

**OCCUPANCY OF ROADS BY UTILITIES
RESOLUTION 00RB01**

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1.00 DEFINITIONS

Applicant: means any person who makes an application for either himself or any other entity which he may be associated with.

County: means the County of Luzerne, Pennsylvania

Permittee: means any person who has been issued a permit and has agreed to abide by all rules, regulations, practices, laws, and specifications associated with a permit.

Street / Roadway: means the entire right-of-way of a County owned street, alley, highway, route, avenue, or easement within the County limits.

Emergency: any condition that constitutes a clear and present danger to life or property by reason of escaping gas, exposed wires, or any other break or defects in the user's line.

Inspection fee: means a fee paid to the County of Luzerne by the permittee to defray street / roadway opening inspection costs

Permit Application fee: means a fee paid to the County of Luzerne by the permittee to defray the costs associated with the issuance, processing, and filing of a street / roadway permit.

Backfill: means the act of backfilling or the material used by the permittee in the filling of the excavated hole after the defect in the user's line has been corrected.

User: means the public or private utility, municipal corporation, municipal authority, or any other person who, or which uses a line to provide a service to one or more customers.

Cost: means actual expenditures incurred by the County of Luzerne for labor, equipment, and materials, which include all fringe benefits, overhead, insurance, and other related costs.

Publication 408: one of the Pennsylvania Department of Transportation publications containing the Department's highway construction specifications, as supplemented.

Road Construction Standards: (RC Standards) one of the Pennsylvania Department of Transportation's publications containing the Department's highway construction specifications, as revised and updated.

Publication 203: The Pennsylvania Department of Transportation publication for the maintenance and protection of work zone traffic.

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2.00 PURPOSE

- A. It is in the best interest of the County of Luzerne and it's motoring public to regulate the locations and construction of utility facilities and other structures that are located, or proposed within a County street / road right-of-way, for the purpose of insuring the structural integrity of the roadway, economy of maintenance, preservation of proper drainage, and safe and convenient passage of traffic.

3.00 APPLICATION / PERMIT REQUIRED

A. GENERAL RULE

The opening of the surface of any County street or roadway is prohibited unless a permit is obtained from the County for that purpose in the manner hereinafter described and proposed. Such a permit may be obtained through the County of Luzerne by filing the proper application and paying the application, inspection, and emergency fees at the Luzerne County Road and Bridge Office located at: 65 Reichard Street, Wilkes-Barre, PA. 18711.

1. All excavations made, or requested to be made in any County street / roadway shall be prohibited unless a permit is granted by the County.
2. The obtaining of street / roadway opening permits by County Departments shall be waived when the work to be performed is completed by County personnel.
3. All contractors performing work under contract for the County shall obtain the street / roadway opening permit for any street / roadway opening work.
4. If street / roadway openings are necessitated by emergencies, the permit(s) shall be obtained on the first regular business day after commencing the opening and on which the County Offices are open for business. Such a permit shall be retroactive to the date when the work was begun.
5. A person or facility performing street / roadway openings for an emergency shall verify the nature of the emergency in writing to the Luzerne County Engineer within five (5) days after such an emergency was worked on by the person or facility.
6. A permit application is not required for accessing an existing utility through a manhole or other existing structure except in street / roadway intersections.

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B. WHO MAY EXECUTE APPLICATIONS

1. If a corporation, authority, or other person in the business of owning or operating a utility service, or intends to own or operate a utility service, the application shall be in that name and executed by that party. An application may not be in the name of the contractor or in the person(s) being serviced by the utility.
2. The applicant shall hold harmless the County of Luzerne from any claims by anyone claiming residual property interest in the permitted area.
3. The applicant under this section shall provide satisfactory evidence to the County the ability to completely control the construction, maintenance, and financial obligation imposed by this ordinance.
4. The applicant under this section shall provide satisfactory evidence to the County that the proposed facility will not be inconsistent with the structural integrity of the right-of-way, the County's maintenance responsibilities, or safe and convenient passage of traffic.

