

ORDINANCE NO. 15102

FILE OF CITY COUNCIL

BILL NO. 48 - 2013

October 16, 2013

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AN ORDINANCE

Amending Streets, Utilities and Public Services Code by changing the description of one Appeals Committee member, number of years for installing any utility, department issuing permits, and A.I.M. Regulation to Ordinance.

SECTION ONE: That Article 901 be amended to read as follows:

**ARTICLE 901  
STREET EXCAVATIONS**

- 901.01 Definitions
- 901.02 Permit Required
- 901.03 Street Openings Prior to Reconstruction or Resurfacing
- 901.04 Prerequisites to Obtaining a Permit
- 901.05 Fees
- 901.06 Permit
- 901.99 Penalty

**901.01 DEFINITIONS**

The following words and phrases, when used in this article, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise:

1. **Alley (Public)** means a minor right-of-way providing secondary access to the side or rear of one (1) or more properties but which shall have a maximum right-of-way width of twenty-four (24') feet.

2. **Appeals Committee** means the body which will review requests to excavate a newly resurfaced or reconstructed street or alley. The committee will consist of five (5) members comprised of the following or their designee:

|                  |   |
|------------------|---|
| Council:         | Chairperson of Public Works Committee                   |
| Engineering:     | Manager of Engineering (Chairperson of Committee)       |
| Engineering:     | <del>Streets Paving Engineer</del> Construction Manager |
| Streets Bureau:  | Superintendent of Streets                               |
| Planning Bureau: | Planning Director                                       |

3. **Applicant** means any person who makes application for a permit.
4. **Calendar Year** means January 1 through December 31, inclusive.
5. **City** means the City of Allentown, Lehigh County, Pennsylvania.
6. **City Corporate Authority** means any governmental corporation initiated by Council under the Commonwealth of Pennsylvania Authorities Act of 1945 to administer a revenue-producing public enterprise.
7. **Concrete** includes soil cement, plain cement concrete or reinforced cement concrete. Material contained in the base course of some City streets.
8. **Cost** means actual expenditures incurred by the City for labor, equipment and materials. These expenditures include all fringe benefits and overhead.
9. **Degradation Fee** means a fee paid by the permittee to the City to defray a percentage of the costs for resurfacing and reconstruction of City Streets resulting from the depreciation of streets associated with street openings.
10. **Department** means the City Department of Public Works.
11. **Emergency** means an unforeseen circumstance which calls for immediate action to protect or safeguard life and/or property.
12. **Inspection Fee** means a fee paid by the permittee to the City to defray street opening inspection costs.
13. **Outdoor Sidewalk Cafe** is defined as any portion of a food establishment or drinking place located on a public sidewalk or open space that provides waiter, waitress or take-out service, is unenclosed, and not used for other purposes, immediately abutting in front of (or on the side of a corner property) a new or existing establishment. (13675 §1 5/21/98)
14. **Permit Fee** means a fee paid by the permittee to the City to cover the costs of issuing, processing and filing the street opening permit.
15. **Permittee** means any person who has been issued a permit and has agreed to fulfill all the provisions of this article.
16. **Person** means any natural person, partnership, firm, association, utility or corporation.
17. **Public Utility** means any utility company, excluding corporate authorities of the City, licensed by the Public Utility Commission of the Commonwealth of Pennsylvania.
18. **Residential Streets Capital Funds** means a fund established and regulated by the City, the monies therein are explicitly designated for the resurfacing and reconstruction of City streets.
19. **Sidewalk Area** means that portion of the street right-of-way reserved for sidewalks. Area defined on the City Plan.

20. **Street** (Public) means a right-of-way dedicated to the public for the movement of traffic with space for utilities and providing access to abutting properties. May also be referred to as avenue, road, boulevard, expressway, court or lane with a right-of-way width greater than twenty-four (24') feet.

21. **Work Day** means a normal business day for the City Government, i.e., Monday through Friday, except designated holidays.

