



**BOROUGH OF LEBANON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY**

**AN ORDINANCE OF THE BOROUGH OF LEBANON,
IN THE COUNTY OF HUNTERDON TO AMEND THE ORDINANCE
GOVERNING THE OPENING AND STREET EXCAVATION
OF ANY PUBLIC RIGHT OF WAY**

ORDINANCE NO. 2020-05

WHEREAS, local government is charged with controlling and maintaining public rights of way within municipalities, and therefore it is necessary to establish guidelines and procedures for any person, public or private utility, firm or corporation requesting permission to make any opening or excavation in the public right of way in the Borough of Lebanon, including but not limited to, any road, street, shoulder or bank area.

WHEREAS, the Governing Body has determined that certain roads, due to an existing concrete subbase, require special street opening and restoration methods; and

WHEREAS, other entities have been granted rights to utilize the roads and rights of way of the Borough for the installation, maintenance and use of their facilities, including but not limited to, the Lebanon Borough Sewerage Authority, the Town of Clinton Water Company, JCP&L, Elizabethtown Gas, Centurylink, Comcast; and

WHEREAS, Main Street and Cokesbury Road, because it is known that these streets consist of a concrete subbase with an asphalt wearing surface, require special street opening and restoration methods; and

WHEREAS, other streets or portions of the intersections of other streets with Main Street, may consist of a concrete subbase with an asphalt wearing surface, will require special street opening and restoration methods if and where encountered.

NOW THEREFORE BE IT ORDAINED by the Council of the Borough of Lebanon, with the Approval of the Mayor, that the Ordinance governing the opening and street excavation of any public right of way, is amended as follows:

SECTION 1.

§ 1.0. Title.

This Article shall be known as and may be cited as the “Lebanon Borough Street Excavation Ordinance.”

§ 2.0. Permit required.

No person, firm or corporation or public or private utility shall disturb the surface of or make any opening, cut, including a curb cut, or excavation of any kind in any road, street, alley, highway, sidewalk, shoulder or bank area or any other public way under the jurisdiction of the Borough of Lebanon (hereinafter “Borough”), including all streets and roads in private developments not part of the Borough road system at the time of excavation but where it is contemplated that application will subsequently be made to have said streets and roads become part of the Borough road system, for any purpose without first having obtained a street opening permit as hereinafter provided. A permit shall not be required for any homeowner who undertakes the repairs of the sidewalk adjoining his or her property which repairs are either safety related or of an emergency nature.

§ 3.0. Emergency repairs.

In the event of emergency where repairs must be made immediately, after having first obtained concurrence and approval from the Borough Engineer, then, and in that event only, the excavation may be made for the purpose of alleviating the emergency. For the purpose of this section, “emergency” shall mean a condition or circumstance which involves immediate danger to life or property, or both, or which involves a possibility of interruption or curtailment of any service furnished to the public by a public or private utility. As soon as the emergency has been repaired, the person, public or private utility, firm or corporation having made the excavation shall forthwith apply for a permit within five (5) business days and comply with all the other applicable provisions of this Article. In emergency matters and in the absence of the Borough Clerk, a permit may be issued by the Mayor or a member of the Borough Council who is on the Streets and Roads Committee.

§ 4.0. Permit procedures.

Street excavation or street opening permits shall be obtained in the following manner:

- A. Any person, public or private utility, firm or corporation desiring a street opening permit shall pay the Application fee and estimated Borough engineering and inspection fee, and if required by the scope of the project, the estimated Lebanon Borough Sewerage Authority (hereinafter “LBSA”) Engineering and inspection fee, and file with the Borough Clerk a signed application containing the following information:
 - 1) Name, address, telephone number, facsimile number, and email address of the Applicant.
 - 2) Application form signed by the person, public or private utility, firm or corporation making the proposed street opening or excavation
 - 3) The purpose for which the opening is to be made.

