

MOSCOW BOROUGH

ORDINANCE NO. 243 - 2017

STREET EXCAVATION ORDINANCE

AN ORDINANCE DEFINING AND REGULATING STREET EXCAVATIONS AND OPENINGS; SETTING FORTH REQUIREMENTS FOR PERMIT APPLICATIONS, FORMS AND FEES AND THE APPROVAL AND ISSUANCE OR DISAPPROVAL THEREOF; REQUIRING NOTIFICATION OF UTILITIES; ASSIGNING RESPONSIBILITY FOR RESTORATION OF OPENINGS AND SURFACES AND DEFECTS THEREFROM; ESTABLISHING REQUIREMENTS AND SPECIFICATIONS FOR WORK UNDER PERMIT; AUTHORIZING EMERGENCY WORK; ESTABLISHING LIMITATIONS FOR THE EXTENT OF SURFACE OPENINGS; AUTHORIZING THE BOROUGH OF MOSCOW TO PERFORM WORK AND COLLECT COSTS; REQUIRING POSTING OF BOND; AND PRESCRIBING PENALTIES FOR VIOLATION.

Now, therefore, be it ordained, by the Borough Council of the Borough of Moscow, County of Lackawanna County, Commonwealth of Pennsylvania, by the authority of the same that:

Section 1: Definitions and Interpretation.

The following words, as used in this ordinance, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number; words in the singular number shall include the plural; and words in the masculine shall include the feminine and the neuter.

- A. APPLICANT - any person who makes application for a permit.
- B. BUSINESS DAY - any normal work day for the Borough government, including Monday through Friday, except designated holidays.
- C. BOROUGH - The Borough of Moscow.
- D. COST - actual expenditures incurred by the Borough for labor, equipment, and materials, which includes all fringe benefits and overhead.
- E. EMERGENCY - any condition constituting a clear and present danger to life and/or property by reason of escaping gas, water, sewage, exposed wires or other breaks or defects in the user's line.
- F. EXCAVATION - any activity within the right-of-way of any street, alley, court, or cartway which involves cutting, breaking or disturbing of the surface thereof. In this ordinance, "OPENING" shall have essentially the same meaning as excavation.
- G. PennDOT - the Commonwealth of Pennsylvania's Department of Transportation
- H. PennDOT STREET - any Pennsylvania State road located within the municipal boundaries of the Borough of Moscow.
- I. PERMIT FEE - a fee paid by the permittee to the Borough of Moscow to cover the costs of issuing, processing and filing the street opening permit and all reasonable costs associated with the inspection of an excavation and restoration of a street opening.

J. PERMITTEE - any person, firm or corporation who has been issued a permit and has agreed to fulfill all the provisions of this ordinance.

K. PERSON - any natural person, partnership, firm, public utility company, association, corporation or municipal authority.

L. PUBLIC UTILITY - any utility company franchised by the Public Utility Commission of the Commonwealth of Pennsylvania.

M. RESURFACE - a process which provides a new wearing surface in a certain paved street area between curbs with the same material which was existing prior to excavation unless the Borough Engineer deems another material to be appropriate

N. SIDEWALK AREA - that portion of the street right-of-way reserved for pedestrian travel that normally parallels the area intended for vehicular travel.

O. STREET - the entire right-of-way established for the use of vehicles including, but not limited to, any public street, avenue, road, court, alley, highway, cartway or easement within the Borough limits.

Section 2: Permit Required to Make Opening or Excavation.

It shall be unlawful for any person to open or to make any excavation of any kind in any of the streets in the Borough of Moscow unless a permit has been secured for said purpose and in the manner hereinafter described, except in instances which require the placement of utility poles outside of the street area.

