

ORDINANCE NO. 478 OF THE CITY OF BUCKHANNON, AN ORDINANCE PROVIDING FOR THE REGULATION OF EXCAVATION OF PUBLIC RIGHTS-OF-WAY WITHIN THE MUNICIPAL LIMITS OWNED OR CONTROLLED BY THE CITY OF BUCKHANNON; REQUIRING APPLICATIONS FOR PERMITS TO EXCAVATE; REQUIRING INSURANCE; REQUIRING THE CITY TO COORDINATE INFRASTRUCTRE PLANS WITH PUBLIC UTILITIES; REQUIRING COORDINATION BETWEEN THE CITY AND POTENTIAL EXCAVATORS; PROVIDING FOR A PERMITTING SYSTEM; SETTING RESTORATION STANDARDS; DEFINING PENALTIES; DEFINING TERMS; AND SETTING AN EFFECTIVE DATE

WHEREAS, West Virginia Code §8-12-13 empowers a municipality to provide for the regulation of public rights-of-way; and,

WHEREAS, The City of Buckhannon encourages the coordination of Public Utility Excavations in the Public Rights-of-Way in order to minimize the disruption of traffic flow, limit inconvenience to residents, businesses, and visitors, and provide for the public safety, health, and welfare; and,

WHEREAS, The Excavation permitting process minimizes the impact of construction on residents and businesses by enforcing cleanliness and safety standards for construction sites, imposing strict timelines for construction in Public Rights-of-Way, and requiring a durable restoration of the rights-of-way with a uniform visual appearance; and,

WHEREAS, Prompt restoration of the Public Rights-of-Way is an essential element of this policy and will be enforced.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF BUCKHANNON, AS FOLLOWS:

ARTICLE I – GENERAL PROVISIONS

1.1 EXCAVATION IN THE PUBLIC RIGHTS-OF-WAY.

No excavation in the Public Rights-of-Way within the City shall occur, except in accordance with the provisions of this Ordinance. The office of the Director of Public Works shall be the responsible City of Buckhannon agency for managing the Public Rights-of-Way.

1.2 PERMITS REQUIRED FOR EXAVATIONS IN CITY RIGHTS-OF-WAY

(a) It is unlawful for any Person to make any Excavation in any of the Public Rights-of-Way without first obtaining from the City a permit authorizing such Excavation.

(b) No Excavation permit will be issued to any Applicant who lacks the legal authority to occupy and use the Public Rights-of-Way for the purposes identified in the Application for the permit.

(c) Applicants conducting residential and commercial building construction projects will be issued permission to construct accesses to the property across Public Rights-of-Way by the City as part of the Building Permit process.

1.3 DEFINITIONS.

For purpose of this ordinance, the following terms shall have the following meanings:

- (a) "Applicant" means any Owner, Person, or business, who has submitted an Application for a permit to excavate.
- (b) "Application" means the form prescribed by the Director of Public Works along with any subsequent changes made to the format after the date of the adoption of this Ordinance outlining the scope of work requested by the Applicant.
- (c) "Block" means that part of the Public Right-of-Way that includes the street area from the property line to the parallel and/or opposite property line in width and extending from the centerline of an intersecting street to the nearest property line or to the centerline of the next intersecting street in length.
- (d) "Certified Telecommunications Provider" means a Person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the West Virginia Public Service Commission to offer local service.
- (e) "City" means the City of Buckhannon.
- (f) "Conduit" means a single enclosed raceway for cables, fiber optics, or other wires but does not include the maintenance duct associated with a Conduit that is reserved for use in replacing damaged cable or for rerouting purposes.
- (g) "Deposit" means any bond, cash deposit, or other security provided by the Applicant in accordance with his or her permit.
- (h) "Emergency" means any Excavation in Public Rights-of-Way required to preserve life or prevent serious damage to property or restore critical public services when such necessity arises at a time when it is impossible or impractical to secure a permit prior to commencing Excavation.
- (i) "Excavation" means any work in the surface or subsurface of the Public Rights-of-Way, including, but not limited to the following: opening the Public Rights-of-Way; installing, servicing, repairing or modifying any Facility; and restoring the surface and subsurface of the Public Rights-of-Way. Excavation shall not include activities in Public Rights-of-Way wherein the surface and subsurface are not disturbed and wherein such activities take place through existing manholes, Conduits and other such facilities.
- (j) "Facility" or "Facilities" shall include, but not be limited to, any and all lines, poles, cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pedestals, splice boxes, surface location markers, tracks, tunnels, utilities, vaults and other appurtenances or tangible things owned, leased, operated, or licensed by a Person or company, that are located or are proposed to be located under, on, or above ground within the Public Rights-of-Way.