4.00 PERMIT REQUIREMENTS & PREREQUISITES

- A. The street / roadway opening permit shall only be granted upon compliance with, but not limited, to the following requirements:
 1. A written application shall be filed with the County for performing all street / roadway openings and signed by the person(s) or facility(s) desiring such a permit.
 2. Prior to the issuing such a permit, the applicant shall pay in full to the County such fees as required.
 3. No permit shall be issued to any applicant unless the applicant has paid to the County all moneys due to the County for prior street / roadway permits, damages, losses or other costs arising from the work done on previous applications and permits.
 4. Agree to save the County, its Officers, Employees, and Agents from any claims, costs, damages, and liabilities which have originated from such work completed on previous or current work completed by the applicant.
 5. The applicant shall secure a certificate of insurance from the County and have the certificate properly executed by the applicant's insurance agency. Properly executed certificates of insurance shall be filed with the County and verify that the applicant is insured against claims for personal injury as well as against claims for property damages which may arise from or out of the work being executed under such permit, whether the damage or loss is created by the applicant or any person(s) directly or

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indirectly employed by him. Such insurance shall include protection against liability arising from completed operations, underground utility damage, and collapse of any property. Liability insurance for bodily injury shall be in an amount of not less than one million dollars (\$1,000,000) for each person, one million dollars (\$1,000,000) for accident , and five hundred thousand (\$500,000) for property damages. Failure of any applicant

to file a certificate of insurance shall be sufficient reason for denying such a permit. The applicant shall hold harmless the County, its Officers, Employees, and Agents from all damages and liabilities by reason of personal injury or property damage arising from work done by the applicant under the provisions of the article and any amendments made to this article.

6. Separate liability insurance requirements for blasting operations and blasting permits may be obtained from the County.
7. The County shall have the authority to implement any other rule and regulation on any specific permit that would be in the best interest of the County and the public.

5.00 BONDS

A. The County may require security, including, but not limited to the following:

1. All persons, facilities, contractors, and others desiring to open a County street / roadway shall furnish a properly executed corporate surety bond. Such bond shall be executed by a reputable surety company licensed to do business in the Commonwealth of Pennsylvania. All bonds obtained by contractors for the purpose of doing business with the County shall have the bonds countersigned by County Commissioners Office.
2. All bonds shall be in a form and amount acceptable to the County to guarantee restoration of the permitted area in a manner satisfactory to the County for a period of at least two (2) years after the acknowledgment of completed and accepted work by the County.
3. All bonds shall be in a form and amount acceptable to the County to guarantee necessary maintenance costs for the street / roadway and right-of-way in which the facility is located within for a period of at least two (2) years after the acknowledgment of completed and accepted work by the County.
4. The permitted entity may deposit sufficient currency in an escrow account acceptable to the County to fully secure the obligations in clauses (#2) and (#3) under this section as an alternative to securing surety bonds.

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5. The use of bonded contractors, person(s), facilities as well as consultants and engineers with professional liability insurance.
6. The County may require additional bonds for the permitting of street / roadway openings during the winter construction season (November 1 - February 28).

6.00 FEES

- A. The County holds the right to change and waive any fees for the permits or any costs related to such permits.
- B. It is recommended that the permittee contact the appropriate County Offices for a list of the current associated costs regarding permits, inspections, and emergency fees.
- C. It is recommended that the permittee contact the appropriate County Offices for a list of the current associated costs regarding additional costs for permits, inspections, and emergency fees.
- D. Types of fees which the permittee may have to pay to the County before issuance of the permit are, but not limited to, the following:
 1. Permit application fee. Application fees are charged to defray the cost incurred by the County in reviewing and processing the application and plans, including the preliminary review of the site location and reason for request. Regardless of whether or not the permit is issued, the permit application fee must be paid to the County. In no case shall the permit application fee be refunded to the proposed permittee.
 2. General inspection fees. General inspection fees are charged to defray the cost incurred by the County in inspecting the work performed under the permit, and to monitor the quality of work to ensure that it is completed in a manner acceptable to the County.
 3. Emergency fees. Emergency fees are charged to defray the costs incurred by the County in the expediting of a permit to the permittee.
- E. If the County anticipates that the incurred costs, as listed in this section, will exceed their listed fees by a significant amount (more than 125%), the County reserves the right to charge additional fees as follows:
 1. Additional application fee. The County will estimate the additional amount of salary, overhead, insurance, and other expenses incurred by the personnel preparing the permit and prepare a reimbursement agreement

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for execution by the applicant. County review of the permit application will commence on the effective date of the agreement.

