

AVOCA BOROUGH  
LUZERNE COUNTY, PENNSYLVANIA

ORDINANCE NO. 5 OF 2017

**AN ORDINANCE OF THE BOROUGH OF AVOCA PROVIDING FOR PAVE CUTS AND OPENINGS WITHIN THE PUBLIC ROADS AND RIGHTS OF WAY, SIDEWALKS, TREE LAWNS AND APPURTENANCES; DEFINITIONS, APPLICATIONS, CRITERIA, INSPECTIONS, PERMITS AND PENALTIES**

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Avoca and it is hereby enacted and ordained by the authority granted to Boroughs under the laws of the Commonwealth of Pennsylvania, as follows:

**Article 1  
Cutting of Pavement or Street**

**Section 100: TITLE AND PURPOSE**

This article shall be known and be cited as the "Pave Cut Ordinance." The Borough intends to promote the health, safety and welfare of the Borough residents and the general public, including but not limited to safe use of roadways and protection of the rights of way within the Borough, enacted under, inter alia, the Borough Code and 15 Pa.C.S.A. § 1511, as may be amended.

**Section 200: WORD USAGE: DEFINITIONS**

- A. Word usage. The following words, terms and phrases when used in this Article shall have the same meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The word "shall" is always mandatory and not merely directory. Whenever in this article the words "directed", "required," "permitted", "ordered", "designated", or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Municipal Street Commissioner, Code Officer, Borough Engineer or their representatives or agents is intended; and similarly, the words "approved", "acceptable", "satisfactory" or words of like import shall mean "approved by," "acceptable to" and "satisfactory to" the Municipal Street Commissioner which shall mean for the purposes of this Ordinance the Borough Code Officer or Borough Engineer or their representatives or agents.
- B. Definitions. As used in this Article, the following terms shall have the meanings indicated:

APPLICATION FOR A PAVE CUT PERMIT --- A form provided to the utility by the municipality, noting pertinent data for the purposes of inspection and control by the municipality and constituting a receipt for services performed by the municipality.

**CAPITAL IMPROVEMENT**--- Preplanned to improve or upgrade an existing system, or to install a completely new system, and/or providing new or additional service(s).

**EMERGENCY REPAIR**--- Work necessitated by the rupture or sudden malfunction of existing underground facilities.

**FACILITIES**---All the plant and equipment of a public utility, including all tangible and intangible, real and personal property without limitations, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, controlled, furnished or supplied for, by or in connection with the business of any public utility; provided, however, that no property owned by the Commonwealth of Pennsylvania or any municipal corporation thereof at the date when this Article becomes effective shall be subject to any of the terms of this Article, except as elsewhere expressly provided herein.

**INSPECTION**--- A careful or critical investigation not necessarily confined to optical observation but is understood to embrace tests and examination for the purpose of ascertaining quality and compliance as prescribed in this Article and discovering and correcting errors.

**MUNICIPAL CORPORATION:**

All cities, boroughs, towns, townships or counties of this commonwealth and also any public corporation, authority or body whatsoever created or organized under any law of this commonwealth for the purpose of rendering any service similar to that of a public utility. For the purpose of this Article, "municipal corporation" shall mean the Borough of Avoca.

**MUNICIPAL CORPORATION**--- The Borough of Avoca.

**PAVE CUT LOG** --- A chronological record of pave cuts as reported to the municipality containing pertinent data as required by the municipality for the purpose of inspection and control.

**PAVEMENTS**--- Roadway surfaces of machine-laid asphalt over a base of concrete, brick, Belgian block, crushed stone, bituminous concrete or oil and stone.

**PERSON** --- An individual, partnership or association, other than a corporation, and includes their lessees, assignees, trustees, receivers, executors, administrators or other successors in interest.

**PUBLIC UTILITY:**

Persons or corporations now or hereafter owning or operating in this commonwealth equipment or facilities for:

- (a) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity or steam for the production of light, heat or power to or for the public for compensation.
- (b) Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation.
- (c) Conveying or transmitting television or radio signals by cable to the public for compensation.
- (d) Sewage collection, treatment or disposal for the public for compensation.

- (2) The term "public utility" shall not include:
- (a) Any person or corporation, not otherwise a "Public utility," who or which furnishes services only to himself or itself.
  - (b) Any bona fide cooperative association which furnishes services only to its stockholders or members on a nonprofit basis.
  - (c) Any producer of natural gas not engaged in distributing such gas directly to the public for compensation.

**SERVICE** --- Used in this Article in its broadest and most inclusive sense, and includes any and all acts done, rendered or performed, and any and all things furnished or supplied and any and all facilities used, furnished or supplied and any and all facilities used, furnished or supplied by public utilities in the performance of their duties under this Article to their patrons, employees, other public utilities and the public, as well as the interchange of facilities between two(2) or more of them.

**STREET** --- Includes any street, highway, road, land, court, alley or place of whatever nature, whether dedicated or not, open to the use of the public as a matter or right for purposes of vehicular travel.

**UTILITY CORRIDOR** --- An area within any public right-of-way, usually underground but not limited to the same, reserved for and assigned to a specified utility for placing and operating its facilities for transmitting and distributing its particular commodity or service.

**UTILITY RELOCATION** --- Includes the adjustment, replacement or relocation of utility facilities as required by a street construction or repaving project, such as removing or reinstalling the facility, acquiring the necessary right-of-way, moving or rearranging existing facilities, changing the type of facility and any necessary safety and protective measures. It shall also mean the construction of a replacement facility functionally equal to the existing facility, where necessary for the continuous operation of the utility service, the project economy or sequence of street construction.

**WORK** --- The furnishing of all materials, labor, equipment and other incidentals necessary or convenient to the successful completion of the project and the fulfillment of all duties and obligations imposed by this chapter.

### **Section 300: PERMIT REQUIRED**

No utility, corporation, person or other entity may make any pave cut or opening without first giving notice to the Borough in the manner herein provided with the date and location identified on the application and securing a permit. The permit must first be obtained before any opening can be made in any paved thoroughfare, cart way, side walk or tree lawn in the municipality.