- (k) "Major Project" means any reasonably foreseeable Excavation that will interfere with the public's use and enjoyment of the Public Rights-of-Way for more than 15 consecutive calendar days.
- (l) "Municipal Utility" means any agency, board, commission, or department of the City that owns; installs, or maintains any Facility or facilities located in-the Public Rights-of-Way.
- (m) "Owner" means any Person, including the City, who owns any Facility or facilities that are or are proposed to be installed or maintained in the Public Rights-of-Way.
- (n) "Permit" means the approved permission to proceed with the scope of work outlined on the Application along with any revisions to the scope of work as outlined and approved by the Director of Public Works.
- (o) "Permittee" means the Applicant to whom a permit to excavate or otherwise work in the Public Rights-of-Way has been granted by the Director of Public Works. In the case where the Permittee is a licensed contractor rather than the Facility Owner, the Permittee must show written authorization from the Facility Owner to act in their behalf.
- (p) "Person" means any individual, firm, Owner, sole proprietorship, partnership, corporation, unincorporated association, governmental body, Certified Telecommunications Provider, registered with the State of West Virginia, Federal Government, Municipal Corporation, executor, administrator, trustee, guardian, agent, occupant, or other legal entity.
- (q) "Public Utility" means any Person or Owner whose Facility or facilities in the, Public Rights-of-Way are used to provide electricity, natural gas, information services, sewer services, steam, water, telecommunications, transit service, cable television, video, or other services to customers regardless of whether such Person or Owner is deemed a public service corporation by the West Virginia Public Service Commission (PSC).
- (r) "Public Rights-of-Way" means the area across, along, beneath, in, on, over, under, upon, and within the control of the City to which the City holds the property rights including but not limited to public alleys, boulevards, courts, lanes, roads, sidewalk, spaces, streets, and ways which are or will be under the permitting jurisdiction of the Director of Public Works.
- (s) "Subcontractor" means any contractor employed by the Permittee to perform any portion of the Excavation permitted. Subcontractors must be duly licensed by the State of West Virginia and the City of Buckhannon prior to doing any work in the City.
- (t) "WVDOT" means the West Virginia Department of Transportation, its Division of Highways.

ARTICLE II – APPLICATIONS FOR PERMITS TO PERFORM AN EXCAVATION

2.1 APPLICATIONS.

An original and two (2) copies of an Application shall be submitted in a format and manner specified by the Director of Public Works and shall contain:

- (a) The name, address, telephone, email address, and facsimile number of the Applicant. When an Applicant is not the Owner of the Facility to be installed, maintained, or repaired in the Public Rights-of-Way, the Application shall also include the name, address, telephone, email address, and facsimile number of the Owner.
- (b) A copy of the franchise, easement, encroachment agreement, or other legal instrument that authorizes the Applicant, Permittee or Owner to use or occupy the Public Rights-of-Way for the purpose described in the Application unless regulated by the Public Service Commission pursuant to Chapter 24 of West Virginia State Code. When the Applicant is not the Owner of the Facility or Facilities to be installed, maintained, or repaired in the Public Rights-of-Way, the Applicant must demonstrate, in a form and manner specified by the Director of Public Works, that the Applicant is authorized to act on behalf of the Owner. A master copy of this authorization to use or occupy Public Rights-of-Way can be deposited with the City in lieu of providing a new document with each Application. The requirements of this Subsection do not apply to a Public Utility that is regulated by the West Virginia Public Service Commission and obligated by the Commission to provide utility service to customers in the City.
- (c) When the Excavation site encompasses both State of West Virginia and City of Buckhannon Public Rights-of-Way, a copy of any applicable state rights-of-way Excavation permits shall accompany the Application for the City permit. Any provision of this article which may be incompatible or in conflict with state law shall not be applicable as to streets which are part of the WVDOT's highway system.
- (d) A description of the location, purpose, method of Excavation, and surface and subsurface area of the proposed Excavation.
- (e) A sketch showing the proposed location, dimensions of the Excavation, the nearest cross street, the right-of-way property line, a North arrow, other underground or overhead facilities in the vicinity of the proposed Excavation, cross sections and/or profiles with a clear legend explaining all plan details, and the facilities to be installed, maintained, or repaired in connection with the Excavation, and any other details as the Director of Public Works may require as an addendum to the Permittee's Facility Plans of Record if required by a franchise agreement.
- (f) The proposed start date of Excavation.
- (g) The proposed duration of the Excavation, including the duration of the restoration of the Public Rights-of-Way physically disturbed by the Excavation.
- (h) A detailed traffic control plan needed to accomplish the Excavation.
- (i) For proposed attachments to poles and bridges a detailed site plan and specifications with the permit Application for approval by the Director of Public Works is also required.
- (j) The Miss Utility of West Virginia confirmation number.
- (k) Details regarding the location(s) of any public tree(s) likely to be disturbed.
- (l) The signature of the authorized Applicant acknowledging the terms and conditions of the policy and permit Application.