Regulating excavations in any street or alley within the City limits, and providing for the issuance of permits granting authority therefore and for the replacement and the payment of the costs thereof. (13083 §1 8/17/91)

### **901.02 PERMIT REQUIRED**

A. That the opening of the surface of any City street or alley is prohibited unless a permit is obtained for that purpose in the manner hereinafter described. Such permit shall be granted through the Department of Public Works of the City when the person applying for such permit files an application with the Department in compliance with the provisions of this article and pays into the City Treasurer the amounts hereinafter stated.

B. Any person working in the vicinity of a City street or alley who in any manner disturbs such street or alley or who in any manner causes damage to a street or alley will be required by this article to obtain a permit and deposit the necessary fees as required to correct damage. Street or alley excavation permits will not be required for persons excavating adjacent to the curb for the express purpose of installing or replacing curbs and/or sidewalks provided a curb and sidewalk permit has been obtained prior to such work.

C. The obtaining of street excavation permits by City departments and corporate authorities will be waived when work to be performed is completed by their own personnel.

D. All contractors performing work under contract for the City or City corporate authorities will obtain street excavation permits. However, all costs will be waived.

E. Public utilities will obtain street excavation permits for work performed by their own forces or by contract.

It will be the permittee's responsibility to comply with Section 5 of Act 172 of the General Assembly of the Commonwealth of Pennsylvania, as amended. (13083 §1 8/17/91)

### **901.03 STREET OPENINGS PRIOR TO RECONSTRUCTION OR RESURFACING**

A. When the City or the Pennsylvania Department of Transportation proposes to reconstruct or resurface any street or alley, the Department of Public Works will first serve notice of such improvements to all persons owning property abutting the street or alley about to be improved, and to all public utility companies operating in the City. Within ninety (90) calendar days from receipt of such notice all notified persons will complete or cause to be completed all necessary repairs and replacements of utility mains, service connections and/or laterals existing under the street and designated curb and sidewalk areas. Failure to comply with this provision will cause the owner to relinquish their option of installing any utility for a period of ~~three~~ five (35) years within resurfaced streets or alleys and ~~five~~ eight (58) years with reconstructed streets or alleys from date of work completion. All repairs, replacements and new installation will be in first class condition so that the same cannot be expected to require repairs or renewal with the periods as herein before stated.

B. Upon failure of any of the notified person or persons to comply with the notice from the Department to place the same in first class condition as hereinbefore provided, the Department will cause existing utility mains, service connections and/or laterals to be placed in first class condition as aforesaid, or to be entirely removed if not used or necessary for the public convenience, whereupon the City will be entitled to collect the cost of such renewals, repairs, caulking, removal or other work from the aforesaid responsible person or persons, either by invoicing the person or persons, or in the case of water or sewer house connections, by filing municipal liens therefore against the abutting properties benefitted by such connections.

C. This section will not forbid, however, the installation of new pipes, conduits or other services or structures, or the repair, replacement or removal of those already existing, in or under the portions of such streets or alleys improved as aforesaid, by tunneling beneath paving in accordance with the ordinances of the City and the directions of the Department of Public Works or the Pennsylvania Department of Transportation, upon obtaining a permit therefore from the Department of Public Works and upon payment to the City of the same fees as prescribed by the provisions of this article for making a surface opening in the street or alley of the same dimensions. (13083 §1 8/17/91)

#### **901.04 PREREQUISITES TO OBTAINING A PERMIT**

Street or alley excavation permits will only be granted upon compliance with the following express provisions:

A. An application for the issuance of a permit will be filed in the office of the Department of Public Works upon forms furnished by the City for that purpose, and will be signed by the applicant. Such application will set forth the purpose for which such excavation is to be made; the size and location of the same; the full scope of work to be completed; the date or dates during which such excavation is to be permitted; and shall provide that the permittee will faithfully comply with each and every provision contained in this article. An applicant will furnish a drawing of the proposed opening site upon request of the Department. Items required on the drawing will be specified at the time of request.