## Section 400: PERMIT PROCEDURE

Applications for a pave cut permit shall be available from the Borough of Avoca at the Municipal Building, 950 Main Street, Avoca, PA 18641. An authorized agent of a utility or contractor may complete said application at the Municipal Building. This shall be done a minimum of five business days excluding Saturday, Sunday and holidays in advance of a planned excavation. A copy of the completed application, signed by the Borough Code officer or Borough Engineer or their agents, shall be in the hands of a competent person at the work site described in said application and shall constitute a permit.

- A. The application for the permit shall state the name and address of the applicant, the nature, location and purpose of the excavation, the date of commencement and the expected date of completion of the excavation as well as the length and width of the cut and such other data as may reasonably be required by the municipality. When in the sole opinion of the municipality, the excavation and /or construction planned is extensive, the municipality may require the application to be accompanied by plans showing the extent of the proposed excavation work and elevations of both the existing ground prior to said excavation and the proposed finished surface, the location of the excavation work and such other information as may be prescribed by the municipality.
- C. The municipality shall keep a record of all permits so granted and, before granting the same, shall collect from the applicant a permit application fee in the amount set forth in the fee schedule provided in this Article 1 along with any required bond or cash deposit. Public utilities may be billed for permit fees monthly.
- D. The contractor or utility performing the work must notify the Borough before the start of construction, including before any backfill or permanent pavement is placed, so that an inspector may be dispatched to the site to inspect the work. All construction, backfill and permanent pavement work must be performed under the continuous observation of the Borough Engineer.
- E. It shall be unlawful for any person, firm or corporation to make any opening, cut or excavation in or under any street, alley or other thoroughfare within the limits of the Borough of Avoca unless and until a permit therefore is secured for each separate undertaking. The police shall promptly prohibit any work to be done without a permit and shall halt any work in progress being performed without a permit.

## **Section 401: EMERGENCY PERMIT PROCEDURES**

In the event of any emergency in which a main, conduit or utility facility in or under any street breaks, bursts or otherwise is in such condition as to immediately endanger the property, life, health or safety of any individual, the person owning or controlling such main, conduit or utility facility, without first applying for and obtaining an excavation permit hereunder, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such facility shall apply for a pave cut permit no later than the end of the next succeeding day during which the borough office is open for business. In addition, the utility shall immediately notify the municipality and inform them that an emergency exists as soon as they become aware of said emergency. An emergency contact number will be provided by the Borough so that an inspector can be dispatched to the site of the emergency repair. An inspector will be present to inspect the construction, backfill and permanent pavement work for all emergency repairs.

## **Section 500: PENALTIES FOR WORK DONE WITHOUT PERMIT/ENFORCEMENT**

500.1 Any utility, corporation, person or entity making pave cuts or openings upon Public Roads, cart way, side walk or tree lawn within the Borough without furnishing the required notification, application, permit and remitting the appropriate Pave Cut Fee as set forth herein or violating any other provision set forth in this Ordinance, may be cited in accordance with this Ordinance and upon conviction shall be sentenced to pay a fine of not more than Six Hundred (\$600.00 Dollars and costs of prosecution, as well as, the costs of restoring and/or maintaining the Pave Cut(s) and roadways in accordance with any applicable PennDot and Borough Engineering Standards.

Failure to return to Avoca Borough to permanently repair a cut and/or roadway as required hereby shall result in the imposition of a fine of not more than Six Hundred (\$600.00) Dollars and costs of prosecution in addition to the imposition of costs as set forth herein.

In addition to all of the remedies the Borough may impose the following:

- i. It shall be illegal for any person, partnership, corporation or other legal entity (collectively "person") to violate the terms of this Ordinance and a person violating same shall be prosecuted under the rules of procedure for summary proceedings before district justice. Any conviction of a violation of any section or subsection of this Ordinance shall result in the imposition of a fine of Six Hundred (\$600.00) Dollars plus costs or in default of payment of said fine and costs the offender may be sentenced to a term of imprisonment subject to Pa R Crim P. 456 (c) and 42 Pa C.S. 9730 (b). A separate offense under this Ordinance shall be deemed to occur for each day for which a violation occurs. Nothing herein is intended to impede or restrict the prosecution of any criminal offense for any person continuing to violate the terms of this ordinance or any order to stop or desist from any illegal conduct or from being charged with any separate offense under

the criminal codes or otherwise. In addition to the penalties provided herein, the Borough may sue at law or in equity to enjoin violations herein and in addition to damages may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate suit at law or in equity against the person, partnership, corporation, or other legal entity found to have violated this ordinance, or the orders, rules, regulations, and permits issued hereunder.

- ii. In addition to assessment penalties and liens, under subsection (i), any person who violates or permits a violation of this Ordinance, upon being found liable therefore in a civil enforcement proceeding before a district justice or magisterial district judge, shall pay a fine and/or penalty of Six Hundred (\$600.00) Dollars per violation, plus all court costs, including reasonable attorney's fees incurred by the Borough in the enforcement of this Ordinance. Each day the violation exists shall constitute a separate offense. In any case where a penalty for a violation has not been timely paid, and the person against whom the penalty was imposed is found to have been liable therefore in civil proceedings, the violator shall be liable for the penalty imposed, including additional daily penalties for attorney's fees incurred by the Borough in the enforcement proceedings. If the violator neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure or as otherwise permitted by law.
- iii. In addition to all of the remedies, the Borough is authorized to exercise and reserves all rights of enforcement and remedies for Municipal Claims and Tax Liens as permitted by law.
- iv. In addition to or in lieu of a civil action before a district justice or magisterial district judge, or Court, the Borough may enforce this Ordinance in equity. The appropriate officers or agents, including Borough Council, Borough or Code Officer of the Borough are hereby authorized to seek equitable relief, including injunctions, to enforce compliance herewith.
- v. The Borough shall be exempt from the payment of costs in any civil case brought to enforce this ordinance.
- vi. Each day a violation occurs shall be a separate offense.
- vii. The reasonable attorney's fees shall be at the rate of One Hundred Twenty-Five (\$125.00) Dollars per hour. Said sum may be amended by Resolution of the Borough, from time to time.