2. Additional inspection fees. If the County determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one or multiple persons to inspect the permitted work on a regular basis, other than spot inspections, the permit will so indicate and the permittee shall be charged for additional salary, overhead, insurance, and other expenses incurred by the County for inspection purposes.
3. Charge calculations. Charge calculations may be requested by the department or the permittee if either party feels the unit cost is unfair or unreasonable. Charges for material, labor, and equipment shall be calculated using the current PennDOT "force account" format as defined in the current version of the PennDOT Publication 408.
4. Invoices. The County shall provide all relevant invoices for supporting charges due to the permittee.
5. In cases of additional fees regarding emergency requests, the permittee shall assume all responsibility for reimbursing the County of all incurred costs associated with the expediting of the permit.

7.0 REVOCATION OF PERMIT

- A. All County street / roadway opening permits are subject to revocation at any time by the County after written notice for, but not limited to, the following:
 1. Violation of any condition of the permit
 2. Violation of any provision of this article or any other applicable ordinance, amendment, or law relating to the work.
 3. The existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or property of others.
- B. Written notice of such violation shall be served upon the person to whom the permit was granted, or his agent or employee engaged in the work. Such notice shall also contain a brief statement of the reasons for revoking such permit. Notice may be given either by personal delivery thereof to the person to be notified or by United States mail, addressed to such person to be notified.
- C. Any fees due at the time of revocation shall be paid to the County within five (5) working days from the date of notice. All work shall be immediately restored to its original condition or as acceptable to the County.

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8.00 TIME EXTENSION AND FEE

- A. If any permittee is unable to complete the street / roadway opening work on or before the date as specified on the permit, the permittee shall file a written application for an extension of time with the County. The written application shall be in letter form and shall thoroughly explain the reasons for the request of additional time and the duration required to satisfactorily complete the project. A fee of \$20.00 shall accompany the written request payable the County of Luzerne to defray the costs of processing and filing the application.

9.00 BACKFILLING AND PAVING

- A. The permittee shall be responsible for backfilling and paving the opening and restoring the street surface to its original condition prior to the street cut.
- B. The County shall have the full authority to establish standards for paving, (temporary and final), and backfilling materials and procedures. Details specifying materials and procedures for paving (temporary and final) and backfilling shall be obtained from the County Engineers Office prior to any street / roadway opening work is started.

10.00 TEMPORARY PAVEMENT

- A. The permittee is responsible for the construction, maintenance, and removal of the temporary pavement structure. The permittee should consult the Luzerne County Engineers Office for details and specifications regarding the temporary pavement material and construction procedures before starting any excavation work.
- B. Additional bonds may be required by Luzerne County for street / roadway openings constructed during the winter months (November 1- February 28) due to weather limitations on approved materials and closure of asphalt plants.
- C. The temporary pavement shall remain in place for a time not less than 60 days. After the 60 days are expired, the contractor will be required to construct the required final pavement within five (5) days.

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11.00 CORRECTING AND FINISHING WORK BY COUNTY WORKFORCE OR OTHERS

- A. In case the work has not been completed before the date of expiration as shown on the permit, or in case the quality or finished work is unacceptable to the County, the County shall take steps to correct or finish the work in the best interest of the County and the public. The County shall provide the permittee with written notification of its intent to do so, and shall hold the permittee responsible for any costs incurred by the County in doing so. Payment not made within thirty (30) days of the completed or corrected work shall be chargeable against the posted bond including all additional fees and costs involved in the collection of this payment.

12.00 RESPONSIBILITY, EXTRA INSPECTION, OTHER RULES

- A. The permittee shall be assume all responsibility for the excavation made by such party for all damages caused by the action of the permittee that may arise by reason of the digging of such trenches or excavations. Whenever it is determined by the County, that in the best interest of the County or the public it is necessary to assign additional inspectors to monitor the excavation, backfilling, or paving operations, such inspection shall be paid by the permittee at a rate per hour to be fixed by the County.
- B. The County is authorized to make such other rules and regulations for the excavations, backfilling, and paving of street / roadway openings which it may deem necessary for the proper maintenance and safety of street / roadway excavations. Such rules and regulations shall be printed upon the permit granted or may be amended, by written notification, to the permit, at any time after it has been issued.