- 4) A clear description of the location of the proposed opening, including the size, length, width and depth of the proposed opening.
 - 5) Four (4) copies of appropriate drawings which show existing facilities such as pavement, curbing, sidewalks, driveways, drainage and other utilities in the area; details for the proposed opening(s) and work to be done, including excavation plan and profile, and appropriate sections of the opening(s), and all applicable construction details.
 - 6) Estimated date of commencement of work and estimated project duration.
 - 7) Agreement in writing, in a form satisfactory to the Borough Attorney, to hold the Borough of Lebanon, and the LBSA, their departments, agencies, boards, commissions, officers, officials, agents, servants, administrators, and employees harmless from any loss, injury or damage whatsoever resulting from actions taken in furtherance of the project for which the permit was issued, whether directly or indirectly connected with the work involved in the proposed street opening, or from any negligence or fault of the applicant, its agents, servants, representatives or contractors in connection with the performance of the work covered by the proposed street opening permit.
- B. Before the permit is approved, the application and drawings shall be forwarded to the Borough Engineer and the LBSA Engineer for review. The LBSA Engineer shall, upon satisfaction, sign off and return the permit to the Borough Engineer. The Borough Engineer shall then verify the engineering and inspection fees, based on the schedule provided in paragraph 5. E below. Once the appropriate fees have been verified, the Borough Engineer, upon satisfaction, shall sign off and return the application to the Borough Clerk, who may then issue the permit, subject to any approval comments.
- C. Prior to the start of work, the appropriate insurance certificates and bond requirements must be filed with the Borough Clerk. Also, prior to the start of work on any trenching operations that will exceed 100 feet in length within any right-of-way under the jurisdiction of the Borough, the Permittee shall be required to have a preconstruction meeting with the Borough Engineer and the LBSA Engineer.

§ 5.0. Surety, Application Fees and Escrow.

- A. Before the permit shall be issued by the Borough Clerk, the person, public or private utility (see also Section 19.0), firm or corporation making the application shall post and file with the Chief Financial Officer (CFO) a cash deposit or surety bond, in the amount indicated under 1, 2, or 3 below:
1. For projects located within the right-of-way and within the shoulder of a road, outside the limits of pavement for a

distance of less than 100 feet, in the minimum amount of one thousand dollars (\$1,000.00);

2. For projects located within the right-of way and within the paved portion of asphalt roadways, either crossing the road or parallel for a distance of less than 100 feet, in an amount not less than three thousand dollars (\$3,500.00);
3. For projects located within the right-of way and within the paved portion of asphalt roadways with a concrete base course, either crossing the road or parallel for a distance of less than 100 feet, in an amount not less than seven thousand five hundred dollars (\$7,500.00).
4. For more extensive trenching operations, in an amount equal to 120% of the estimated cost of saw cutting the asphalt pavement, saw cutting the concrete base, as applicable, backfilling, compaction, asphalt base course , concrete base course, as applicable and final asphalt trench restoration, as determined by the sole discretion of the Borough Engineer based on an estimate of quantities prepared on behalf of the applicant by the applicant's engineer and reviewed and approved by the Borough Engineer. A minimum of 10% of the performance surety for projects that fall under this category shall be in the form of cash or a certified check made payable to the Borough of Lebanon.

The cash deposit or surety bond being intended to cover the opening or excavation set forth in the application and any and all future openings and excavations to be made in the calendar year. Said bond shall be conditioned upon the permittee's compliance with this Article and shall indemnify the Borough and LBSA, for any loss, liability or damage that may result or accrue from actions taken in furtherance of the project for which the permit was issued, or because of the making, existence or manner of constructing, guarding or protecting any such opening or excavation during the term of said bond.

- B. The person, public or private utility, firm or corporation making and signing the application and receiving a permit acknowledges and agrees to be bound by and shall comply with all the provisions of this Ordinance.
- C. Any street opening that involves work on, or may interfere with, sanitary sewers or related appurtenances in any road, street, alley, highway, sidewalk or any other public way under the jurisdiction of the Borough of Lebanon shall first be approved, in writing, by the LBSA before the street opening permit can be issued by the Borough, except as may be provided under Section 3.0 – Emergency Repair.