B. Prior to the issuing of permits, every applicant will pay to the City Treasurer Bureau of Engineering the amount hereafter required for the purpose hereinafter provided and will exhibit to the Department a receipt for the amount aforesaid. This deposit will be based upon a rate per square yard of restoration and a degradation fee as affixed by the Director of the Department of Public Works of the City and as set forth subsequently in this article or as amended from time to time by A.I.M. Regulation Ordinance. No permit will be issued to any applicant unless the applicant pays to the City any and all monies then due to the City, for prior excavations made or for any loss, damages or expense in any manner occasioned by, or arising from the excavation of streets or alleys of the City under prior permits.

In the case where the permittee requests to perform the permanent surface restoration the City will advise the permittee of the standards and specifications which are to be followed. City inspectors will be assigned to assure work is in accordance with these regulations and standards. Deposits for restoration fees will be retained by the City for a period of twelve (12) months. Upon the expiration of this twelve (12) month retainage period, 85% of the funds deposited for the rate per square yard of restoration will be refunded the permittee. The 15% retainage will cover costs of supervision and inspection for permitted excavation and permanent restoration.

A fee will be paid by the applicant to cover cost of issuing the permit. Said fee is also to be established by the Director of the Department of Public Works of the City and as set forth subsequently in this article or as amended from time to time by A.I.M. Regulation Ordinance.

In all cases where a permit has been issued and the work set forth in such permit has not commenced within sixty (60) days the same will be canceled and the deposit for restoration and degradation fee will be refunded by the City Treasurer. Any fee for issuance of the permit will not be refundable. (13186 §1 4/9/93)

The City will by proper voucher refund to the said permittee the difference in cost of the replacement of said excavation and the amount deposited should the square yards of restoration be less than estimated on the application. In case the cost of restoration exceeds the amounts deposited then the excess will be charged to the permittee. The sums due the City will be paid within thirty (30) days from the date of rendering a statement to the said permittee.

C. Except in emergency situations, the appeals Committee will at its discretion be permitted to allow the opening of a street or alley which has been resurfaced within a ~~three~~ five (35) year period or reconstructed within a ~~five~~ eight (58) year period prior to the date of request for permit based on criteria established by Appeals Committee.

D. Except in emergency situations, applications for street or alley openings will be submitted to the Department at least ~~two~~ three (23) work days prior to the proposed date of excavation. The Department will review each application and grant or deny the applicant a permit upon completion of their review.

E. No street or alley opening will be performed, except in the case of emergency, when seasonally prohibited or, in the judgment of the Director of Public Works conditions are unreasonable for such work.

F. The applicant will agree to pay the entire cost and expense incurred in the replacement of the excavation and that the City will at all times have the right and authority to correct any and all omissions in the conduct of the work and to have the power to take possession of and to do all the work and charge the expense thereof to the permittee. The expense so charged will be deducted and paid by said City out of such monies as may have been deposited with the City, and in case such expense will exceed the sum on deposit, then the said permittee will pay the amount of the excess to said City.

G. The permittee will also agree to safeguard and maintain in good order the excavation until such time as the City may temporarily or permanently restore the excavation, and to assume all cost and expense due to defective backfilling for the period of one year after the date of the completion of the excavation.

H. The permittee during the progress of the work will provide and maintain such fences, barriers, street closures, danger signs, lights and watchmen as may be necessary to prevent accidents to the public and adjoining tenants. Permittee shall comply with the regulations in PennDOT Publication 213, Work Zone Traffic Control Regulations.

The convenience of the public and temporary approaches to and crossings of intersecting streets will be provided for and kept in good condition where practicable. The sidewalks or portions of the street adjoining the work or its vicinity will not be littered or obstructed more than necessary and the drainage gutters and inlets to the storm water sewers will at all times be kept clean and unobstructed. All necessary best practices for stormwater management shall be followed.