500.2: Responsibility for Enforcement: In order to maintain uniformity of enforcement and centralized recordkeeping, the Avoca Borough Manager and/or Code Officer and/or Engineer shall be the primary enforcers of the regulations set forth in this Ordinance, making all violations known to Swoyersville Borough, who will thereafter initiate enforcement of these provisions as outlined in Sections 4500 et seq.

In addition to all other remedies and penalties, all work done without a permit shall be subject to the penalty provided, plus regular fees (See Fee Schedule) and required bonds or cash deposits.

#### **Section 600: WORK DONE WITHOUT AN INSPECTOR**

Any construction, backfill or permanent pavement work performed without the presence of a Borough designated inspector present shall be removed and replaced under the observation of a Borough authorized inspector at the cost of the contractor performing the work. The removal and replacement of any uninspected work will be at no cost to the Borough.

#### **Section 700: INDEMNIFICATION OF MUNICIPALITY; INSURANCE REQUIRED**

- A. The applicant shall be insured as set forth below and shall protect, defend, indemnify and save harmless the municipality, its officers and/or agents thereof from all claims, suits, actions and proceedings of every nature and description which may be brought against the municipality, its officers or agents thereof for or on account of any injuries or damages to persons or public or private property because of any materials or appliances used in the work or by or on account of improper materials or workmanship or for or on account of any accident or any other act, negligence or omissions of said applicant or his agents, servants or employees, and the municipality shall not, in any way, be liable there for during the period of the work progress and for the period following the completion of the work until the street is resurfaced or reconstructed by the municipality.
  
- B. Minimum insurance shall be:
  - (1) Liability of One Million (\$1,000,000.00) Dollars for personal injury or death per individual with a limit of Three Million (\$3,000,000) Dollars for each occurrence for bodily injury.
  - (2) Liability of Five Hundred Thousand (\$500,000.00) Dollars for property damage.
  
- C. Evidence of insurance in the form of a certificate or letter executed by a duly authorized representative of the applicant's insurance carrier shall be submitted to the municipality no later than each January 15. Said evidence of insurance must include the provision that the municipality shall be given proper advance notice of at least thirty (30) days of cancellation or any material alterations in the applicant's policy. The Borough shall be added as an additional insured to the policy.

## **Section 800: SAFETY PRECAUTIONS**

During the progress of work, the applicant shall provide and maintain such barricades, warning signs and flag persons as may be deemed necessary by the municipality to prevent accidents to the public and/or adjoining tenants. Minimum precautions must include, but should not be limited to, advance warning signs on all approaches to the work, safe crossing for pedestrians a minimum of each three (300) feet and barricades with flashers on each exposed side at fifty-foot intervals. All precautions shall be in accordance with the Manual of Uniform Traffic Control Devices, as adopted by the United States Department of Transportation, Federal Highway Administration, 1971 Edition, Part IV, Traffic Controls for Street and Highway Construction and Maintenance Operations (latest edition).

## **Section 900: CLOSING OF STREETS**

No street in the Borough of Avoca may be completely closed to traffic at any time. One (1) lane of traffic must be able to pass unobstructed at all times. Flag persons must be posted at the limits of work at all times to direct traffic through the work area, and all established traffic patterns must be maintained at all times. If all other means of traffic control have been exhausted, the municipality may permit a road to be completely closed temporarily, only with the consent of the Chief of Police and the Fire Chief. When an emergency exists, the Police and Fire Departments shall be notified. An application form for a permit to close a street will be available from the municipality. The completed application, bearing the signatures of the before-mentioned officers, shall be returned to the applicant and shall constitute a permit. The Applicant/Contractor must notify the Luzerne County Communications Center of any road closure for construction activity at (570) 819-4916 (non-emergency contact number), prior to the implementation of any such closure. A penalty shall be imposed for failure to notify the Police Chief, Fire Chief and Luzerne County Communications Center.

## **Section 1000: TIME PERIODS FOR COMPLETION OF PAVE CUTS**

For small area pave cuts (those twenty-five (25) feet or less in length), the utility or contractor shall be required to complete the back-filling within forty-eight (48) consecutive hours of the initial cut during the normal working week, excluding holidays and weekends. Extension time may be allowed upon appeal to the Municipal Street Commissioner, Code Officer or Borough Engineer provided that the contractor substantiates sufficient reasons for the extension required. Work on long cuts (those over twenty-five (25) feet in length) shall proceed in a continuous manner in accordance with safety precautions. Permits for long cuts or capital improvements will not be granted during the months of November through March except by written permission from the Municipal Street Commissioner, Code Officer or Borough Engineer. The utility or contractor shall coordinate planned cuts in the municipal streets with the paving program of the municipality as they become available. The municipality will strive to provide a paving program for a one-year period to the utilities prior to February 15 of each year. Changes in the utilities' schedule of planned cuts shall require a confirmation from the Municipal Street Commissioner or Borough Engineer. Changes in the municipal paving program will be submitted to all utilities at the earliest possible date to permit the utilities to adjust their respective schedules accordingly.



## **Section 1100: MISCELLANEOUS WORK PROVISIONS**

All excavations shall be commenced and completed by the use of a reasonable workforce. In congested areas and the central business district, the municipality may limit work to other than normal daytime working hours. At the cessation of work, adequate steel plates shall be placed over the excavation while it is not being worked to ensure full traffic flow. The maximum length of any opening in the roadway shall be two hundred (200) feet unless otherwise permitted, in writing, by the Borough Engineer or Municipal Street Commissioner.

## **Section 1200: EXCAVATED MATERIAL**

In peak traffic areas as determined by the Municipal Street Commissioner or Borough Engineer, all excavated material shall be removed daily at the cessation of work. All gutters and drainage devices shall be kept clean of all debris and excavated material. Hydrants adjacent to the work shall be, at all times, readily accessible to fire apparatus and no material or obstructions shall be placed within fifteen (15) feet of any hydrant.