- D. The application fee for such permit shall be one hundred dollars (\$100.00) per opening. Such fee shall be due and payable at the time the application is made to the Borough Clerk.
- E. In addition to the application fee, the applicant will be responsible for reasonable engineering and inspection fees by the Borough Engineer and/or by the LBSA Engineer, as set forth in the following schedule:
- 1) Any opening area within the right-of-way and within the shoulder or sidewalk area of a road, less than one hundred (100) square feet: two hundred fifty dollars (\$250.00).
 - 2) Any opening area within the right-of way and within the paved portion of asphalt roadways, less than one hundred (100) square feet: three hundred dollars (\$300.00).
 - 3) Any opening area located within the right-of way and within the paved portion of asphalt roadways with a concrete base course, less than one hundred (100) square feet: seven hundred and fifty dollars (\$750.00)
 - 4) Any opening area within the right-of-way and within the shoulder or sidewalk area of a road, one hundred (100) square feet or greater: two hundred fifty dollars (\$250.00.), plus forty-five dollars (\$45.00) for each additional one hundred (100) square feet of opening area or part thereof.
 - 5) Any opening area within the right-of way and within the paved portion of asphalt roadways, one hundred (100) square feet or greater: three hundred dollars (\$300.00.), plus fifty dollars (\$50.00) for each additional one hundred (100) square feet of opening area or part thereof.
 - 6) Any opening area located within the right-of way and within the paved portion of asphalt roadways with a concrete base course, one hundred (100) square feet or greater: seven hundred and fifty dollars (\$750.00.), plus an amount equal to five (5%) of the Borough Engineer's estimated cost of the street opening.
 - 7) A three-foot width shall be used as a typical trench width for the purpose of determining the inspection fee only. Any project requiring a larger trench width (i.e. deep excavations, trench box, etc.) may require the use of a wider width for the purpose of determining the appropriate engineering and inspection fees.
- F. Any trenching operations determined to have a potential impact on sanitary sewer facilities, at the sole discretion of the LBSA Engineer as well as any trenching operations that will exceed 100 feet in length within any right-of-way under the jurisdiction of the Borough where sanitary sewer facilities exist will require engineering and inspection fees for both the Borough Engineer and the LBSA Engineer. Said engineering and inspection fees shall be calculated separately at and in accordance with, paragraph 5.E, above.

- G. The Permittee on any permit issued where the LBSA Engineer indicated that engineering and inspection fees by their office were not anticipated, but found evident in field conditions to warrant review and inspection by the LBSA Engineer, agrees to pay such engineering and inspection fees in accordance with paragraph 5.E above.
- H. In the event that the above inspection fees do not cover the cost of the Borough Engineer's and or the LBSA Engineer's inspections, or where field conditions warranted inspection by the LBSA Engineer, the permittee agrees to pay the additional costs of inspections. Any bond posted shall not be released and no additional permits shall be issued to the permittee until all outstanding inspection fees are paid in full.

§ 6.0. Issuance and display of permit.

The Borough Clerk shall provide each permittee, at the time a permit is issued hereunder, a suitable placard upon which is written the following notice: "Borough of Lebanon, New Jersey, Permit No. _____ Expires: _____." It shall be the duty of any permittee to keep the placard posted in a conspicuous place at the site of the excavation work. It shall be unlawful for any person to exhibit such placard at or about any excavation not covered by such permit or to misrepresent the number of the permit or the date of expiration of the permit.

§ 7.0. Compliance with terms of permit; bracing.

It shall be unlawful to make any opening or excavation in any way contrary to or at variance with the terms of the permit therefore. Proper bracing, shoring and protection of the street excavation shall be maintained in accordance with all applicable safety codes including but not limited to the Federal Department of Labor Occupational Safety and Health Administration's Standards (OSHA). No portion of the excavated area below the surface shall extend beyond the opening at the surface. Compliance with this Section shall be the sole responsibility of the person, public or private utility, firm or corporation making and signing the application.

§ 8.0. Disturbance of pipes, cables or conduits.