I. Excavation will be by open cut from the surface and no tunneling or drifting will be permitted except by permission and so noted on the permit. The amount of trench opened and also the amount unfilled will at all times be subject to the decision of the department. No trench or excavation will be undercut or have a greater width at the bottom than at the top. In case of slips or slides of the sides of the

excavation the same will be trimmed to solid earth and the top surface cut back to the limit of the same before any backfilling is commenced. When necessary or required, the sides of a trench will be sheathed and braced and rendered secure until the construction has been laid therein and the trench refilled. Care will be taken not to move or disturb other sub-surface structures and in crossing these or running parallel with or near them, they will be securely hung, braced and supported in place until the work is completed. The applicant will maintain their respective services and will repair all damage done to any of the said structures.

In rock excavation, all drilling and blasting will be conducted with the greatest possible care and all possible precautions taken to guard against accidents. The permittee will at all times exercise the utmost care in the use of explosives so as not to endanger life or property and will at all times comply with Title 25, Rules and Regulations for the storage, handling and use of explosives as set forth by the Pennsylvania Department of Environmental Resources. Blasting delays less than one-half (1/2) second will not be permitted in the City except when waived by the Engineer. Permittee will be required to obtain Blasting Permits from the City Fire Bureau.

J. In back-filling, only approved crushed aggregate as recommended by the Department of Public Works will be used. The method of back-filling will be such as to insure that the fill is thoroughly compacted. The method or methods used to compact will be subject to the approval of the Department of Public Works which will have the power to issue regulations as to such method. 13186 §1 4/9/93)

In all unimproved streets the surface of the trenches after being filled and settled will be finished in a most work-like manner without needless delay and will in every respect be equal in quality, character and materials to the street surface existing previous to making the excavation. In all improved streets the crown of the surface will conform to the adjacent street surface until sufficient time has elapsed to warrant the restoration either temporarily or permanently of the pavement surface. All such restorations of pavement surfaces will be made by the City under existing contracts or by its own forces and the cost thereof charged to the applicant.

In the replacement or restoration of permanent roadway surfaces the City will have the right and authority to cut back the surface and supporting base as far as may be deemed necessary to afford a good support upon firm earth or to remove any part of the surface and base which may have become injured by reason of the said excavation.

K. In no case will an applicant open or remove a greater area or surface and at no other location than specified in the original application, provided however, that if at the time of actually doing the work it should be necessary to open or remove a greater area of surface than originally applied for, the applicant will first notify and secure, by telephone or otherwise, the consent of the department to do so, upon the express condition that the said applicant will, before 12 o'clock noon of the following business day, file a supplementary application for the making of an additional excavation.

L. All permits will at all times be in the possession of a competent person actually on the work site and will be shown at all times to any police officer or properly authorized officer or employee of the Department of Public Works upon demand.

M. In case of an emergency arising at night, Sundays, legal holidays or at such time as the office of the Department of Public Works is closed and an immediate excavation may be necessary for the protection of public or private property, the same will be reported to the police department, which will grant permission to make the necessary excavation, upon the express condition that an application be made to the Department of Public Works on or before 12 o'clock noon of the following business day.

N. All excavations will be commenced and completed by the use of a reasonable work force working around the clock, or in the alternative, all excavated material will be removed and at the cessation of work suitable steel plates will be placed over the excavation or trenches will be backfilled for protection and to allow traffic to resume. All steel plates shall sit on a minimum of one (1) foot of solid surface with each plat pinned on. There shall be no less that 2 pins on each side, maximum pin spacing of eight (8) feet, and pins on corners to be no further than twelve (12) inches from the corner.

O. Restoration fees for the utility companies, i.e., U.G.I., Bell of Pennsylvania, PP&L, and cable companies will be waived. Each utility will be required to make permanent restoration in accordance with City regulations at their own expense.