## **Section 1300: SUITABILITY OF MATERIALS**

The suitability of material to be used as backfill shall be determined by the Municipal Street Commissioner and Borough Engineer. All materials not conforming to the requirements of this Article, whether in place or not, shall be rejected. Such materials shall be removed promptly from the worksite.

## **Section 1400: DISPOSAL OF WASTE MATERIAL**

Material which is unsuitable and any surplus of excavated material shall be considered waste and shall be disposed of by the utility or contractor beyond the project limits at an approved or permitted site in accordance with all applicable federal, state and local regulations. In no case shall waste material be left at the worksite.

## **Section 1500: FILL MATERIAL**

- A. The Street Commissioner or Borough Engineer shall be the judges of the stability and suitability of the fill material. In no case will excessively wet or dry material be allowed as fill material. Fill must be compacted to a dry density at least equal to ninety-eight percent (98%) of the maximum dry density attained by the Modified Proctor Test, ASTM D1557, latest revision, Method C or Method D, as designated by the Street Commissioner or Borough Engineer.
- B. PennDOT 2A Coarse Aggregate, AASHTO #8 Stone or special bedding material as may be required by the particular Utility's bedding/conduit envelope specifications, as approved by the Street Commissioner or Borough Engineer, shall be deposited in the trench beneath and simultaneously on both sides of the pipe for the full width of the trench to a height of at least six (6)

inches above the top of the pipe, placed and hand-tamped to fill completely all spaces under and adjacent to the pipe. The contractor shall procure the required approved material for backfilling around the pipe at no cost to the municipality.

- C. Succeeding layers of backfill shall be placed utilizing PennDOT 2A Coarse Aggregate.
- D. Whenever suitable material (PennDOT 2A Coarse Aggregate) exists within the upper four(4) feet of the finished grade of the paved or traveled portions of the street or roadway and is removed by the excavation, the contractor may stockpile and place said material as backfill in the upper Four (4) feet of the finished grade. The Street Commissioner or Borough Engineer shall be the judges of the suitability of such material for reuse within the excavated trench area, and all costs associated with any required testing to substantiate the suitability of said material shall be the sole responsibility of the Utility/Contractor.
- E. As an alternate, 250 psi flowable fill may be used. Flowable fill shall be in accordance with PennDOT Publication 408, Section 220 (Latest Edition) with a compressive strength not less than 150 psi.

#### **Section 1600: BACKFILLING REQUIREMENTS**

- A. The Street Commissioner or Borough Engineer must be notified at least 12 hours in advance of placing any backfill for inspection purposes. No backfill shall be placed without a Borough designated inspector present. In backfilling, six-inch layers shall be placed in the deepest portion of the backfill, and as placement progresses, each six- inch layer shall be horizontally constructed. Compaction operations shall be continued using mechanical tampers until each layer of fill is compacted to a dry density at least equal to ninety-eight percent (98%) of the maximum dry density attained by the Modified Proctor Test, ASTM D 1557, latest revision, Method C or D method, as designated by Street Commissioner or Borough Engineer.
- B. Backfilling shall be done in such manner as to obtain compaction through the entire length of backfill not less than that which exists adjacent to the excavation, but in no case less than the compaction requirements noted above. The method of backfilling shall be consistent with good engineering practice. Backfilling shall begin as soon as practical after the pipe or other construction has been placed and shall thereafter be carried on as rapidly as protection of the balance of the work will permit.
- C. Depositing of backfill shall be done so the shock of falling material will not injure the pipe or adjacent structures.
- D. All deficiencies in the quality of material for backfilling the trenches or for filling depressions caused by settlement shall be supplied by the contractor.

- E. In all cases, the contractor shall blade and compact the roadway after the trench has been backfilled so that it shall be passable to traffic at all times. The contractor shall maintain the roadway in a condition acceptable to the Borough Engineer or Street Commissioner at all times until final approval of the entire work by the municipality.
- F. The contractor shall remedy, at his own expense, any defects that appear in the backfill for a period of two (2) years following compaction.

#### **Section 1700: PERMANENT PAVEMENT REQUIREMENTS**

- A. The Street Commissioner or Borough Engineer must be notified in advance of placing any permanent pavement for inspection purposes. No pavement shall be placed without a Borough designated inspector present.
- B. Where the excavation is in a paved surface, the pavement shall be restored with not less than 6 inches of 2A Subbase, 4 1/2 inches of 25 mm Superpave Base Course or the full depth of the adjacent permanent bases, whichever is greater, and 1 1/2 inches of 9.5 mm Superpave Wearing Course. All materials and work shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Sections 350 and 409 respectively. Prior to replacement of the pavement, one foot (1') outside of each edge of the opening shall be sawed the full depth of pavement and stone base in a neat straight line (1 foot cutback). The detached material shall be removed without damaging the adjacent pavement. The final pavement joint between new and existing pavement shall be sealed with PG 64-22 or other sealant approved by the Street Commissioner or Borough Engineer to a width of 4 inches either side of the joint. The Street Commissioner or Borough Engineer shall be contacted to verify the sealant material to be used for all pave joints, in case the required sealant designation changes from that specifically provided herein. In cases where pave cuts are made between December 1 and April 15, the pavement restoration shall consist of cold patch or similar temporary material, as approved by the Street Commissioner or Borough Engineer. Final pavement restoration shall be completed as specified hereinabove during the next paving season, but in no event later than July 1st, unless prior approval is received from the Street Commissioner or Borough Engineer. Maintenance of the temporary patch shall be the responsibility of the contractor.
- C. When a longitudinal opening longer than 100 linear feet is made in the pavement, the entire roadway width shall be milled and overlaid with 9.5 mm Superpave within the area of the opening. When four (4) or more transverse openings are made within 100 feet linear feet of pavement, the entire roadway width shall be milled and overlaid with 9.5 mm Superpave within the total opening length including those areas unexcavated. Overlay shall consist of 1 1/2 inches (minimum) of 9.5 mm Superpave Wearing Course. A milled paving notch, with a minimum 10 feet transition, shall be provided at each end of the overlay.