(m) The City of Buckhannon shall establish a schedule of fees to be paid by Applicants by motion of the City Council, which schedule shall be published on the application forms prepared by the Director of Public Works and otherwise available upon request.

(n) Any other information that may be reasonably required by the Director of Public Works.

2.2 INSURANCE

The Permittee shall obtain insurance of the types and in the amounts described below. The insurance shall be written through insurance companies admitted to write policies in the State of West Virginia and shall be written on forms acceptable to the City of Buckhannon.

(a) Commercial General Liability Insurance and Umbrella Liability Insurance Permittee shall maintain commercial general liability (CGL) with a limit of not less than \$1,000,000 each occurrence. Permittee shall also maintain umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence.

1) CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury.

2) The City of Buckhannon and its agents, officers, directors and employees, shall be included as an additional insured, and shall also be included as an additional insured under the umbrella liability policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by the City of Buckhannon, with respect to Permittee's operations. If any applicable insurance coverage is subject to a deductible, the Permittee shall be responsible for such deductible(s).

3) There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

4) Waiver of Subrogation. Permittee waives all rights against the City of Buckhannon and its agents, officers, directors- and employees for recovery of damages to the extent these damages are covered by the insurance maintained pursuant to this section.

5) The Permittee shall require all Subcontractors to secure and maintain CGL insurance coverage of similar type and scope as required by Permittee as stated herein.

(b) Business Auto

Permittee shall maintain business auto liability insurance with a limit of not less than \$1,000,000 each accident.

1) Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos).

2) Waiver of Subrogation. Permittee waives all rights against Owner and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or insurance obtained by Permittee pursuant to this section or pursuant to any applicable auto physical damage coverage.

(c) Workers Compensation Insurance

Permittee shall maintain workers compensation and employers liability insurance of not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

(d) Professional Errors and Omissions Liability Insurance

If Permittee's work or processes include design work related in any way to the permitted Excavation, Professional Errors and Omissions Liability Insurance shall be required with a limit of not less than \$1,000,000 each occurrence.

(e) The City of Buckhannon and its agents, officers, directors and employees, shall be included as an insured under all insurance policies required under this Ordinance. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by the City of Buckhannon, with respect to Permittee's operations. If any applicable insurance coverage is subject to a deductible, the Permittee shall be responsible for such deductible(s).

(f) Permittee waives all rights against the City of Buckhannon and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the insurance maintained pursuant to this section.

(g) Evidence of Insurance

Prior to commencing the Work, Permittee shall furnish the City of Buckhannon with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, setting out compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days written notice to the City of Buckhannon prior to the cancellation of any insurance referred to therein.

(h) Acceptance of any insurance certificate provided to the City of Buckhannon pursuant to section 2.2 shall not constitute a waiver of the right of the City of Buckhannon to enforce any provision or requirement imposed on Permittees under section 2.2.

ARTICLE III - COORDINATION OF EXCAVATION

Municipal and/or Public Utilities are requested to submit a long-range plan of proposed Excavations in Public Rights-of-Way so that Major Projects in the same Block planned within a three (3) year period can be coordinated to the maximum amount possible.

Applicants may apply jointly for permits to excavate in the Public Rights-of-Way at the same time and place thereby minimizing permit and restoration costs. In addition, planned Excavations in Public Rights-of-Way on any pavement less than three (3) years old for the purpose of a main extension or replacement shall require full overlay of the pavement lane in order to return the pavement to a minimum of the condition existing prior to the Excavation.

Utility Coordination Meeting: The City will host utility coordination meetings at least one (1) time per year, at the initiation of the Director of Public Works. The purpose of the

meeting shall be or the City to inform agencies and public infrastructure contractors of proposed and current capital improvement projects in the City and also for the agencies and public infrastructure contractors to inform each other and the City of current and future projects. Each agency and public infrastructure contractor shall designate a specific representative for the City of Buckhannon to contact and make reasonable efforts to attend and participate in the meetings of the City when notified of the time and date.

ARTICLE IV – PERMITS TO EXCAVATE WITHIN PUBLIC RIGHTS-OF-WAY

4.1 ACTION ON APPLICATIONS FOR PERMITS TO EXCAVATE

(a) After receipt of an Application for an Excavation permit, the Public Works Director, or his or her designee, shall within five (5) business days determine whether an Application has been properly completed.