No injury shall be done to any pipes, cables or conduits in the making of such excavations or openings, and notice shall be given to the persons maintaining any such pipes, cable or conduits which are or may be endangered or affected by the making of any such excavations or openings before such pipes, cables or conduits shall be disturbed. The permittee shall be responsible for repairing or replacing any pipes, cables or conduits damaged during the excavation process to the satisfaction of the owner of said facility. Any work required on any sanitary sewer facilities shall be in accordance with the LBSA standard details or as directed by the LBSA Engineer.

§ 9.0 Methods of work.

- A. The area of pavement to be removed from the proposed opening or excavation shall have straight, clean-cut edges made by saw cutting only. Excavation in pavement areas shall only be permitted between the saw cut limits. Any rough, ragged or zig-zag pavement edges shall be cut out in a straight line as directed by the Borough Engineer. All material removed from the excavation shall be removed from the work site and disposed of in accordance with all applicable Municipal, State and Federal Regulations.

- B. Upon completion of the proposed work in the excavated area, all excavations and trenches shall be backfilled with dense graded aggregate (DGA) in accordance with the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction, latest revision. The backfilling shall be made in layers not to exceed twelve (12) inches in depth and be thoroughly compacted and shall be carried to within seven (7) inches of the existing surface in pavement areas and within six (6) inches of the existing surface in landscaped areas.
- C. Upon completion of the compacted backfilling of the trench to the required elevation, all trench restoration in paved areas shall be made in accordance with the “Typical Trench Details, Borough of Lebanon Road Openings,” which is herewith made part of this Ordinance unless an alternate method is otherwise deemed appropriate by the Borough Engineer.
- D. In areas where concrete base course below the asphalt surface course is removed for the proposed excavation, the compacted backfill shall be completed as above to the subgrade of the existing concrete base course. In any area where undermining of the concrete base course is occurring, backfill shall consist of a flowable fill mixture containing cement, sand, fly ash, water and/or foam mixtures. The flowable fill shall be a minimum thickness of 6-inches and extend the full width of the trench opening. Concrete base course and asphalt pavement restoration, shall be in accordance with the “Typical Trench Details for Concrete Base Course Pavement, Borough of Lebanon Road Openings.”
- E. All of the backfilling and repairing of the excavated area shall be done in a neat and workmanlike manner so that the restored pavement meets the existing surrounding pavement as smoothly as possible. All costs for backfilling and pavement restoration shall be borne by the permittee.
- F. In landscaped areas, topsoil shall be placed for a minimum depth of 6-inches and the disturbed area shall be restored to match the existing vegetation in place prior to the start of the excavation.
- G. All disturbed areas shall be completely restored, as applicable, within three (3) days of the date that backfilling is completed.

§ 10.0. Tunneling and undermining.

No part of a trench or excavation shall be tunneled or undermined, except in such cases as may be approved by the Borough Engineer.

§ 11.0. Work done by Borough; expenses.

If the permittee fails to complete the excavation work covered by the permit, including backfilling and trench restoration as set forth in this Article, within the time set by said permit, the Borough and/or LBSA, under the advisement of the Borough Engineer and/or LBSA Engineer, shall have the right, but not necessarily the obligation, to do all work and things necessary to complete the excavation work and or restoration of the disturbed area. The permittee shall be liable for the

actual cost thereof, plus twenty-five percent (25%) of such cost, in addition to general overhead and administrative expenses.

§ 12.0. Notice of new regulations; compliance.

Whenever the Council enacts any ordinance or resolution providing for the paving or repaving of any street, the Borough Clerk shall promptly mail a written notice thereof to each person, firm or corporation owning any sewer main, conduit or other utility in or under said street. Such notice shall notify such persons, firms or corporations that no excavation permits shall be issued for openings, cuts or excavations in said street for a period of five (5) years after the date of repaving or resurfacing of said street. Such notice shall also notify such person, firm or corporation that application for excavating permits for work to be done prior to such paving or repaving shall be submitted promptly in order that the work covered by the excavation permit shall be completed as soon as practicable, and in no event later than the date specified in the permit for the excavation therefore. During the five-year moratorium period, no excavation permit shall be issued to open, cut or excavate in said street unless, in the judgment of the Borough Engineer, an emergency as described in this Article exists which makes it absolutely essential that the excavation permit be issued or such work is approved by the Borough Council. In the event of an emergency street opening, or other street opening approved by the Borough Council where the five (5) year moratorium is in effect, the finished pavement repair shall be constructed utilizing an approved infra-red patching process.

