

**ORDINANCE NUMBER 2019-25**

**CALLERY BOROUGH, BUTLER COUNTY, PENNSYLVANIA**

**AN ORDINANCE REQUIRING PERMITS TO BE OBTAINED PRIOR TO PERFORMING OPENINGS, EXCAVATIONS, OR OTHER WORK IN THE BOROUGH'S PUBLIC STREETS OR RIGHTS-OF-WAY; REQUIRING THE SUBMISSION OF PLANS PRIOR TO THE ISSUANCE OF PERMITS; PROVIDING FOR THE PAYMENT OF PERMIT AND INSPECTION FEES; REQUIRING MAINTENANCE BONDS; AND ESTABLISHING PENALTIES FOR VIOLATIONS.**

**BE IT ENACTED AND ORDAINED**, and it is hereby enacted and ordained, by Callery Borough council, that Chapter 73, Streets and Sidewalks, of the Code of the Borough of Callery is hereby revised by adding Article III, Street Opening Permits, as follows:

**CHAPTER 73  
STREETS AND SIDEWALKS**

**ARTICLE III  
STREET OPENING PERMITS**

**§ 73-301. SHORT TITLE.** This Article shall be known and may be referred to as the "Callery Borough Street Occupancy Permit Ordinance."

**§ 73-302. PURPOSE AND LEGISLATIVE INTENT.** The purpose and the legislative intention of council in enacting this Article are as follows:

- A. Openings, excavations, and other work performed in the Borough streets and rights-of-way have resulted in damage, improper drainage, and uneven riding surfaces on Borough streets and have resulted in increased costs of repairs and maintenance of streets and rights-of-way and dangers and hazards to vehicular traffic.
- B. The Borough desires to require proper repair of openings, excavations, and other work performed in the Borough streets and rights-of-way in order to minimize damage to Borough streets and rights-of-way and associated repair costs, and to eliminate hazards to the public.

**§ 73-303. DEFINITIONS.** For the purposes of this Article, the following terms shall be defined as follows:

Borough – Callery Borough, Butler County, Pennsylvania or its duly appointed representative.

Contractor -The person or business entity installing or performing a project in a Borough street or rights-of-way, including all agents, subcontractors, officers, or employees of that person or business entity.

Council – Callery Borough council.

Owner - The owner of the land or the owner of the facility for which a project is planned.

PENNDOT - Pennsylvania Department of Transportation.

Permit - A Street Occupancy Permit issued by the Borough pursuant to this Article.

Permit Holder - The holder of a duly issued Street Occupancy Permit.

Person - Any natural person, firm, partnership, corporation, entity, association, or other group of persons.

Public Street - Any street, road, alley, bridge, or public thoroughfare, including the entire area between right-of-way lines, either presently maintained by the Borough, or, as shown on a subdivision or land development plan, dedicated by the developer for public use.

Right-of-Way - The area which has been acquired by the Borough for street purposes.

#### **§ 73-304. PERMITS REQUIRED.**

A. No person shall hereafter perform opening, excavation, or other work within the Borough's public streets or rights-of-way without first obtaining a Street Occupancy Permit from the Borough.

B. Each opening, excavation, or other work site within a public street or right-of-way shall require an individual permit.

#### **§ 73-305. PERMIT APPLICATION REQUIREMENTS, ISSUANCE, AND REVOCATION.**

A. Every person intending to perform opening, excavation, or other work within a public street or right-of-way shall, prior to obtaining a permit, file an application with the Borough, on a form furnished by the Borough.

B. The application shall contain at a minimum the following information:

1. Tax map and parcel number of the property on which the project is proposed.
2. The name, address, and telephone and fax number of the applicant.
3. A drawing or sketch of the exact location of the proposed project with respect to the public street or right-of-way.
4. The purpose of the proposed project.
5. The method and proposed stages for performing the work.
6. The proposed dates and times of commencing and completing the work.
7. The approximate size and depth of the proposed project.
8. Such other information, diagrams, sketches, forms, and plans as the Borough may deem necessary.