13.00 ADDITIONAL WORK

- A. Under no conditions, except for those directed to the permittee by the County in writing, shall the permittee open or remove a greater area than what is specified on the permit. The permittee shall only excavate at the location as described on the permit. If the permittee determines during the course of the work that any of the information on the permit is in error, he shall immediately notify the County and stop all work. All work being stopped shall not be grounds for claim by the permittee against the County. After receipt of permission by the County to proceed with work, the permittee shall file with the County a supplementary application for the work no later than one (1) working day. Any subsequent fee amounts as described in this article or any other related articles shall accompany the supplementary application.

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14.00 MAINTENANCE AND PROTECTION OF TRAFFIC

- A. Traffic Control shall be maintained in accordance with the Pennsylvania Department of Transportation's Publication 203, "Work Zone Traffic Control" manual. The permittee shall furnish and maintain all lights, signs, barricades, and flagmen as may be necessary to properly protect the public and work zone. The permittee shall be responsible for any damages or claims resulting from improper traffic control methods.
- B. The permittee shall be responsible for implementing and maintaining any and all detours that may be required by the County as a result of street / roadway opening. All detours shall be reviewed and approved by the County before commencing with the street / roadway opening.

15.00 PENNSYLVANIA ONE CALL

- A. The permittee shall contact the "Pennsylvania One Call System" before starting any excavation work, and as written in PA ACT 287 of 1974 and as amended by ACT 187 of 1996 73P.S. 176 et. Seq..
- B. The permittee shall locate in advance of all excavations all surface and subsurface utility lines and structures, and shall take all necessary precautions to avoid damage to other utility lines and to public and private property. In the event damage does occur to the property of others, the permittee shall immediately and satisfactorily repair all damage and restore the property to a satisfactory condition as determined by the County and the property owner.

16.00 TRENCH SAFETY

- A. The permittee shall be responsible for following and abiding by all OSHA rules and regulations as governed by their "Standards and Interpretations" in Subpart P- Excavating, Trenching, and Shoring and any other sections thereof.
- B. Not abiding by OSHA rules and regulations shall be immediate grounds for revocation of the permit. Any costs or damages resulting from OSHA rules and regulations not being adhered to shall be the responsibility of the permittee and will not be reason for claim against the County.

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17.00 MATERIALS AND WORKMANSHIP

- A. All backfill and paving materials intended for use by the permittee shall conform the most current version of the Pennsylvania Department of Transportation Publication 408 and Road Construction Standards or as approved by The Luzerne County Engineers Office. All certifications, material data sheets, mill certifications, or any other certification shall be supplied to the County before any work is performed to assure the materials conformance with the required specifications.
- B. All procedures for excavating, backfilling, and paving shall conform to the most current version of the Pennsylvania Department of Transportation Publication 408 and Road Construction Standards or as approved by the Luzerne County Engineers Office.
- C. The permittee shall be responsible for all associated costs in the procurement of the specified materials and application of specified construction methods as outlined and defined in this article and any other related articles.
- D. The permittee shall be responsible for keeping all streets / roadways free and clear of any obstacles, equipment, material, and all other debris that may cause unsafe conditions to the traveling public as depicted by the County.
- E. No material or equipment shall be stored in the County Right-of-Way during non-working hours.

18.00 PENALTIES

- A. Any person violating any provision of this article shall, upon conviction thereof shall be fined not less than one hundred dollars (\$100.00) for each and every offense, together with costs, and in default of payment thereof, shall be imprisoned not more than thirty (30) days. Each failure to obtain a permit or to comply with any of the requirements and provisions of this article, and each and every day during which such violation continues shall constitute a separate offense.
- B. The County reserves the right to deny the issuance of future street / roadway permits to any person who violates the provisions of this article. This provision in no way shall prohibit or limit the right of the County to bring legal action against the permittee.