§ 13.0. Conduct of work; Protection of property.

Each permittee shall conduct and carry out the excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce, to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris and shall promptly remove from the street all excess of excavated materials.

Each permittee shall be responsible to maintain and protect all of the permittee's work, the Borough's right-of-way, existing utilities and adjacent private property during the course of the street opening work. The permittee shall be responsible for any damages to such facilities resulting from the work performed under the permit. If property damage claims have been filed, or there exists reasonable evidence indicating probability of claims being filed, the cash deposit or surety bond posted shall not be released. In the event the permittee fails to complete the work covered by the permit, including restoration of disturbed or damaged property outside of the right-of-way, the provisions of Section 11 are applicable.

§ 14.0. Safety provisions.

All persons, firms or corporations granted a permit to make an opening or excavation in the public streets and highways of the Borough shall at all times maintain suitable traffic control devices, barricades and guards, display proper warning and signals and flags and provide all necessary traffic control to prevent injury to any person or damage to any vehicle by reason of the work. All such traffic control devices and flagger procedures shall be in accordance with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, (MUTCD). Streets and highways must be kept open for traffic at all times, except when otherwise ordered or approved by the Borough Engineer. Where deemed necessary by the Borough Engineer, all persons,

firms or corporations granted a permit under this ordinance shall be required to utilize police traffic directors for maintenance and protection of traffic. Additionally, the use of police traffic control officers shall be required when any excavation or road opening is within any portion of, or within one-hundred (100) feet of an intersection of, the following streets:

- Main Street, entire length
- Cherry Street, entire length
- Maple Street, during school hours

The cost of all traffic control devices and police traffic directors shall be borne by the permittee.

§ 15.0. Time limits; extensions.

No excavation shall be left open overnight, unless and under extraordinary circumstances approval is provided by the Borough Engineer. No street opening permit shall be issued pursuant to this Article for a period in excess of two (2) weeks, unless the Borough Engineer shall approve a greater period of time, either at the time of the application for the permit or subsequent thereto. If the Borough Engineer shall approve such a period of time at the time the application is submitted, it shall be so endorsed upon the application, and if approved subsequently, such approval shall be in writing and an endorsement to that effect attached to the placard required in Section 6.0 - Display of Permit. In any event, no such approval shall be granted except on written application, signed by the permittee or applicant, setting forth the reasons for such application.

§ 16.0. Filing of plans.

Users of subsurface street space shall file accurate drawings, plans and profiles showing the location and character of all existing underground structures and installations with the Borough Engineer within two (2) years after enactment of this Article. Corrected maps shall be filed with the Borough Engineer within sixty (60) days after new installations, changes or replacements are made.

§ 17.0. Insurance.

A permittee, prior to commencement of excavation work hereunder, shall furnish the Borough Clerk satisfactory evidence, in writing, that the permittee, or the contractor performing such work for the permittee, has in force and will maintain in force during the performance of the excavation work and the entire period of the excavation permit, public liability insurance, duly issued by an insurance company authorized to do business in the State of New Jersey of not less than the following:

- 1) Comprehensive general public liability insurance against claims for bodily injury, death and property damage, in an amount of not less than \$1,000,000.00, each occurrence and \$2,000,000 general aggregate
- 2) Comprehensive Automotive Liability Insurance against claims for bodily injury, death or property damage in combined single limit amount of not less than \$1,000,000, each incident
- 3) Property damage insurance of not less than five hundred thousand dollars (\$500,000.); and
- 4) Worker's Compensation Insurance coverage of all of Contractor's employees employed at the work site, except as relative to New Jersey Public or private utility Corporations

All liability insurance referred to above shall include the Borough of Lebanon and the LBSA, their departments, agencies, boards, commissions, officers, officials, agents, servants, administrators, and employees as additional insureds on a primary and non-contributory basis.

§ 18.0. Inspections and supervision.