A. Any person who desires to make **an opening or excavation in any PennDOT street within the Borough limits shall provide an approved copy of the PennDOT permit to the Borough. The PennDOT permit may be obtained from the Pennsylvania Department of Transportation, District 4-0, O'Neill Highway, Dunmore, Pennsylvania, 18512.**

B. Any person working in the vicinity of a Borough street or Borough right-of-way who in any manner disturbs such street or causes damage to a street or right-of-way shall be required by this article to obtain a permit and correct this damage in accordance with the standards contained herein.

C. All Borough Departments shall not be required to obtain a permit when work is to be performed by Borough personnel.

D. All contractors or subcontractors performing work under contract for the Borough, Commonwealth of Pennsylvania, or Federal Government shall obtain a permit for street excavation work.

E. In the case of any leak, explosion or other accident in any subsurface pipe, line construction or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, construction or apparatus, to commence excavation to remedy such condition before securing a permit, provided that application for a permit shall be made immediately and not later than the following business day thereafter, and that all other provisions of this ordinance are fully complied with. If any such emergency condition shall not be immediately attended to by the owner or person responsible for such pipe, line, construction, or apparatus, the Borough, after such notice as they shall deem necessary under the circumstances of the particular case, shall proceed to do what is necessary and required by such emergency and charge the same on the basis of cost plus twenty percent (20%) to such owner or person.

Section 3: Application and fees for Permit.

Street opening permits shall only be granted upon compliance with the following express provisions.

A. Permits shall be issued only to persons furnishing public utility services or the owner or owners of real property adjoining the location where such opening or excavation is to be made.

B. Any person who shall desire to make any opening or excavation in any of the streets in the Borough shall make application to the Borough in writing, for that purpose. Such application shall be made upon forms to be furnished by the Borough and shall set forth the name of the applicant, the exact location of the proposed opening or excavation, and the approximate size and depth thereof, the full scope of the work to be included in the project, the date or dates during which such excavation is to be performed, the date such excavation is to be refilled and resurfaced in the manner hereinafter provided. The applicant shall furnish a drawing of the proposed opening site upon request by the Borough.

C. The application shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Borough and the laws of the Commonwealth of Pennsylvania in relation thereto, and that the applicant shall well and truly save, defend and hold harmless the Borough from, and indemnify it against any and all action, suits, demands, payments, costs and/or charges for or by reason of the proposed opening or excavation, and all damages to persons or property resulting in any manner therefrom, or occurring in the prosecution of the work connected therewith, or from any other matter, cause or thing related thereto. In the event that a suit shall be brought against the Borough, either independently or jointly with obtained against the Borough, either independently or jointly with the permittee, the permittee shall pay such judgment with all costs and hold the Borough harmless therefrom.

D. An applicant shall provide all necessary certificates of insurance executed by the applicant's insurance agency and verify that the applicant is insured against claims for personal injury as well as claims against property damages which may arise from or out of the performance of the excavation work, whether such performance be by the applicant or anyone directly or indirectly employed by him. Such insurance shall include protection against liability arising from completed operations, underground utility damage and collapse of any property. Liability insurance for bodily injury shall be in an amount not less than one million dollars (\$1,000,000.00) for each person, one million dollars (\$1,000,000.00) for property damages. Failure of an applicant to file a certificate of insurance shall be sufficient reason for denying a permit. Evidence of public liability and property damage shall not be applicable to any excavation work carried on by the Borough or it's employees.

E. No company, corporation or association shall excavate any street without first providing to the Borough a bond with some acceptable trust or surety company as surety in the sum determined by the schedule of fees, conditioned for the faithful performance of these provisions and also for any and all damages, claims, demands, suits, costs and counsel fees occasioned or arising from the excavation, opening or closing of said streets. The surety bond provisions of this ordinance shall not apply to any excavation which is made under a contract awarded by the Borough or made by the Borough.

F. Before any permit shall be issued to open or excavate any street in the Borough, the applicant shall pay a fee to the Borough, in the amount fixed by Section 3 G. of this ordinance. No permit shall be issued to any applicant unless the applicant has paid to the Borough any and all monies, then due the Borough, for prior excavations made or for any loss, damages, or expense in any manner occasioned by or arising from the work performed by the applicant under the provisions of this ordinance.