C. The application shall be accompanied by such permit issuance fees and general inspection fees as determined by resolution from time to time by council. Issuance fees are used to defray costs incurred by the Borough in reviewing and processing the application and plan(s), including the preliminary review of the site location identified in the application, and issuing and processing the permit. General inspection fees are used to defray costs incurred by the Borough in spot inspection(s) during the progress of the work and after it has been completed to ensure compliance with the permit and these regulations.

D. The application shall also be accompanied by such performance bonds, certificates of insurance, and blasting bonds as the Borough deems appropriate, in amounts determined by the council, and in forms acceptable to the Borough.

E. If the Borough determines that the application and plan meet the criteria above, the Borough shall issue the permit.

F. If the application or plan is found to be deficient, or if in the opinion of the Borough the plan should be revised in order to meet the criteria above, the Borough shall notify the applicant of the deficiencies or changes to be made.

G. Once the Borough determines that the revised application and/or plan meet the criteria above, the permit shall be issued.

H. Permits shall apply only to the work specified in the application, expire on the date and time specified, and may contain such conditions or limitations as the Borough deems necessary for the protection of persons and property.

I. Permits are Non-Transferable. Permits may not be transferred without the prior approval of council.

J. Revocation. In the event of failure or neglect by the permit holder to perform and comply with the requirements of the permit, the Borough may immediately revoke and/or annul the permit and order and direct the permit holder to remove any or all structures, equipment or property belonging to the permit holder and/or its contractors from the legal limits of the right-of-way and to restore the right-of-way to its former condition.

K. All permit records shall be made available for public examination by the Borough upon written request.

#### **§ 73-306. STREET OPENING, EXCAVATION, AND OTHER WORK REQUIREMENTS.**

##### **A. Emergencies.**

1. In the case of any leak, explosion, or other accident in any subsurface pipe, line, conduit, construction or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, conduit, construction or apparatus to commence an opening or excavation to remedy such condition before securing a permit, provided that application for a permit shall be made no later than the next business day.

2. If any such emergency condition shall not be immediately attended to by the owner or person responsible for such pipe, line, conduit, construction or apparatus, the Borough, after

such notice, or attempt of notice, as it shall deem necessary under the circumstances of the particular case, may proceed to have the necessary and required work performed and charge the cost thereof to the owner or person responsible.

**B. Drilling, Boring, Driving, or Tunneling Under Improved Areas.**

1. When crossing under any improved area, the opening shall be drilled, bored, or driven on a horizontal plane at a minimum depth of three (3) feet below the surface of the street and its swale ditches.
2. When boring, the hole shall be backfilled with sand with ends grouted or flowable fill.
3. Wet boring is prohibited.
4. No opening under the improved area shall be made closer than three (3) feet to the edge of the street.
5. Facilities and other structures crossing under the improved area shall be constructed so as to assure the safety of the traveling public and to preclude the necessity of entering upon the improved area for maintenance or replacement.

**C. Trenching Across Improved Areas.**

1. Generally, trenching across the improved area is prohibited.
2. Trenching across the improved area may be authorized where drilling, boring, driving, or tunneling are not feasible because:
  - (a) The subsurface is solid rock.
  - (b) There are other facilities located longitudinally under the improved area and their location precludes methods other than trenching.
  - (c) Adjacent development in a very congested area makes the construction of a tunneling or boring shaft impossible.
3. When trenching, the operation shall be performed by one of the following two (2) methods:
  - (a) Utility facility placed in one (1) piece.
    - (1) Traffic shall be routed over one-half of the pavement width.
    - (2) The closed half of the pavement shall be opened to the required depth and bridged with steel plates.
    - (3) Traffic shall be shifted to the bridged half of the pavement.
    - (4) The remaining half of the pavement shall be opened to the required depth.
    - (5) The facility shall be placed full width.
    - (6) The open trench shall be backfilled and restored half-width.
    - (7) Traffic shall be shifted to the restored half of the pavement.
    - (8) The bridging shall be removed, and the remaining half of the trench shall be backfilled and restored.

(b) Utility facility placed in more than one (1) piece.

- (1) Traffic shall be routed over one-half of the pavement width.
- (2) The closed half of the pavement shall be opened to the required depth, the facility placed, and the trench backfilled and restored.
- (3) Traffic shall be shifted to the restored half of the pavement.
- (4) The remaining half of the pavement shall be opened to the required depth, the facility placed, and the trench backfilled and restored.