The Borough Engineer shall verify the extent of the excavation or opening and shall observe and inspect the work. In the case of any work performed in connection with sanitary sewer facilities, the LBSA personnel shall observe and inspect the work related to the sanitary sewer appurtenances. Similarly, any work performed on any utility line or facility shall be subject to the approval of the appropriate utility owner. No bond or deposit money, as the case may be, shall be released until eighteen (18) months after the completion of the project and receipt of written certification from the Borough Engineer and/or LBSA Engineer stating that the work has remained in a satisfactory condition for said eighteen (18) months.

§ 19.0. Public or private utility corporate bond.

Public or private utility corporations of the State of New Jersey may file a corporate bond on a yearly basis in an amount of five thousand dollars (\$5,000.00) in lieu of cash deposits or surety bonds. Said bond shall be applicable only for projects located within the right-of-way of a road for a distance of less than 200 feet. For more extensive trenching operations, as determined by the sole discretion of the Borough Engineer, the provisions of paragraph A.4 of Section 5 shall govern. Said bond shall also be conditioned upon compliance with the provisions of § 9.0 hereof.

§ 20.0. Interpretation of provisions; liability.

This Article shall not be construed or interpreted as imposing upon the Borough or LBSA, or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued hereunder; nor shall the Borough or LBSA or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any excavation work.

§ 21.0. Violations and penalties.

Any person, firm or corporation who is found to be in violation of the provisions of this Ordinance shall be subject to a penalty in accordance with General Penalties provision of the Revised Ordinances of the Borough of Lebanon (Ordinance #2010-4). Each day in which a violation exists shall be considered to be a separate offense

SECTION TWO: In event that any clause, section, paragraph, or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason; it shall be deemed severable, and the Borough Council hereby declares its intent that the balance of the Ordinance shall not be affected by the said invalidity, and the remainder shall remain in full force and effect.

SECTION THREE: Effective date. This Ordinance shall take effect upon final adoption and publication in accordance with the law, and thereafter, any conflicting Ordinance or provision is repealed and replaced by this Ordinance.

ATTEST:

LEBANON BOROUGH COUNCIL

Karen M. Romano, RMC
Borough Administrator/Clerk

Richard J. Burton, Council President

Vote after public hearing and upon final adoption:

Burton __ 1 __ Ordinance approved by the Governing Body and presented
Berger __ 1 __ to the Mayor on _____, 2020
Junge __ 1 __
Baldinger __ 1 __
Saharic __ 0 __
Harris __ 1 __

Veto in Whole or Part:

Approved:

Jim Pittinger, Mayor
Date:

Jim Pittinger, Mayor
Date:

Returned to Borough Clerk with statement attached on _____, 2020

NOTICE

TAKE NOTICE that the above ordinance was introduced at a regular meeting of the Borough Council of the Borough of Lebanon on June 25, 2020 and will be considered for final passage after public hearing at a regular meeting of the Borough Council of the Borough of Lebanon to be held on July 15, 2020 at 7:30 p.m. in the Municipal Building, located at 6 High Street, Lebanon, New Jersey

Karen M. Romano, Borough Clerk

BOROUGH OF LEBANON

**COUNTY OF HUNTERDON
STATE OF NEW JERSEY
ORDINANCE 2020- 05**

**AN ORDINANCE OF THE BOROUGH OF LEBANON,
IN THE COUNTY OF HUNTERDON TO AMEND THE ORDINANCE
GOVERNING THE OPENING AND STREET EXCAVATION
OF ANY PUBLIC RIGHT OF WAY**

NOTICE is hereby given that the above Ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Lebanon, in the County of Hunterdon, State of New Jersey, held in the Municipal Building on the 25th day of June 2020, and the same came up for final passage at a meeting of the said Borough Council on the 15th day of July, 2020 at which time, after persons interested were given an opportunity to be heard concerning said ordinance, the same was passed and will be in full force in the Borough according to law by order of the Borough Council of the Borough of Lebanon, County of Hunterdon and State of New Jersey.

Karen M. Romano, RMC
Borough Administrator/ Clerk

INTRODUCED: June 25, 2020
ADOPTED: July 15, 2020