- D. When any street is overlaid, the Applicant/Permittee shall construct new ADA curb ramps at each affected intersection. ADA ramp designs must be in accordance with current PA DOT standards and must be submitted to the Borough Engineer for approval prior to construction.

#### **Section 1800: SIDEWALK CURB RESTORATION REQUIREMENTS**

- A. The Street Commissioner or Borough Engineer must be notified in advance of placing any permanent pavement or concrete for sidewalks or curbing for inspection purposes. No pavement or concrete for sidewalks or curbing shall be placed without a Borough designated inspector present.
- B. Where the removal of a portion of a curb, sidewalk, or curb and gutter is required to perform work, the curb, sidewalk, or gutter shall be restored as follows:
1. Asphalt sidewalks shall be a minimum of 2" of 9.5 mm Superpave Wearing Coarse or the thickness of the adjacent materials, whichever is greater.
  2. Asphalt curbs shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Section 636. The minimum allowable length of a replaced curb shall be 4 feet.
  3. Concrete sidewalks shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Section 676. The minimum allowable length of a replaced concrete sidewalk shall be 4 feet.
  4. Concrete curbs shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Section 630. The minimum allowable length of a replaced curb shall be 4 feet.
  5. Stone curbs shall be replaced in kind. A minimum length of replaced curbs shall be 4 feet.
  6. Where curbing and/or sidewalks are composed of other materials (brick, pavers, granite, flagstone, etc.) every attempt should be made to save the original materials and replace them during restoration.
  7. The replacement of all walks, curbs, gutters, etc. shall be made in-kind in accordance with the above-noted specifications.

**Section 1900: MACHINERY TO BE USED**

Power-driven concrete saws or air hammers shall be used on all cuts in Portland-cement-based pavements. The cuts must be of sufficient depth to provide a smooth edge. No pavement busters, such as drop hammers, hoe rams and the like, shall be used without the written permission of the Street Commissioner or Borough Engineer.

**Section 2000: RESPONSIBILITY FOR DAMAGE TO UNDERGROUND FACILITIES**

In the event a cut is made and, upon inspection, damage to another utility's underground facilities is discovered, it shall be the responsibility of the party making the cut to contact the Municipal Street Commissioner or Borough Engineer and all concerned pertinent utilities to allow the utility to have their respective representatives inspect the condition before any backfilling is begun. The Contractor conducting the excavation work shall be responsible for any and all damages incurred in connection with his operations.

**Section 2100: COMPLIANCE WITH STATUTES, RULES AND REGULATIONS**

All contractors shall ensure compliance with the provisions of all applicable and relevant, state, local and federal statutes, rules and regulations.

**Section 2200: INSPECTION AND TESTING**

The Borough Engineer shall inspect all cuts, backfilling, pavement restoration and curb/sidewalk restoration work that occur within the Municipality's right of way in connection with any permits issued under this Ordinance. An inspection fee shall be charged for this inspection (See Fee Schedule.) Such inspection fees shall constitute acceptance of work performed by the contractor, but it is understood that such acceptance does not relieve the utility of any responsibility under this Article throughout the guaranty period.

In order to ensure proper testing, the Utility or Contractor shall retain an independent testing company meeting the following requirements:

- Maintains a facility that is AMRL and CCRL certified and meets the minimum requirements of ASTM E-329
- Has the ability to provide field testing technicians that have the appropriate ACI, NICET, and NECEPT certifications for testing of the work being performed as follows:

<u>TYPE of WORK</u>	<u>REQUIRED CERTIFICATIONS</u>
Permanent Backfill	NICET Level I Soils and QC Nuclear Regulatory Certified
Permanent Asphalt Paving	NICET Level I Asphalt and NECEPT Bituminous Field Test Technician

Permanent Concrete (Sidewalks or Curbs) NICET Level I Concrete and  
NECEPT Concrete Field Test Technician

- Has the ability to mobilize for contractor requests within one (1) hour of being notified.
- Has the ability to submit Testing Reports to the Borough Engineer upon completion of work.

All costs associated with all testing shall be borne solely by the Utility or Contractor and will not be included within any permit costs or fees. The Utility or Contractor shall contract separately with the independent testing company.

For all excavations within Borough Right-of-Ways, the Independent Testing Company shall conduct the required compaction tests for permanent backfill at a minimum frequency of one test per 100 linear feet of pipe trench or part thereof at vertical intervals of 2 feet starting 2 feet above the pipe, unless more frequent testing is required by the Borough Engineer due to suspect compactions methods of the Utility or Contractor.

For all concrete work within Borough Right-of-Ways, the Independent Testing Company shall take cylinders and conduct compression tests as well as slump and air entrainment tests in accordance with ACI 301. Test results shall be submitted to the Borough Engineer. The Testing Company shall utilize the following guidelines unless directed otherwise by the Borough or the Borough Engineer:

1. Five concrete test cylinders will be taken for concrete placed each day. Two cylinders will be broken at 7 days and two at 28 days with one held in reserve. Follow ASTM C 31 and C 39. One additional test cylinder will be taken during cold weather and be cured on site under same conditions as concrete it represents.
2. One slump test will be taken for each set of test cylinders taken. Follow ASTM C 143.
3. One air-entrainment test will be taken for each set of test cylinders taken for air-entrained concrete. Follow ASTM C 173 or C 231.

**Section 2300: MAJOR IMPROVEMENTS OF SERVICES AND/OR LINE REPLACEMENT BY UTILITIES; PROCEDURES FOR NEW PAVEMENT CUTS**

Upon notification from the municipality of a planned street repaving, resurfacing or reconstruction, all utilities will be required to test their lines and service and to schedule necessary capital improvements or new main lines and service connections prior to resurfacing or reconstruction.