4. The trench must be filled to within three (3) inches of the surface with PENNDOT approved flowable fill. When cured, the trench must be topped with asphalt to final street surface height.

D. Blasting. No pre-drilling or blasting shall be permitted within the right-of-way unless specifically authorized by the permit.

1. Only controlled blasting, as specified in Section 203.3 (d), PENNDOT Form 408, shall be permitted within the improved area.

2. When blasting is proposed, the permit holder shall make, execute, and deliver a bond to the Borough, in an amount determined by council, with surety by a company duly registered and authorized to do business in the Commonwealth, conditioned that the Commonwealth and Borough will be saved harmless from any damages whatsoever to the improved area for a period of one (1) year from the date of the completion of the last work covered by the permit.

3. When blasting is anticipated within one hundred (100) feet of any bridge, box or culvert, the permit holder shall submit to the Borough a detailed plan of excavating, shoring, blasting, and backfilling procedures with the application.

4. Blasting shall be prohibited within twenty-five (25) feet of the nearest part of a bridge, box or culvert.

E. Maintenance and Protection of Traffic. The permit holder shall be required to provide the following traffic protection and maintenance measures at the work site:

1. A traffic control plan shall be submitted to and approved by the Borough engineer before implementing traffic detours.

2. Maintenance and protection of traffic shall be carried out in accordance with the requirements of the Pennsylvania Department of Transportation, as set forth in Publication No. 43 and Publication No. 90.

3. The permit holder shall provide and maintain all necessary precautions to prevent injury or damage to persons and property in accordance with instructions furnished by the PENNDOT district office.

4. Warning signs shall be placed in advance of the actual operation in such a manner as to be visible to the traveling public, and substantial barricades with adequate illumination shall be provided and maintained for any open trench or hole in the improved area.

5. The permit holder shall provide flagmen to direct one-lane traffic.

F. Matting. The permit holder shall protect the street pavement and shoulders by using matting, wood, or other suitable protective material having a minimum thickness of four (4) inches. The permit holder shall be responsible for restoring the pavement and shoulders to their pre-existing condition upon completion of the project.

G. Open Lane of Travel. No opening, excavation, or construction in any street shall extend from the right-of-way line into the street past the centerline, until the opened section is restored to a condition safe and convenient for travel.

H. Allowable Limits of Excavation. No more than one hundred (100) feet longitudinally shall be opened in any street at any one time, except for the installation of gas or water lines, or sanitary or storm sewers by private or public entities.

I. Plates and Bridging. Except for emergency repairs of utility facilities, all work shall be stopped each day from thirty (30) minutes prior to thirty (30) minutes after peak traffic hours as determined by the Borough. By the time work is stopped, steel plates or bridging shall be placed over all openings made within the improved area, which are less than six (6) feet in either length or width. The plates or bridging shall be extended a minimum of eighteen (18) inches from each edge of the opening and shall be secured in a safe manner.

J. Disposition of Materials.

1. The permit holder shall keep the improved area free of all material which may be deposited by vehicles traveling upon or entering onto the street during the performance of work authorized by the permit.
2. The permit holder shall be responsible for controlling dust conditions created by project operations.
3. All excess material and material that is not suitable for backfill shall be removed and disposed of outside the right-of-way as the work progresses.
4. All retained suitable material shall be placed or stored on the side of the operation farthest from traffic, unless otherwise authorized by the permit, and in such a manner that there will be no interference with the flow of water in any gutter, drain, pipe, culvert, ditch, or waterway.

K. Overnight Parking. Where the project requires equipment to park at the site overnight, the parking area shall be located a minimum of four (4) feet from the edge of the street surface.

L. Project Delays. The permit holder shall immediately notify the Borough if work is stopped or delayed on the project. If any ditch or trench remains open at the time of stoppage or delay, the Borough may require the permit holder to refill the ditch or trench until the permit holder is ready to proceed.

M. Utility Connections. The permit holder shall be responsible for locating underground utility lines prior to commencing work and ensuring all work is conducted so as not to interfere with water mains, gas lines, sanitary or storm sewers, or their connections with structures, or any other sub-surface pipes, facilities, or structures unless and until written permission is obtained from the owner of such pipe, facility, or structure.