G. Street opening permit fee: Any person who desires to do any opening or excavation of any street shall pay the sum of two hundred dollars (\$200.00) for an opening of twenty (20) square feet or less. Any opening which exceeds 20 square feet will be an additional two dollars (\$2.00) per square foot. Any street opening or excavation will be rounded to the next highest square foot for purposes of computing the permit fee.

H. The work authorized by the permit is subject to all provisions of the PA One Call System. It shall be the permittee's responsibility to coordinate and locate all utilities within their work area.

Section 4: Roadway Pavement.

Utility restoration shall be subject to the following requirements:

A. When any longitudinal opening longer than ten feet or wider than two feet is made in the highway pavement, the permittee shall overlay the traffic lanes in which the opening was made, for the entire length of the highway that was opened plus one foot each side as directed by Moscow Borough.

B. When two or more transverse trench openings are made in the highway pavement less than 100 feet apart the permittee shall overlay all traffic lanes in which the openings were made, for the entire length of the highway between such openings plus one foot each side as directed by Moscow Borough.

The sections of pavement subject to these requirements shall receive the trench restoration as specified with the entire roadway milled down 1 1/2" depth and then tack coat applied with 1 1/2" depth ID2 overlay installed.

C. All disturbed portions of the highway, including appurtenances and structures such as sidewalks, guiderails, shoulders, lawns or drain pipes, shall be restored to a condition equal to that which existed before the start of any work authorized by the permit.

E. Where roadways adjacent to shoulders are overlaid, the shoulder shall be raised so that the overlaid pavement and the shoulder edges will be at the same elevation.

F. Where curbs or drives are adjacent to roadway, milling of pavement will be required to match existing elevations.

G. Blasting shall be allowed only as approved by Moscow Borough and by a certified company at the sole responsibility of the permittee. No blasting shall be permitted if within 25 feet of the nearest part of a bridge, box or culvert.

H. Boring and or jacking of utilities under the roadway shall only be allowed as approved by Moscow Borough and by a certified company at the sole responsibility of the permittee and is subject to additional requirements for depth and location.

I. As long as the permittee operates and leaves in place any structure of facilities, in upon, or along the right-of-way, the permittee shall maintain and keep them in good order and repair.

J. Responsibility of the permittee for damage to highway shall comply with the following:

1. If there is a failure of the highway, including slope or any other appurtenance thereto, in the immediate area of the permitted work within two years after the completion of the permitted work and there is no similar failure of the highway beyond the area adjacent to the area of the permitted work, permittee shall have absolute responsibility to make all temporary and permanent restoration including restoration of the adjacent area if it has also failed.
2. If there is a failure of the highway, including slope or other appurtenance thereto, in the area adjacent to the immediate area of the permitted work within two years after the completion of the permitted work and there is no similar failure of the highway in the area of the permitted work or beyond the area adjacent to the area of the permitted work, it shall be presumed that the work done by the permittee was the proximate cause of the failure and the permittee shall be responsible to make all temporary and permanent restoration unless the presumption is rebutted by clear and convincing evidence.
3. If there is a failure of the highway, including slope or other appurtenance thereto, in the immediate area of the permitted work, which occurs more than two years but no more than

five years after the completion of the permitted work, and there is no similar failure of the highway beyond the area adjacent to the area of the permitted work, it shall be presumed that the work done by the permittee was the proximate cause of the failure and the permittee shall be responsible to make all temporary and permanent restoration, including any failure of the adjacent area if it also failed, unless the presumption is rebutted by clear and convincing evidence.