Thereafter any cuts which will be permitted in new pavement and any permits issued for the same shall be subject to the following:

- A. Pavement shall be considered new for a period of five (5) years from the date of final and complete placement of new pavement.
- B. Any utilities or contractors who make cuts in new pavements shall be required to make permanent restoration and repaving and resurfacing of said openings in pavements. Permanent restoration must be completed within thirty (30) days of the initial cut. Any delay or failure of restoration will be reported to the pertinent utility, and repairs by the utility will begin within twenty-four (24) hours after notification. Upon failure of the utility to repair the cut in a satisfactory manner, the municipality shall have the option to do the work or to contract to complete the work and bill the utility for the costs of permanent restoration, plus twenty percent (20%). In addition, penalties for noncompliance shall be levied against the utility or contractor. All backfilling of new pavement cuts shall be in accordance with the backfilling requirements and provisions set forth in this Article. Prior to the placement of the base course, the existing base and surface must be exposed twelve (12) inches on each side of any depressions that may have developed. Restoration of base pavements shall consist of 25mm Super Pave Base Course for the full depth of the adjacent permanent base or for a depth of six (6) inches, whichever is greater. The wearing course or top coat shall be placed at a minimum depth of one and one-half (1 1/2) inches and shall be 9.5 mm Super Pave Wearing Course and shall be rolled to conform to the existing road and the edges sealed. Surface treatments such as sand or chip seals are prohibited. On long cuts (those greater than twenty-five (25) feet in length), surface finishing must be rolled with not less than a six-ton roller. Small cuts may be finished with a mechanical tamper or vibrator. All openings in new pavement, regardless of size, must be permanently restored.
- C. The permanent restoration of special-type pavements such as concrete, brick, Belgian block, cobblestone, gutters or tiles, shall consist of relaying the original wearing course in accordance with the original installation specifications in such a manner as to prevent settlement or other determination.

- D. Whenever any utility or contractor shall make cuts in new pavement for purposes of replacing a main line on a street or part thereof or for purposes of making any capital improvements or improving or upgrading an existing system, or when any utility or contractor shall for any purposes, except emergency purposes, make a cut or cuts in new pavement totaling ninety (90) square feet or more within any block in the Borough, the utility shall be required to backfill and permanently restore, refinish, mill and repave the entire width of said street from curb to curb for the entire length of the block or blocks of said street or streets where there is located any pave cut or cuts or parts thereof with said backfilling and restoring, refinishing, milling, and repaving to be done in accordance with the provisions of this Article. (The purpose of this provision is to encourage utilities to replace their main lines and make capital improvements or improve or upgrade their systems prior to new repaving so as to prevent subsequent cutting of new pavement.)
- E. The utility shall be required to notify the Street Commissioner or Borough Engineer prior to commencement of permanent restoration. Such permanent restoration must be commenced and completed promptly. Any delay or failure of restoration will be reported to the pertinent utility, and such work shall commence by the utility within twenty-four (24) hours after notification. Upon failure of the utility to restore the street in a satisfactory manner, the municipality shall have the option to do the work or to contract to complete the work and bill the utility for the costs of permanent restoration, plus twenty percent (20%). In addition, penalties for noncompliance shall be levied against the utility or contractor.

#### **Section 2400: REPLACEMENT OF PAVEMENT MARKINGS**

The utility and/or its contractor must replace, in kind, all pavement markings damaged or removed by pave cuts and work incident thereto. All markings must be replaced within five (5) days after permanent restoration. Should the contractor fail to replace the same, the municipality shall contract to have the necessary repairs made and bill the utility for the costs of the work, plus a twenty-percent (20%) penalty.

#### **Section 2500: REPLACEMENT OF TRAFFIC CONTROL DEVICES**

Electronic traffic control devices and ancillary equipment damaged or removed because of pavement excavation or work incident thereto must be replaced by the utility or its contractor, in kind, in whole or in part as required by the Street Commissioner or Borough Engineer. The municipality shall contract to have the necessary repairs made and bill the utility.

#### **Section 2600: REPLACEMENT OF PROPERTY PINS OR MONUMENTS**

All property pins or survey control monuments damaged or altered, as a result of the contractor's work, shall be replaced at the contractor's expense by a Registered Pennsylvania Professional Land Surveyor.



## **Section 2700: UTILITY CONNECTIONS**

The Borough of Avoca provides by this Article for the laying, renewing and repairing of all gas, water or other pipes or conduits in any street before the paving, repaving or repairing of the same and for making the necessary house connections with said pipes and also for the necessary house connections and branches with and leading into main or lateral sewers; provided that in no case, except as a sanitary measure, of which the municipality shall be the judge, shall Avoca Borough require such house connections to be extended further from such sewers or from such gas, water or other pipes or conduits than to the inner line of the curbstone of such corporations, persons and owners affected and, in default of compliance therewith, cause said pipes to be laid, renewed or repaired and said connections made and collect the costs of paving and repairing all pipes or conduits with interest; and the cost of the sewer connections shall be a first lien against the land for whose benefit such connections are made. A separate lien may be filed therefore, or such sewer connection costs may be included in any lien filed for the costs of such street improvement, and the lien and the proceedings thereon shall be as in the case of other municipal liens.

## **Section 2800: DETERMINATION OF LINES AND GRADES FOR STREET CONSTRUCTION OR RECONSTRUCTION**

The Borough Engineer shall have the final decision for determination of lines and grades for street reconstruction. This decision shall be based on good engineering practice and municipal standards. The determination by the Borough Engineer shall be final.

## **Section 2900: REQUIRED UTILITY LINE DEPTHS**

The following minimum depths (to the top of the pipe or conduit) for pipes and conduits are assigned to the utilities operating under this Article, unless specific site conditions warrant lesser depths, and then only as approved by the Street Commissioner or Borough Engineer:

- A. Gas lines shall be a minimum of thirty (30) inches below grade.
- B. Water service lines shall be a minimum of thirty-six (36) inches below grade; a water main shall be a minimum of five (5) feet below grade.
- C. Electric lines and conduits shall be a minimum of twenty-four (24) inches below grade.
- D. Telecommunication lines and conduits shall be a minimum of thirty-six (36) inches below grade.