(b) If the Application is deemed to be incomplete, the Director of Public Works or his or her designated representative will advise the Applicant of the reasons for rejecting the Application as incomplete.

(c) If the Application is deemed to be complete, the Director of Public Works may deny, approve, or conditionally approve the Application within fifteen (15) calendar days. The permit may be conditioned with specified requirements that preserve and maintain the public health, safety, welfare, and convenience.

(d) If the Application is denied, the Director of Public Works shall advise the Applicant in a written, electronic, or facsimile communication of the basis for denial. Permits may be denied for, but not limited to, any one or more of the following reasons:

(1) The proposed activity will substantially interfere with vehicular or pedestrian traffic and no approved procedures have been implemented to minimize the interference.

(2) The proposed construction will substantially interfere with another activity for which a permit has been issued or will conflict with existing Facilities already in the Public Rights-of-Way.

(3) The proposed barricading, channelizing, signing, warning, or other traffic control procedures or equipment do not comply with the requirements of the Traffic Control Regulations published by any agency of the State of West Virginia.

(4) The activity or the manner in which the Excavation is to be performed will violate a city ordinance or regulation or a state or federal statute or regulation.

(5) The Applicant has not presented insurance and bonding as required by this ordinance.

(6) The Applicant has consistently failed in the past to perform in accordance with the requirements of this Ordinance and has failed to give adequate assurances of future compliance.

(7) The Applicant has failed to present all the information required by this Ordinance or to file the Application within the time prescribed by this Ordinance.

(8) The Applicant has misrepresented or falsified information in the Application.

- (9) The Applicant has outstanding debts to the City.
- (10) The Applicant is not in compliance with the applicable requirements of an existing permit issued under this Ordinance.
- (11) The Applicant has requested to excavate within a Public Right-of-Way that, in the opinion of the Director of Public Works, should be crossed by jacking, boring, or tunneling to better serve the interests of the public.
- (12) There is a lack of available space in the Public Right-of-Way at the requested location to accommodate the Applicant's request.

4.2 TERMS AND LIMITATIONS.

The permit shall specify the location, extent, and method of the Excavation, the start date and duration of the Excavation, the Permittee to whom the permit is issued, and any conditions placed on the permit.

4.3 EXPIRATION OF PERMIT.

Permits shall be void if the Excavation as specified in the permit has not started within thirty (30) calendar days of the start date specified in the permit. If the Excavation, including restoration, has not been completed within the time specified in the permit, the Director of Public Works may cause a "Stop Work Order," to be issued and/or withhold future permits or cause such Excavation to be completed by other contractors at the Permittee's sole expense; provided, however, that the Director of Public Works may issue extensions to the start date, or time of completion, or both, upon written request from the Permittee stating the reasons for the extension.

4.4 NON-TRANSFERABILITY OF PERMITS.

Permits are not transferable.

4.5 EMERGENCY EXCAVATIONS.

Nothing contained in this Ordinance shall be construed to prevent any Person from taking any action necessary to preserve life or prevent serious damage to property when such necessity arises when prior approval of a permit is impossible to secure. An emergency would exist anytime the public services of a group of individuals was interrupted; when the safety of the public is endangered by a damaged utility such as a ruptured gas line or when there is a possibility that damage might occur to public or private property unless immediate corrective action is taken. Then, at the applicant's sole risk and responsibility, repair the damaged facilities. Appropriate safety methods and devices must be used to give adequate warning and protection to Persons and property. In the event any Person takes any action to excavate or cause to be excavated the Public Rights-of-Way pursuant to this section, such Person shall apply for an Emergency permit immediately upon the opening of City offices by the usual permit Application process. The Applicant for an emergency permit shall attach a written statement of the basis of the emergency action and describe the Excavation performed and any Excavation remaining to be performed.

Permit Applications for main replacements and conduit for communications lines will not be granted emergency status. Street restoration requirements and maintenance of traffic regulations will not be changed due to the emergency nature of the Excavation.