4. If there is a failure of the highway, including slope or other appurtenance thereto, in the area adjacent to the immediate area of the permitted work which occurs more than two years but no more than five years after the completion of the permitted work, the permittee shall be responsible to make all temporary and permanent restoration if the permitted work was the proximate cause of the failure.
5. If the permitted work is the proximate cause of damage to the highway, including slope or any other appurtenance thereto, beyond the adjacent area, the permittee shall be responsible for all remedial work and shall make all temporary and permanent restoration.
6. Where the permittee has the responsibility to restore a highway, including slope or any other appurtenance thereto, under the above subparagraphs, including instances where a presumption of responsibility has not been rebutted, the permittee shall have the duty to restore the improved area in accordance with the permit. If the permittee fails to restore the improved area properly Moscow Borough will have the authority to do the work at the expense of the permittee. The permittee shall reimburse Moscow Borough for the costs incurred within 30 days after receipt of a Moscow Borough invoice.

K. If at any time in the future the highway is altered for public convenience or necessity, the permittee shall at his own expense, change or relocate all or any part of the structures or facilities authorized by the permit which interfere with such highway alterations or which is inconsistent with the purpose of the highway alterations.

L. Approval by the inspector of Moscow Borough of all or part of any permitted work shall not constitute acknowledgement that the work was performed in accordance with the permit, nor shall such approval of the inspector act as a release of the permittee or waiver by Moscow Borough of its right to seek performance or restitution from the permittee.

Section 5: Manner In Which Permitted Work Is To Be Completed.

Any person who shall open or excavate any street in the Borough shall thoroughly and completely refill and compact the opening or excavation in such a manner as to prevent any settling thereafter, and shall restore the surface to the same condition as it was prior to the opening or excavation and such restoration shall be in accordance with the specifications contained herein and when not herein specified, shall be in accordance with the specifications of the Commonwealth of Pennsylvania's Department of Transportation and are hereby adopted as the specifications of the Borough for restoration of streets in the Borough, as restored. The surface shall conform to the proper grade and be of the same surface covering as the area immediately adjoining the opening. If, within five (5) years after the restoration of the surface as herein provided, defects shall appear therein resulting from defective backfilling by the applicant or the use of materials insufficient with the requirements found in this ordinance, the applicant shall reimburse the Borough for cost of all necessary repairs to the permanent paving and/or restoration.

Section 6: Requirements for Work; Correction of Unsatisfactory Work; Completion of Incomplete Work.

A. No opening or excavation in any street shall extend from the curb line or shoulder into the street a distance greater than one (1) foot beyond the center line of the street before being properly backfilled

in accordance with the requirements found herein and the surface of the street restored to a condition safe and convenient for travel.

B. No more than three-hundred (300) feet longitudinally shall be opened in any street at any one time before being properly backfilled in accordance with the requirements found herein and the surface of the street restored to a condition safe and convenient for travel.

C. The work of excavation shall be so conducted as not to interfere with the sanitary sewer mains, storm sewer mains, water mains, gas mains, or any subsurface lines or construction of their service connections with any structure, until permission of the proper authorities in connection with said subsurface lines or constructions shall have first been obtained.

D. The permittee shall be responsible for contacting the proper authority of any subsurface line or construction immediately in the event of accidental damage to any subsurface line or construction.

E. No tunneling shall be allowed without the express approval of the Borough Engineer and permission therefore endorsed on the permit. The backfilling of the tunnel excavation shall be made only in the presence of the Borough Engineer or an inspector designated by him, and, shall be done in a method approved by the Borough.

F. All openings or excavations shall be backfilled promptly, and pavement restoration completed immediately thereafter in accordance with the specifications and construction requirements set forth herein.