### **Section 3000: ADDITIONAL UTILITY PLACEMENT PROVISIONS**

Aerial installations of electric power transmissions and telecommunications lines suspended from supporting poles having their base and/or support wires within the public right-of-way and interfering with a roadway construction, reconstruction or repair project shall be located upon written order from the Borough Zoning Officer, Code Officer or Street Department to a point specified therein. The Borough Engineer may require the utility to place its aerial facilities underground where it is deemed necessary or desirable. Hereafter, aerial installations shall be placed subject to approval by the Borough Engineer. The Borough Engineer shall assign horizontal corridors on a case-by-case basis for all new construction. All gate boxes, shutoff valves and other regulating devices underground for individual customers for gas, water, steam, electric and telecommunications lines shall be located inside the inner line of the curbstone or, in the case where no curbing exists, to a point specified by the Borough Engineer or his agent.

### **Section 3100: MUNICIPALITY RESPONSIBILITY IN UTILITY RELOCATION**

- A. An existing utility right-of-way is owned by the utility, as opposed to the municipality, and interferes with a municipal construction project; and,
- B. Utility relocation may be necessary for the installation, maintenance or repair of municipally owned or operated utility systems, such as, the municipal sanitary and/or storm sewer systems, or where the installation or modification of a municipally owned or operated utility is a part of a road way construction project.
- C. In the limited instance above, where both A and B apply, the Municipality shall be responsible for costs and fees under this Ordinance.

### **Section 3200: UTILITY RELOCATION PROCEDURES**

- A. Upon receipt of a letter from the Street Commissioner or Borough Engineer authorizing the start of physical work, the utility shall commence work within thirty (30) days unless otherwise stated by Street Commissioner or Borough Engineer with reasonable cause shown in order to clear the construction area. The utility shall perform the relocation work in accordance with the approved plan of the Engineer. The utility shall ensure compliance with the provisions of all relevant local, state and federal acts, rules and regulations.
- B. Utility relocation shall be accomplished by the utility to assure its completion prior to the commencement of roadway construction. Areas of utility relocation work, which cannot be accomplished prior to the start of construction but can be accomplished simultaneously without restricting the roadway project contractor, may be done concurrently with the contractor's operations when approved by the Engineer and the municipality's contractor.
- C. It is acknowledged that field conditions occasionally necessitate revision of the utility relocation plan. It shall be the responsibility of the utility to report and justify such revisions and to correct any data on file with the Engineer.

The utilities are required to obtain the contractor's concurrence prior to such revisions within the right-of-way of the project under construction. Minor modifications of the relocation plan may be made without prior approval of the Engineer. All such changes shall be brought to the attention of the project engineer and shall be noted in the daily inspection report.

### **Section 3300: AUTHORIZATION OF BOROUGH ENGINEER AND MUNICIPAL STREET DEPARTMENT**

The Council provides by this Article that the responsibility and authority for the administration and enforcement of this Article shall rest in the office of the Borough Engineer and/or Municipal Street Commissioner and/or Code Officer.

### **Section 3400: DESIGNATION OF REPRESENTATIVES**

The Borough Engineer may appoint as his representatives persons to enforce this Article. These agents shall have the authority and responsibility for the enforcement of this Article as vested in the Borough Engineer.

### **Section 3500: ACTIONS UPON NONCOMPLIANCE**

When work performed by a utility or contractor under this Article is found in violation of the same, the contractor or utility may be given the opportunity to make corrections as required by the municipality. If the corrections are not completed in the specified time or not completed as specified, the municipality may suspend all work, whether completed or in progress, in noncompliance with this Article and take appropriate safety precautions. All work performed or contracted by the municipality to attain compliance in this regard shall be billed to the utility or contractor, plus a twenty-percent (20%) penalty. In addition, a penalty for noncompliance shall be imposed.

### **Section 3600: RESUMPTION OF SUSPENDED WORK**

The utility shall actively resume work upon order from the municipality after suspension.

### **Section 3700: PROVISION FOR PENALTY**

If the utility or contractor fails to make adequate corrections to work found in noncompliance with this Article in the time specified, a penalty shall be imposed until said corrections are completed to specifications.

## **Section 3800: NONISSUANCE OF PERMITS**

- A. The municipality reserves the right to bar any contractor or his employee from working within the municipal limits whose work is found in noncompliance with this Article. The municipality reserves the right to refuse issuance of a permit to any applicant who fails to maintain pave cuts in accordance with this Article or who failed to pay sums due to the municipality within thirty (30) days from the date of billing.
- B. The municipality reserves the right to refuse issuance of a permit to cut new pavement.

## **Section 3900: DESIGNATION OF RESPONSIBLE AGENT**

Every public utility shall file with the municipality a designation, in writing, of the name and the post office address of a person within the Commonwealth of Pennsylvania upon who service of any notice, order or process may be made under this Article. Such designation may, from time to time, be changed by like writing, similarly filed.

## **Section 4000: GENERAL CONTRACTORS**

At the discretion of the municipality, licensed contractors, other than those under contract to a utility, may be permitted to make an opening, cut or excavation in the municipality's public streets. Sections pertaining to public utilities shall be applicable to licensed contractors. (See Fee Schedule)

## **Section 4100: BONDS**

- A. Public utility companies desiring to open a street in the Borough shall provide a bond of indemnity which shall be properly executed and filed with the Borough. Such bond shall be in the amount of Fifty Thousand (\$50,000.00) Dollars and shall cover street opening work performed in one calendar year and shall be for the same amount each year thereafter, unless otherwise required to be adjusted by Borough Council. Any approved bond amount adjustment shall also be applied for the calendar year immediately following the year in which the adjustment was made. A bond of indemnity shall be in effect for a minimum of twenty-four (24) months in accordance with Section 4100C and Section 4200.
- B. All other persons, except contractors performing work for the Borough, desiring to open a street shall furnish a properly executed corporate surety bond or equivalent cash deposit. Said bond shall be executed by a reputable surety company listed on the current U.S. Treasury Department's Circular 570, as amended, and must be licensed to do business in the Commonwealth of Pennsylvania. Said bond shall cover street opening work performed during one calendar year. The bond shall

be in effect for a minimum of a twenty-four (24) month period in accordance with Section 4100C and Section 4200. The amount of the bond or cash deposit shall be Two Hundred (\$200.00) Dollars per square yard of required pave restoration area or part thereof, with a minimum bond or cash amount of One Thousand Five Hundred (\$1,500.00) Dollars for each pave cut requested. The amount of the bond or cash deposit required by this subsection may be increased, reduced or waived by the Borough upon advice of the Borough Engineer that such increase, reduction or waiver is required or appropriate in view of the type of pave cut to be performed.