4.6 LIABILITY UPON PERMITTEE AND INDEMNIFICATION OF CITY.

Each Permittee and Facility Owner is wholly responsible for the quality of the Excavation performed in the Public Rights-of-Way and is liable for all consequences of any condition of such Excavation and any facilities installed in the Public Rights-of-Way. Further, as a condition of the issuance of a Permit, Permittee agrees and binds himself or herself to indemnify, defend, and keep and hold the City, its officers, agents, and employees free and harmless from any and all claims, causes of action, damages or any liability, without limit and without regard to the cause or causes thereof, related in any way to any injury or damage of any type to any Persons or property arising out of, or directly or indirectly resulting from, any act or omission of Permittee, related in any way to: (a) any Excavation, service or other related activity performed by Permittee; (b) Permittee's use of the public ways or other areas of the City; (c) the acquisition, construction, reconstruction, erection, installation, operation, maintenance, repair or extension of Permittee's facilities; (d) the failure, refusal or neglect of Permittee to perform any duty imposed upon or assumed by Permittee by or under their Permit. In the event that any suit or proceeding shall be brought against the City at law or in equity, whether asserted by Permittee or any third party, Permittee, upon notice given to it by the City, will defend the City in any such action or other proceeding at the cost of the Permittee, and Permittee shall pay any and all judgments, settlements, awards, expenses and costs of any type, including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and all court, arbitration or other dispute resolution costs, and shall hold the City, its officers, agents, and employees free and harmless there from. The issuance of any permit, inspection, repair, or suggestion, approval or acquiescence of any Person affiliated with the City of Buckhannon shall not excuse the Permittee from such responsibility or liability.

4.7 PERMIT TO BE AVAILABLE AT EXCAVATION SITE.

Permittees must have the permit or a photo duplicate available for review at the site of the Excavation for the duration of the Excavation that shall be shown, upon request, to any police officer, inspector, or any other employee of a City agency or department with jurisdictional responsibility over activities in the Public Rights-of-Way. Failure to have a valid copy, or failure to produce a valid permit upon request, may cause a "Stop Work Order" to be issued and additional permit fees to be incurred. All additional costs incurred, as result of the issuance of a "Stop Work Order," shall be the Permittee's responsibility.

4.8 FEES AND DEPOSITS.

Permittee shall remit to the City the applicable fees and deposits as required by such applicable building or zoning ordinance as may be in effect at the time of the Application. The City of Buckhannon shall establish a schedule of fees to be paid by Applicants by motion of the City Council, which schedule shall be published on the application forms prepared by the Director of Public Works and otherwise available upon request.

ARTICLE V – EXCAVATIONS

5.1 NOTICES

Any Permittee who makes an Excavation in the Public Rights-of-Way shall provide notice as follows:

- (a) Excavation location notice to City required: At least twenty-four (24) hours prior to the commencement of Excavation, the Permittee shall deliver an Excavation location(s) sheet, as designated by the Director of Public Works, to the Director of Public Works, or his or her designee. Failure to fax or deliver the Excavation location(s) sheet within the prescribed time may result in the issuance of a "Stop Work Order" authorized by the Director of Public Works.
- (b) Notice for Emergency Excavation. For Emergencies, the Permittee, or the Applicant if a permit has not yet been issued, shall notify, as soon as possible, the City of Buckhannon Public Works Director and advise of the Emergency and any potential impacts on traffic flow or pedestrian safety. The Permittee shall then apply for a permit within twenty-four (24) hours after City offices open in the regular manner.
- (c) Notice for Marking of Subsurface Facilities. Any Person excavating within the Public Rights-of-Way shall comply with the requirements of Miss Utility One-Call notification (1-800-245-4848).

5.2 LIMITS UPON EXCAVATION IN THE PUBLIC RIGHTS-OF-WAY

- (a) Scope. It is unlawful for any Permittee to make, to cause, or permit to be made, any Excavation in the Public Rights-of-Way outside the boundaries, times, and description set forth in the permit.
- (b) Single Excavation maximum of 500 feet. No single Excavation site shall be longer than 500 feet in length at any time except with the prior written approval of the Director of Public Works.
- (c) No Excavation will be permitted (except for Emergencies) on certain streets during special City events, or other events so designated by the City.

5.3 EXCAVATION OUTSIDE THE PAVEMENT

- (a) All Excavation areas outside the pavement shall be restored to their original condition immediately after Excavation completion. All pits/trenches remaining open overnight shall be barricaded or fenced on all sides to ensure pedestrian and motorist safety.

(b) When the Excavation area is interrupted in excess of one week, temporary repairs (select fill to grade) must be made. No Excavation area outside of the pavement will be left in a disturbed condition over fifteen (15) days. When the Permittee is notified of a failure in the Excavation area (i.e. cave-in), the Permittee must respond and repair the Excavation area within 24 hours.

(c) The City reserves the right to perform any and all required repairs, and warrant for the collection for all associated costs from the Permittee, where necessitated by emergency conditions.

5.4 QUALITY ASSURANCE/QUALITY CONTROL INSPECTION

(a) The City may inspect any permitted Excavation within the Public Rights-of-Way. The inspector serves as liaison with the Permittee to advise on construction standards and practices, and to coordinate activities between the City and other utility companies and to advise on the extent and scope of restoration.