1. The permittee shall notify all potential underground utility owners at the proposed site and shall comply with the requirements of the "PA One Call System".
2. The permittee shall provide all traffic control devices in accordance with PennDOT for the respective site condition. No work shall commence until such devices are properly in place. The permittee shall provide, in addition to the traffic control devices described above, any safety devices and take every reasonable precaution to keep the street in a safe and passable condition, both day and night, by use of guards, barricades, barriers, lanterns and other devices, and, all excavation permits granted hereunder are granted under and subject to the express condition that the permittee shall indemnify, save and keep harmless the Borough from any loss in damages, or otherwise whatsoever, which may or shall be occasioned at any time by the said excavation, or by any leak, explosion or other injury from any pipe, apparatus, conduit, or any other matter in conjunction with the said excavation
3. The permittee shall be responsible for providing adequate dust control measures throughout the construction process to avoid dirt and/or dust from being carried by the wind onto adjacent properties.
4. All pavement excavations shall be saw cut straight and vertically and extend the full depth of the existing pavement. Saw cuts for permanent pavement restoration shall be located a minimum of twelve (12) inches beyond the limit of trench excavation on all sides.
5. The permittee shall be responsible for providing written notification, a minimum of one full working day (24 hours) in advance, for any anticipated street closure associated with work performed under the respective excavation permit. No street shall be fully closed (inability to provide one clear travel lane a minimum of ten foot in width) without the approval of the Borough and permission therefore endorsed on the permit.
6. Temporary paving or cold patch premix may be used on a temporary or emergency basis in any street opening or excavation; however, permanent paving shall be installed within ten (10) working days after the initial excavation has been backfilled in the manner provided herein.

7. The bottom of the trench shall be compacted and shall be free of any loose material prior to the placement of bedding material.
8. Bedding material for the underground utility shall consist of No. 57 stone installed to a depth to provide a minimum 6" base below and a 6" cover around and 12" above the utility and shall be compacted thoroughly with a mechanical tamper in a manner which will not alter the alignment nor cause displacement of the utility.
9. Backfill material shall consist of PennDOT 2A sub base compacted mechanically in six (6) inch layers or lifts to at least 95% of the modified proctor maximum dry density. All backfill material shall be imported and shall be free of debris, wood, ice or any other foreign material not suitable for compaction. Native backfill material may only be utilized for the specific location as authorized by the Borough Engineer and such authorization shall be endorsed on the excavation permit.
10. Permanent pavement restoration shall be constructed as required herein but shall not be less than the existing pavement depth.
11. All bituminous material shall be installed when the ambient temperature and the surface temperature is above forty (40) degrees Fahrenheit and when surfaces are dry and clean of loose or foreign materials.
12. Bituminous base course shall be a minimum of five (5) inches in depth after compaction and shall consist of plant mixed bituminous concrete base course (BCBC) or PennDOT ID-2 binder. The base material shall extend a minimum of twelve (12) inches beyond the limit of trench excavation and shall be placed in layers of approximately two and one-half (2 1/2) inches equal depth. All irregularities in the surface of more than 3/8 inch shall be satisfactorily corrected.
13. Bituminous wearing course shall be a minimum of one and one-half (1 1/2) inches in depth after compaction and shall consist of PennDOT ID-2 wearing top. The wearing course shall extend a minimum of twelve (12) inches beyond the limit of the trench excavation on all sides. All irregularities in the surface of more than 3/16 inch shall be satisfactorily corrected.
14. All bituminous materials must be compacted with a vibratory roller operated in the vibrating mode. The surface shall be rolled when the mixture is in the proper condition and when rolling will not cause undue displacement, cracking or shoving.
15. Edge joint treatment shall be applied immediately after the wearing course has been compacted and shall consist of AC-20 liquid bituminous material or E-1, E-3 emulsified asphalt applied to seal all joints flush with the road surface. All water, dust, debris or other foreign material shall be removed from the joint area prior to sealing.
16. All materials and installation methods used in the permanent pavement replacement must meet or exceed the requirements of PennDOT specifications.
17. All grass areas disturbed during excavation shall be restored to the proper grade with topsoil, seed, fertilizer and mulch and shall be mulched and seeded with PennDOT formula B.
18. The permittee shall notify the Borough when: the opening or excavation is ready for backfilling before any backfilling is done: after backfilling work has been completed; prior to base repairs and pavement placement and when the street has been permanently restored so that inspections can be made.
19. Trench restoration detail is attached hereto and is also part of the requirements for this ordinance.