- C. The bonds or cash deposits shall be released by the Borough upon the written notification by the Borough Engineer of a satisfactory inspection of the subject restoration work.

### **Section 4200: GUARANTEE OF WORK**

The Applicant/Permittee shall guarantee and maintain his work for twenty-four (24) months from the completion of the restoration work. Within this twenty-four (24) month period, upon notification from the Borough of necessary correction work required, the applicant/permittee shall correct or cause to be corrected all restoration work required within five (5) calendar days of receipt of the notification. The Borough Engineer shall determine the extent of restoration required and the method of correction. Any and all work not completed within this five (5) day period, or within any extension of time granted by the Borough for just cause, may be completed by the Borough. The Borough shall invoice the applicant/permittee for all costs incurred by the Borough in performance of this work. Payment not made within thirty (30) days of the invoice date will be chargeable against the posted bond or cash deposit, including all fees and costs involved in the collection of this payment.

### **Section 4300: EFFECT ON EXISTING CONTRACTS AND OBLIGATIONS**

All litigation, hearings, investigations and other proceedings, whatsoever, pending under any act repealed by this Article, shall continue to remain in full provisions of this Article. All orders, rules or regulations issued or filed under any act repealed by this Article, and in full force and effect for the term issued or until revoked, vacated or modified under the provisions of this Article, and all existing contracts and obligations entered into or created under any act repealed by this Article, and in force and effect upon the effective date of this Article, shall remain in full force and effect, except for any matters relating to future fees for permits and permanent pavement restoration fees, which shall be governed by those fees set forth in this Article.

### **Section 4400: EFFECT ON REPEALED LAWS**

The repeal by this Article of any other act shall not revive any law heretofore repealed or superseded and shall not impair or affect any act done, offense committed or liability, penalty, judgment or punishment incurred prior to the time this Article takes effect, but the same may be enforced, prosecuted or inflicted as fully and to the same extent as if this Article had not been passed.

**Section 4500: ACKNOWLEDGMENT OF GUILT; VIOLATIONS AND PENALTIES; CIVIL ACTION**

A. Acknowledgment of guilt. Any person charged with violating any provision of this Article may sign an acknowledgment of the offense committed, either before or after the beginning of suit, and pay to any duly authorized agent of the borough the maximum penalties provided by Avoca Borough Council, together with costs accruing to that date. Such person shall receive a printed receipt therefore, which shall bear the imprint of the Seal of the borough and the signature of its Council President, which shall be evidence of full satisfaction of the offense committed.

B. Penalties. Any person, firm or corporation who shall violate any provision of this Article shall, upon conviction thereof, be sentenced to pay a fine and/or penalty of not more than Six Hundred (\$600.00) Dollars plus cost, or, in default of payment of such fine and costs, shall be subject to imprisonment for a term not to exceed thirty (30) days. Every day that a violation of this Article continues shall constitute a separate offense.

C. Civil action. In addition to the foregoing, said borough may pursue such other and additional remedies as may be authorized by law.

**Section 4600: FEE SCHEDULE**

A. Fees shall be as follows:

**PERMITS/SERVICES/PENALTY**

Processing and issuing a permit	\$50.00 ea.
Issuing road closure permit	\$50.00 ea.
Inspection First hour (minimum inspection)	\$65.00/hr.
Second hour or hours thereafter	\$65.00/hr.

Engineering fees incurred by the Borough shall be paid within thirty days of billing, in addition to the hourly rates provided above.

Field testing, testing, laboratory tests and similar tests shall be paid within thirty days, in addition to the hourly rates if the testing is not provided by the Utility or Contractor.

Penalty for failure to obtain a permit \$600.00/event/day

Penalty for noncompliance with any other Section or part thereof (each day)  
\$600.00/event/day

B. The Borough may amend the above fees and charges by Resolution of Council.

- All invoices to permittee shall be fee plus 10%.
- Inspection fees between the hours of 5:00 pm and 7:00 am will carry a surcharge of 20%
- Inspection fees beyond 8 hours in a day will incur a premium surcharge of fee times 1.5. No additional surcharge will be applied.

**Section 4700: Severability**

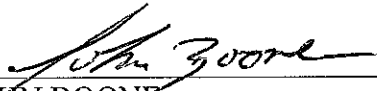
The provisions of this ordinance are severable. If any part of this ordinance is declared to be unconstitutional, illegal or invalid, the validity of the remaining provisions shall be unaffected thereby. It is the intention of the Borough of Avoca that this ordinance would have been adopted had such unconstitutional, illegal or invalid part not been included.

**Section 4800: Effective Date**

This Ordinance shall become effective on May 11, 2017.

Ordained and enacted by the Borough Council of the Borough of Avoca, this 11 day of May, 2017.

**ADOPTED , ENACTED AND ORDAINED** by the Council of Avoca Borough at a regular meeting duly held this 11 day of May, 2017.


  
\_\_\_\_\_  
JOHN BOONE  
President of Council

ATTEST:

  
\_\_\_\_\_  
KELLY O'BRIEN, Secretary

(SEAL)

**THE FOREGOING ORDINANCE** is hereby approved by the Mayor of the Borough of Avoca this 11 day of May, 2017.

  
\_\_\_\_\_  
ROBERT MULLEN  
Mayor