(b) Quality control is the responsibility of the Permittee. It is the Permittee's responsibility to be familiar with the applicable standards and to employ qualified and licensed Subcontractors that will utilize these standards in the restoration of the Public Rights-of-Way. Permittees and their Subcontractors who fail to comply with these standards risk denial of permits for performing future Excavation in the Public Rights-of-Way.

(c) The City's Rights-of-Way Inspector will be focused on restoration of the Public Rights-of-Way, backfill, compaction, hazard protection, repaving, and traffic control. Some inspections will be ongoing throughout the duration of a Permit, whereas other inspections will be made only after completion of the Excavation. Factors to be considered for ongoing inspections include location of, duration of work, size of area being disturbed or other issues as determined by the Director of Public Works. Any restoration not in compliance with the standards set forth in this ordinance must be repaired when directed by the City Inspector.

ARTICLE VI – RESTORATION STANDARDS

Each Permittee who excavates or is responsible for an Excavation in the Public Rights-of-Way shall be responsible to maintain, repair, or restore the site of the Excavation to a condition acceptable to the Director of Public Works. All restoration shall result in a work site condition that is at a minimum equal to or better than that which existed prior to construction. Complete restoration of all pavement surfaces disturbed must be complete no later than ten (10) working days from the date the pavement was first excavated, including final pavement finishes.

6.1 PAVEMENT

Excavations in Public Rights-of-Way on any pavement less than three (3) years old, for the purpose of a main extension or replacement, shall require full width overlay of the

paving lane that is cut under the supervision of the City Rights-of-Way Inspector. Pavement restorations shall match the existing street cross section and pavement type. The limits of restoration required to any pavement type shall be dependent on the size and location of the Excavation. Any variance of the limits of restoration required is at the discretion of the Director of Public Works.

1) Limits of Restoration:

(a) Asphalt Pavement:

1) Any Excavation, which transversely covers six feet (6') of a travel lane or street (eleven feet (11') typical), shall require the entire lane width to be milled and repaved.

2) Multiple hole cut Excavations that are located less than or equal to forty feet (40') from one another, longitudinally, and within the same traffic lane shall be restored as a single patch, as identified in section (1)(a)(1), above.

3) For any Excavation that disturbs more than 30% of an intersection, the Director of Public Works may require the restoration limits to be larger than the Excavation area to insure a smooth, rideable surface.

4) Any Excavation exceeding 40 square feet made in a street paved within the previous three (3) years shall require full paving lane width milling and repaving.

(b) Concrete Pavement:

1) Any Excavation exceeding 40 sq. ft. in a concrete street pavement shall require a slab replacement from the nearest transverse joint longitudinally and the entire width of the traffic lane.

2) Backfilling and Compaction:

(a) Select fill material shall be as defined as in the current edition of the WVDOT Roads and Bridges Specifications. The Permittee may elect to use controlled density (flowable) fill in lieu of select fill, subject to prior approval of the Director of Public Works. Controlled density fill material may not be used as a riding surface. Stone may be substituted for select fill at the discretion of the City Rights-of-Way Inspector. Each Excavation shall be backfilled and compacted within twenty-four (24) hours from the time the construction, related to the Excavation, is completed. Allowing vehicular traffic to compact a fill is not an acceptable compaction method.

(b) The Permittee shall use standard construction practices to backfill and compact each Excavation. Select fill material shall be placed in 6" lifts and compacted after each lift with appropriate compaction equipment. At a minimum, each lift shall be compacted utilizing a jumping jack compactor with a minimum of four (4) passes on each lift. As part of the Permittee's quality control plan, written verification of compaction is required. In addition, a City inspector may perform all necessary inspections during the compaction process to ensure compliance with these standards.

(c) The Director of Public Works may require a flow test to be performed prior to flowable fill being placed. If granular backfill is used, a City Inspector may be present during backfill operation or may require random testing.

3) Permanent Repair Patch:

(a) Patches will be approved based on their general appearance as well as their "rideability." Rideability is defined as a leveling tolerance to within one-quarter inch (1/4") at any point across the patch as it relates to the surrounding street surface. Cuts must be saw cut and squared for a better appearance and performance of permanent patch.

(b) Asphalt Pavement:

1) New hot mix asphalt will be placed in lifts (3" maximum) and compacted using a vibratory plate compactor or a static roller. Asphalt depths will be governed by the existing cross section of the street. When it is necessary to use cold patch in an opening due to the unavailability of hot mix material, the cold patch will be applied in one lift, approximately 2 inches thick. The restoration will not be considered complete until the cold patch is removed and replaced with hot mix asphalt and notice of the final repair is approved by the City.