N. Altering Drainage. The permit holder is not permitted to:

1. Alter the existing drainage pattern or the existing flow of drainage water, or direct, divert, or otherwise drain additional surface water toward, onto, or into, or in any way to affect the street or right-of-way or street facilities without the prior written consent of council.
2. Direct, divert, or otherwise drain any surface water over adjacent or abutting property without the prior written consent of the property owner and/or council.

O. Removal of Vegetation. The permit holder is not permitted to remove or destroy trees or shrubbery on adjacent or abutting parcels or within the street or right-of way without written consent from the owner of the adjacent or abutting property and/or council.

P. Temporary Surface. On improved streets, the permit holder shall install a minimum two (2) inch, temporary paving of hot mix thoroughly bound and compacted flush with the surface of the adjoining paving. Permanent paving must be completed within sixty (60) days of excavation or following completion of site work related to the project.

Q. Project Completion, Inspections, and Defects.

1. The permit holder shall notify the Borough, in writing, when the project is completed.
2. The Borough may inspect the work at any time during construction and up to eighteen (18) months from the date that backfilling is completed. In the event the Borough determines that the backfilling, surface restoration, or maintenance of the disturbed area is defective, it shall notify the permit holder, in writing, of the defect. Promptly upon receipt of such written notice the permit holder shall take immediate steps to correct such defects.
3. In the event the permit holder fails to rectify a defect which presents an immediate or imminent safety or health problem within forty-eight (48) hours or any other defect within sixty (60) days after written notice from the Borough to do so, or in the event that the work for which the permit was granted is not completed within the time fixed by the Borough, the Borough may do the necessary and required work or cause the same to be performed by another person and impose upon the permit holder the cost thereof, together with an additional twenty (20%) percent of the costs, which may be recovered by the Borough.

R. Maintenance of Disturbed Area; Bonding Requirements. The permit holder shall maintain the portion of the street or right-of-way disturbed by the opening or excavation for a period of eighteen (18) months from the date the backfilling is completed at a proper grade and condition free from ridges and depressions. Such maintenance work shall be done as often as may be necessary. To guarantee proper restoration of the surface and proper maintenance of the disturbed area, the permit holder shall deposit with the Borough, prior to issuance of the permit, a bond in an amount set by council, with corporate surety guaranteeing the proper performance of the work and the proper maintenance of the disturbed area for the required period of time. Utilities and other persons who open or excavate in streets or rights-of-way on a regular basis may, with the permission of council, keep on deposit a single bond in an amount set by council and applying to the work included in all the permits at any time outstanding.

#### S. Permit Holder Responsibilities.

1. The permit holder shall pay all costs and expenses incident to or arising from the project, including but not limited to the cost of making and maintaining temporary and permanent restorations of all disturbed areas.
2. The permit holder owner shall be responsible for repairing damage to any portion of the street and rights-of-way, including shoulders, caused by equipment in route to or used at the work site and to adjacent or abutting property as a result of work done on the project at the permit holder's expense.
3. The permit holder shall reimburse the Borough for any and all inspection costs, which the Borough may deem necessary to incur, within thirty (30) days after receipt of the Borough's invoice.
4. **Maintaining Structure or Facility.** As long as the permit holder operates and leaves in place any structure or facility in, upon, or along the street or rights-of-way, the permit holder shall maintain and keep them in good order and repair.
5. **Damaged Structure or Facility.** If at any time the structure or facility shall become damaged from any cause whatsoever, the permit holder shall have it removed, repaired, or otherwise made safe immediately upon notification from the Borough.
6. **Indemnification.** The permit holder shall fully indemnify and save harmless and defend the Borough of and from all liability for damages or injury occurring to any person or persons or property through or in consequence of any act or omission of any contractor, agent, servant, employee, or person engaged or employed in, about or upon the work by, at the instance or with the approval or consent of the permit holder; from any failure of the permit holder or any such person to comply with the permit or these regulations; and, for a period of two (2) years after completion of the permitted work, from the failure of the street or right-of-way in the immediate area of the work performed under the permit where there is no similar failure of the streetway or right-of-way beyond the area adjacent to the area of the permitted work.
7. **Insurance.** The permit holder shall, upon request, submit to the Borough office a certificate or certificates of insurance for public liability and property damage, in form and amount satisfactory to council, to cover any loss that may be incurred for or on account of any matter, cause, or thing arising out of the construction, reconstruction, repair, relocation, or installation of the permitted structures or facilities.