G. The permittee shall be responsible for the care and maintenance of the said area for a period of five (5) years from the date of completion of permanent pavement restoration and acceptance by the Borough.

H. The Borough may request the paving contractor to drill a six (6) inch diameter core through the wearing and base course for verification of pavement thickness if the Borough did not witness depth and placement of each course. Pavement thickness less than the depth specified herein shall be considered defective work and the affected area shall be removed and replaced at the contractor's own expense. Drilling and filling of test holes shall be considered incidental to the paving operation, and the Borough will not be responsible for any costs or expenses associated with the testing for specified depth or for the removal and replacement of defective materials.

I. In the event that any work performed by or for a permit holder shall, in the opinion of the Borough be unsatisfactory and the same shall not be corrected in accordance with his instructions within the time frame fixed by him, or in the event that the work for which the permit was granted is not completed within the time fixed on the permit, the Borough may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost thereof, plus twenty percent (20%) to such permittee or owner.

Section 7. Payment for Work Done by the Borough.

Payment for all work done by the Borough under the provisions hereof shall be made by the person made liable therefore under the provisions hereof within thirty (30) days upon receipt of a bill sent to such person by the Borough. Upon failure to pay such charges within such time, the same shall be collectible by the Borough of Moscow by an action in assumpsit or in the manner provided by law for the collection.

Section 8. Failure to Comply With the Provisions of this Ordinance.

If any person shall fail, refuse or neglect to comply with the provisions of this ordinance, or any rules or regulations, or any reasonable orders or directions of a Borough representative in reference thereto, the Borough may refuse to issue further permits to such person or persons until such conditions or orders are complied with.

Section 9. Violation and Penalties.

Any person, firm or corporation who shall violate any provision of this Ordinance shall, upon conviction thereof, be sentenced to pay a fine of no more than five hundred dollars (\$500.00); and in default of payment, to imprisonment for a term not to exceed ninety (90) days. Each day that a violation of this Ordinance continues shall constitute a separate offense.

Section 10. Applicability.

The provisions of the Ordinance do not apply to construction or reconstruction of sidewalks where said construction does not alter, disturb, or change in any manner the existing curb.

Section 11. Repealer.

All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

Section 12. Severability.

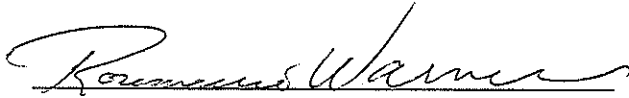
If any section, clause, provision or portion of this Ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this Ordinance so long as it remains legally enforceable minus

the invalid portion. The Borough reserves the right to amend this Ordinance or any portion thereof, from time to time as it shall deem advisable in the best interest of the promotion of the purposes and intent of this Ordinance, and the effective administration thereof.

Section 13. Effective Date.

This Ordinance shall become effective immediately upon approval.

DULY ENACTED and ORDAINED at the regular meeting of the Borough Council of the Borough of Moscow, Pennsylvania on the 7th day of August, 2017.