(c) Concrete Pavement:

1) Once the compacted backfill has been placed, place, finish, and protect new concrete with adequate protection during its curing period. Concrete is required to "set" within 4 hours of placement. Before the pavement is opened to traffic, joints must be cleaned and properly sealed. Concrete restoration shall be in accordance with the current edition of the WVDOT Standard Specifications and typical detail drawings for Roads and Bridges.

6.2 TRANSPORTATION

(a) Signalized Intersections: The Permittee, or the Permittee's Subcontractor, must not cut into the pavement of a signalized intersection without contacting the Buckhannon Director of Public Works 24 hours in advance. The Public Works Office will attempt to locate and mark buried loop detection devices. Any Permittee, or Permittee's Subcontractor, that damages a loop detector must replace the damaged loop detector within 48 hours of such damage and the sole expense of the Permittee or Permittee's Subcontractor.

(b) Pavement Markings: Lane striping or other painted and affixed delineators, which are removed or damaged, must be replaced by the Permittee before restoration will be considered complete. Replacement materials for lane striping and other affixed delineators shall be as specified and approved by the Traffic Engineer, and as specified in the latest WVDOT standard specifications and typical detail drawings.

6.3 SIDEWALKS

Damaged sidewalks shall be removed and replaced in full sections (nearest joint). Replacement sidewalk material shall match the existing sidewalk to the extent practicable. All concrete edges that are to be removed must be saw cut and formed from construction joint to joint. A section's size will be determined by the adjacent sections or by the City's inspector.

(a) Any sections of sidewalk that have been undermined must be cut out and replaced. Suitable backfill must be installed and compacted prior to replacement.

(b) The Permittee, or the Permittee's Subcontractors, must not park any vehicles and/or equipment on City sidewalks or within a landscaped bed on City property. Any damage observed after the Excavation has been completed will be the Permittee's responsibility. The Permittee will be required to make the necessary repairs before the Excavation will be accepted.

6.4 STREET/ROAD CROSSINGS

(a) The preferred method of crossing a street in the City of Buckhannon will be by boring and jacking the new pipe, service line, conduit or system extension under the street crossed. Horizontal Directional Drilling (HDD) may also be used within the Public Rights-of-Way. Unless otherwise specified the West Virginia Department of Highway, Accommodation of Utilities on Highway Right of Way standards shall apply in addition to the following:

1) Horizontal Directional Drilling equipment operators must be trained in the safe and proper operation of the equipment. Written proof of proper training shall be furnished to the City's Rights-of-Way Inspector upon request. Failure to furnish training documentation could result in a Stop Work-Order being issued.

a. For all underground utility construction, the Permittee shall thoroughly investigate the location of all known Public or Municipal Utilities paralleling or crossing the proposed path of the proposed utility facilities and call MISS UTILITY one-call system (1-800-245-4848) for location of utilities and directly call any utilities or providers who are not a member of the one-call system to locate their facilities in the field prior to starting any Excavation.

b. All Public Utility Facilities which are to be located underground shall be installed to a minimum depth of thirty inches below the surface of the Public Rights-of-Way.

c. The Permittee or the Permittee's Subcontractor must be in direct charge and control of the HDD operation at all times.

d. The Director of Public Works shall be notified 48 hours in advance of starting HDD operations. HDD operations must be performed in the presence of a City Rights-of-Way Inspector unless otherwise directed by the Director of Public Works.

(b) A street may also be crossed with an open cut to the pavement if approved by the Director of Public Works. The following conditions will apply.

- 1) The use of steel road plating and a controlled density fill material will be required to ensure uniform compaction in order to reopen the street to traffic at the earliest possible time.
- 2) Concrete roadways will be repaired to the nearest expansion joint, and doweled (steel dowel rods) into the adjacent existing concrete.

6.5 DRIVEWAY APRONS

Driveway aprons shall not be "patched" following any utility Excavation until the Permittee or the Permittee's Subcontractor has notified the Director of Public Works for an inspection. The materials and method of restoration or replacement must be done in accordance with the City Engineer's design standards, and as specified by the City Engineer. All edges of concrete restoration shall be saw cut.