T. Above Ground Facilities - General Rule. Permits will not be issued to install aboveground facilities at locations which the Borough determines have a high accident potential.

#### U. Location of Above Ground Facilities.

1. New poles, guys and other aboveground facilities shall be installed outside the shoulder of the public street and as near the right-of-way line as practicable.
2. Installation of poles, guys, and other aboveground facilities in locations where curbs exist shall be placed off the street and as close to the curb as possible.



V. Wires, Cables, or Conductors. All wires, cables, or conductors which overhang any portion of the right-of-way shall be placed so as to provide a minimum vertical clearance of eighteen (18) feet over the street, except where the National Electrical Safety Code requires vertical clearances in excess of eighteen (18) feet due to voltage and/or span lengths.

W. Guys.

1. Guys shall be placed so as to avoid interference with vehicular or pedestrian traffic.
2. Guys shall be insulated or grounded in compliance with the National Electrical Safety Code.

X. Poles. Each pole shall bear the name or initials of the facility owner and the pole number(s) assigned by the facility owner.

Y. PENNDOT Requirements. When an excavation or other work is proposed in a state highway, the owner shall comply with all PENNDOT requirements, including the requirement to obtain a permit from PENNDOT. A separate Street Occupancy Permit from the Borough is not required for projects proposed in a state highway.

§ 73-307. **AMENDMENTS.** From time to time, council may adopt, by amendment, additional specifications and requirements, or revise, supplement, or modify the specifications and requirements set forth in this Article.

§ 73-308. **PENALTIES.** Any person who violates any provision of this Article shall, upon being found liable therefore in a civil enforcement proceeding, pay a fine not to exceed Six Hundred Dollars (\$600) per violation, including additional daily penalties for continuing violations, plus all court costs and reasonable attorney's fees incurred by the Borough. Each day of violation shall constitute a separate offense and be subject to the penalty set forth herein.

§ 73-309. **SEVERABILITY.**

A. If any sentence, clause, phrase or section of this Article is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining sentences, clauses, phrases or sections of this Article.

B. It is hereby declared as the intention of council that this Article would have been adopted had such unconstitutional, illegal or invalid sentence, clause, phrase, or section thereof not been included therein.

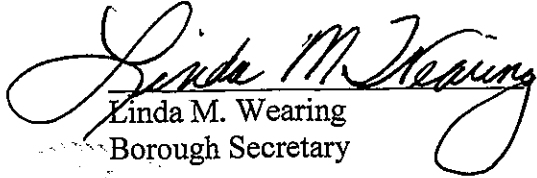
§ 73-310. **REPEALER.** All other ordinances, or parts of ordinances inconsistent herewith are hereby repealed.

§ 73-311. **EFFECTIVE DATE.** This Article shall become effective five (5) days after adoption.

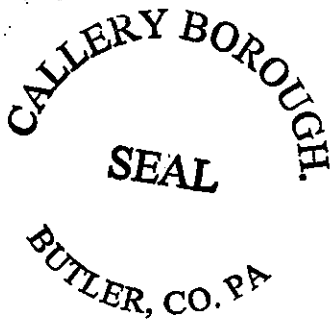
**DULY ENACTED AND ORDAINED**, this the 7<sup>th</sup> day of January 2019, by Callery Borough council in public session duly assembled.

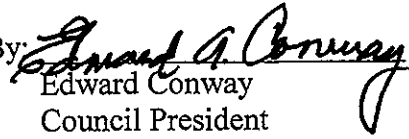
**CALLERY BOROUGH**

ATTEST:


  
Linda M. Wearing  
Borough Secretary

(SEAL)



By:   
Edward Conway  
Council President

APPROVED:

By:   
Ed Ashley  
Mayor

Date: 01-07-2019