1. If two (2) cuts are made less than one-hundred (100) feet apart, the entire area between the 2 cuts and including the two (2) cuts shall be milled and overlaid for a width of one-half the street/alley width, unless the repair crosses the centerline of the street/alley, then the mill and overlay shall be for the full width of the street/alley.-
2. If more than 4 cuts are made within a five-hundred (500) foot span in the roadway street/alley, the section must be milled and overlaid for one-half (1/2) the width of the road street/alley, unless the repair crosses the centerline of the street/alley, then the mill and overlay shall be for the full width of the street/alley for the entire five hundred (500) feet length of work.
3. Milling an and overlay may also be required wherever designated by the Director of Public Works.
4. The time from milling to final paving shall not exceed 24 hours. The are milled section of street/alley shall be closed to traffic until final restoration is complete. Permittee is responsible for Traffic control during the street closure.
5. Permittee is responsible for the final restoration of the street for one year from the date of final restoration.
6. Permittee shall inspect all temporary patches on a weekly basis and make necessary repairs until final repair is made.
7. Permittee shall inspect final patches and restorations every three (3) months for a period of one year from the date of the final restoration to ensure the original street/alley grades and cross sections are maintained.

P. Permittee agrees to save the City, its officers, employees and agents from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of such work to be done in such application. The acceptance of any permit under this article will constitute such an agreement by the applicant whether the same is expressed or not.

Q. An applicant or designee will secure a certificate of insurance from the Department and have the certificate properly executed by the applicant's insurance agency. Properly executed certificates of insurance will be filed with the Department 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 performance of the excavation work, whether such work was performed by the applicant or anyone directly employed by them. Such insurance will include protection against liability arising from completed operations, underground utility damage and collapse of any property. Liability insurance for bodily injury will be in an amount not less than Three Hundred Thousand (\$300,000) Dollars for each person and Three Hundred Thousand (\$300,000) Dollars for each accident and for property damages an amount not less than Three Hundred Thousand (\$300,000) Dollars. Failure of an applicant to file a certificate of insurance will be sufficient reason for denying a permit. The applicant will save and hold harmless the City from any and all damages and liability by reason of personal injury or property damage arising either directly or indirectly from the work to be performed under the provisions of this article, irrespective of the cause of

such injury or damage. Liability insurance requirements for blasting may be obtained from the City Fire Bureau. Blasting permits will be obtained from the Bureau of Fire.

R. Public utility companies desiring to open a City street or alley will be required to file with the Department a properly executed indemnity agreement for the faithful compliance with the ordinance of the City relating to the making of excavation in streets and alleys. (13115 §1 3/5/92)

S. A street or alley opening permit will be obtained for any test hole work. No test holes will be made in or upon a greater surface of the street or alley than as specified in such permit, and no excavation or test holes will interfere with any of the water pipes, sewers, drains of the City or any other underground utility service. Test holes having an area of four (4) square inches or less will be filled by the applicant with a grout composed of one part cement and two parts sand and a sufficient quantity of water, filled to the surface of the street or alley, and the surrounding surface of the street or alley will be placed in the same condition as before. Test holes greater than four (4) square inches in area will be backfilled in accordance with the provisions of this article, unless otherwise directed by the Department of Public Works.

T. The permittee will guarantee and maintain his work for twelve (12) months from the completion of the restoration and replacement work. Within this twelve (12) month period, upon notification from the City of necessary correction work required, the permittee will correct or cause to be corrected all restoration work required within five (5) calendar days of receipt of the notification. The Department of Public Works will determine the extent of restoration required and the method of correction. Any and all work not completed within this five (5) day period may be completed by the City at the discretion of the Director of Public Works. The City will invoice the permittee for all costs incurred by the City in performance of this work. The sums due the City will be paid within thirty (30) days from the date of sending a statement to the permittee. In the case of public utility companies, payment not made within thirty (30) days of the invoice date will be chargeable against the restoration fee including all fees and costs involved in the collection of this payment.