ARTICLE VII – VIOLATIONS

- (a) The Director of Public Works, or his or her designee, or the Building Code Official, or his or her designee, or any sworn law enforcement officer, has the authority to enforce the regulations and standards specified in this Ordinance against violations thereof.
- (b) Any Person or Permittee who performs Excavation for which a permit is required by this code that has begun such Excavation prior to obtaining the required permit, in violation of this ordinance, shall be assessed a fee in the amount of double the amount of the permit fee or an additional \$100.00 above the usual permit fee, whichever is greater.
- (c) Any Person or Permittee occupying or using any of the Public Rights-of-Way of the City in a manner not permitted to the general public, without having first legally obtained the consent of the City in accordance with the requirements contained herein or occupying or using such Public Rights-of-Way inconsistent with the requirements of this Ordinance, shall be guilty of a misdemeanor punishable by fines of up to \$500.00. A separate and distinct offense shall be deemed committed each day a violation occurs or continues.
- (d) Any Person or Permittee that fails to comply with the requirements as set forth in this Ordinance may be prohibited from continuing to work in the Public Rights-of-Way and all future permit requests may be denied.
- (e) Violations by Municipal Utilities are not subject to the penalties specified herein. The Director of Public Works is empowered to abate violations by Municipal Utilities.

7.1 STOP WORK ORDER, PERMIT MODIFICATION, AND PERMIT EVOCATION

When the Director of Public Works has determined that a Permittee, Person, Facility Owner, or Subcontractor has violated the provisions of this ordinance or that an Excavation poses a hazardous situation or constitutes a public nuisance, public emergency, or other threat to the public health, safety, or welfare, the Director of Public Works shall authorize a Stop Work Order, to impose new conditions upon a permit, or to

suspend or revoke a permit by notifying the Permittee of such action in a written, electronic, or facsimile communication.

7.2 SUBSURFACE OR PAVEMENT FAILURES- WARRANTY

In the event that subsurface material or pavement over or immediately adjacent to any Excavation should become depressed, broken, or fail in any way within two (2) years after the Excavation has been completed and accepted by the City, the Permittee and the Permittee's Subcontractor that is responsible for the failure in the subsurface or surface of the Public Right-of-Way shall make the necessary repairs as directed by the Director of Public Works. The Director of Public Works shall notify the Permittee or Subcontractor of the condition, location, and the required remedy, and such Permittee or Subcontractor shall repair or restore, or cause to be repaired or restored, such condition to the satisfaction of the Director of Public Works within seventy-two (72) hours of the notification. The Director of Public Works may extend the time for the responsible party to repair or restore the affected Public Right-of-Way.

7.3 REPAIR BY THE CITY

(a) In the event that any Permittee or Subcontractor fails, neglects, or refuses to repair or restore any condition pursuant to the Director of Public Works's notice as set forth in Section 7.2, the Director of Public Works may repair or restore, or cause to be repaired or restored, such condition in such manner as the Director of Public Works deems expedient and appropriate. The Permittee, or Subcontractor identified by the Director of Public Works as the responsible party shall compensate the City of Buckhannon for any costs associated with such remediation, repair, restoration, or any other actual costs incurred by the City that were made necessary by reason of the repair or restoration undertaken by the City and the City may collect against the Permittee if necessary. The City's determination as to the cost of the repair or restoration performed shall be final, but the Permittee may seek an itemization of all costs sought to be recovered. Additionally, the City has the right to file a lien against the real property of the Permittee, Facility Owner, or Subcontractor in an amount of the actual costs incurred and to institute a civil action in any court of competent jurisdiction for all costs incurred by the City with respect to the Excavation and for reasonable attorney fees and costs incurred in the prosecution of the action. In addition, the responsible party may be subject to those enforcement actions as set forth in this Ordinance.

(b) Repair or restoration by the City of Buckhannon in accordance with this Section shall not relieve the Person(s) from liability for future pavement failures at the site of the repair or restoration.

(c) Nothing contained in this Ordinance shall be construed to prevent the Buckhannon City Council from entering into agreements with railroad and Public Utility companies which may exclude from or grant them deviations from the provisions of this Ordinance when, in the judgment of the Director of Public Works, it is in the public interest to do so

and the health, safety and welfare of the inhabitants of the city will be adequately safeguarded.


ARTICLE VIII – SEVERABILITY:

In the event that any provision of this Ordinance is determined to be unconstitutional or otherwise invalid by a court exercising competent jurisdiction, such determination shall not affect the validity of this Ordinance as a whole or the provisions thereof which are not specifically determined to be unconstitutional or invalid.

ARTICLE IX – EFFECTIVE DATE:


This Ordinance shall be effective thirty (30) days following its passage on Third Reading, (i.e., on July 17, 2026).

FIRST READING:	May 21, 2026
SECOND READING:	June 4, 2026
THIRD READING, PASSAGE AND ADOPTION:	June 17, 2026


Robert N. Skinner, III, Mayor

CERTIFICATE OF ENACTMENT

I, Randall H. Sanders, City Recorder, do hereby certify that the foregoing Ordinance No. 478 was lawfully ordained and enacted by the Council of the City of Buckhannon at a regular session of the said Council assembled on June 17, 2026.


Randall H. Sanders, City Recorder

[End of document]