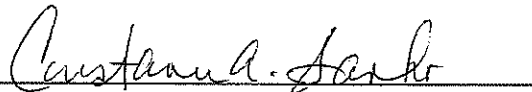


Rosemarie Warner, Mayor



Arthur Pencek, President
Moscow Borough Council

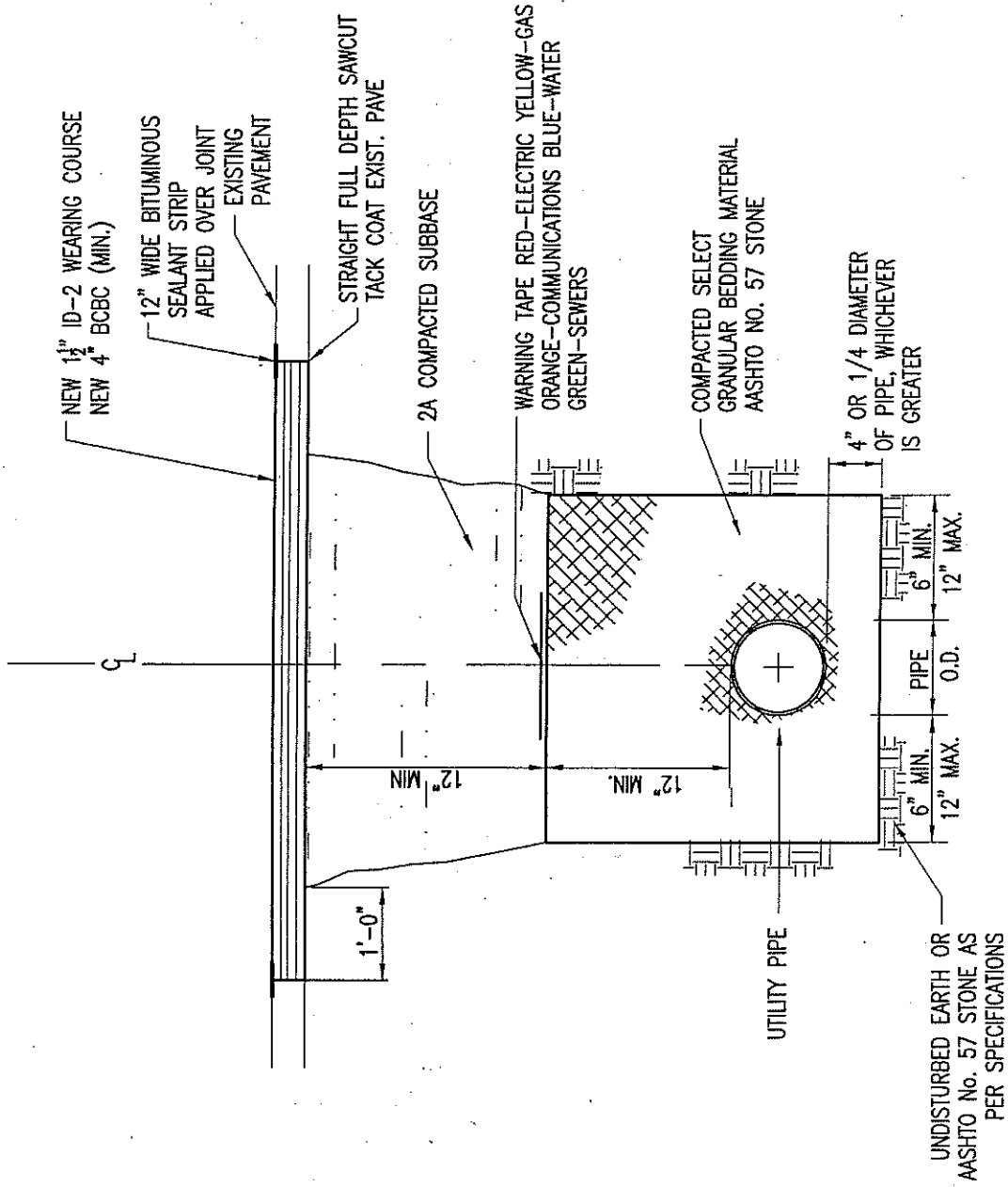
ATTEST:



Constance A. Sanko, Secretary
Moscow Borough Council

APPROVED this 7th day of August, 2017.

- NOTES:
- * PAVEMENT CUTS SHALL BE PERPENDICULAR TO ROADWAY
 - * UTILIZE PENNDOT MATERIALS AND INSTALLATION METHODS
 - * MOSCOW BOROUGH TO INSPECT ALL PHASES OF WORK DURING INSTALLATION
 - * FOLLOW ALL REQUIREMENTS OF MOSCOW BOROUGH ORDINANCES



TYPICAL PAVEMENT CUT & TRENCH SECTION

NOT TO SCALE