U. In the case where the permittee, other than public utilities, will disturb or remove existing concrete sidewalk, the City will, by letter, notify the property owner of their responsibility to acquire proper permits and replace sidewalk area in accordance with current City standards within sixty (60) days of the completion of work, allowance will be made for restoration requirements by the Director of the Department of Public Works, regarding permits and work completed during the winter months. (13186 §1 4/9/93)

#### **901.05 FEES**

1. Fees or deposits must be in the form of either cash or check (person or company). (§1 8/17/91)
2. See the current City of Allentown, ~~Administrative Information Manual (AIM)~~ Ordinance for "RESTORATION" and "DEGRADATION" fee schedules. The number of square yards of excavation shall be computed to the nearest whole square yard, rounded upward. This will include any pavement that must be removed to enable an overlap of the surface course and base course on the existing subgrade or as determined by the City Engineer. (13186 §1 4/9/93; 13679 §1 6/4/98)
3. The Director of Finance, or designee, will place collected degradation fees into Residential Streets Capital Fund. (13083 §1 8/17/91; 13679 §1 6/4/98)

### **901.06 PERMIT**

Private or quasi-public utilities will make application and be granted a permit for street or alley cuts prior to commencing work in accordance with the fee as set forth in the current A.I.M. Regulation Ordinance. (13186 §1 4/9/93)

### **901.99 PENALTY**

Any person violating the provisions of this article will, upon conviction thereof, be fined not more than Six Hundred (\$600.00) for each and every offense, together with costs, and in the default of payment thereof, be imprisoned for not more than thirty (30) days. Each failure to obtain a permit, or having obtained a permit, to comply with any of the requirements of this article, and each day during which such violation continues, will constitute a separate offense.

The Department of Public Works reserves the right to deny the issuance of future street opening permits to any person who violates the provisions of this article.  
(10839 §12 11/16/65; 11995 §1 2/21/73; 13083 §1 8/17/91)

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN:

SECTION TWO: That this Ordinance will take effect ten (10) days after final passage.

SECTION THREE: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

|                        | Yea | Nay |
|------------------------|-----|-----|
| Joe Davis              | X   |     |
| Jeanette Eichenwald    |     |     |
| Jeff Glazier           | X   |     |
| Cynthia Y. Mota        | X   |     |
| Ray O'Connell, VP      |     |     |
| Peter G. Schweyer      | X   |     |
| Julio A. Guridy, Pres. | X   |     |
| TOTAL                  | 5   | 0   |

**I hereby certify that the foregoing Ordinance was passed by City Council on December 4, 2013 and signed by the Mayor on December 5, 2013.**

  
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**CITY CLERK**

- **What Department or bureau is Bill originating from? Where did the initiative for the bill originate?**

Administration

- **Summary and Facts of the Bill**

Changes the Street excavations ordinance to provide for more uniform repairs after excavations by utilities and others. It also allows costs to be spread to those excavating the streets.

- **Purpose – Please include the following in your explanation:**
  - **What does the Bill do – what are the specific goals/tasks the bill seek to accomplish**
  - **What are the Benefits of doing this/Down-side of doing this**
  - **How does this Bill related to the City’s Vision/Mission/Priorities**

The changes to the ordinance make the person doing the excavations in the street responsible for repairs and also more responsible for monitoring the repairs.

- **Financial Impact – Please include the following in your explanation:**
  - **Cost (Initial and ongoing)**
  - **Benefits (initial and ongoing)**

This will save the City money in minimizing repairs by the City after a utility has done a street excavation. More of the burden is placed on the utility Company.

- **Funding Sources – Please include the following in your explanation:**
  - **If transferring funds, please make sure bill gives specific accounts; if appropriating funds from a grant list the agency awarding the grant.**

None

- **Priority status/Deadlines, if any**

To be introduced at the next council meeting.

- **Why should Council unanimously support this bill?**

It will place greater responsibility for street repairs on the utility companies and also prevent unsatisfactory repairs to City streets that would make streets uneven and rough. This will also eliminate excess money spent to repair poorly repaired streets after excavation.

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