

ORDINANCE NO 14-120319

VILLAGE OF BREEDSVILLE

VAN BUREN COUNTY, MICHIGAN

**AN ORDINANCE REQUIRING A PERMIT AND SURETY BOND FOR ANY WORK IN
THE VILLAGE RIGHT-OF-WAY; DECLARING EMERGENCY; AND FOR OTHER PURPOSES.**

THE VILLAGE OF BREEDSVILLE HEREBY ORDAINS:

NOW, THEREFORE BE IT ORDAINED BY THE VILLAGE COUNCIL

SECTION 1: An ordinance requiring that any work performed upon, in, under, above or about any street, alley, curb, gutter, sidewalk, any public rights-of-way or any public easement within the village shall furnish to the Village, prior to issuance of a permit, a plan showing the work area, the space within the right-of-way required for the work and a proposed barricade plan for the use of barricades, signals, signs, flags, flares and other traffic control and safety devices about the work area. A timeline or schedule for work shall be permitted to the village prior to the issuance of the permit. This section shall not apply to utility companies or the village when engaged in work involving overhead signals, communications and/or electric circuits.

SECTION 2: The Village of Breedsville finds that the village has experienced development, construction and maintenance operations by utilities and other entities which requires excavations and cuts in public streets, alleys and other properties. These excavations or cuts occur because of such things as the installation of water lines, sanitary sewers, drainage structures, other utilities, or the replacement, improvement or maintenance of such systems. When these excavations or cuts occur, significant problems face the village because of the vast number of cuts, the occasional poor restoration techniques, or the multiple cuts in the same area by different entities because there is no need to contact other utilities. As a result, there is a real potential for serious deterioration of the paved rights-of-way and on occasion, a threat to public safety. As a result, an ordinance is required that sets forth in detail the responsibilities of any entity that uses the public rights-of-way through franchise or other legal authority, and in the course of, or in furtherance of, that use, causes excavation or cuts to occur.

SECTION 3: It shall be unlawful for an applicant, to make or cause to be made any excavation or cut in the public right-of-way without having first obtained a permit from the Village and obtain a surety bond. A written permit is not required prior to an excavation, cut or boring of any public right-of-way **if, and only if,** the excavation cut or bore is made as a result of an emergency situation in which the destruction of life or property is imminent or is necessary to restore basic service. The Village shall be notified at the earliest possible moment, but in any event, no later than the end of the first business day after the excavation, cut or bore is made. The provision of this ordinance does not apply to minor maintenance work. Minor maintenance work is defined as work performed to existing utilities which does not include excavation of any material in the village right-of-way or damage to any street, alley, curb, gutter, sidewalk and vegetation.

SECTION 4: Notwithstanding any other provision of this ordinance, it is the preference of the village that boring or pushing of utility services under the village streets, alleys or other public property, occur instead of excavations or cuts. Even so, the permitting process set forth in this ordinance shall be met, and all tunneling plans shall be subject to the approval of the Village. Street closures shall be permitted after a permit from the village has been approved. Notification of emergency and public service agencies shall be the sole responsibility of the permittee.

SECTION 5: All excavations or cuts in paved surfaces shall have a minimum uniform width of twenty-four (24) inches unless the Village expressly authorizes a different width. All excavations or cuts in paved surfaces shall be smoothly cut or sawed and shall have a neat appearance. Any boring, excavation or cut made pursuant to the terms of this article shall be restored. Temporary restoration shall occur immediately upon completion of the work that required the boring, excavation or cut, gravel surfaces are strictly prohibited. The applicant shall complete permanent restoration within ten (10) business days. The applicant shall resurface the full width of any street lane and replace pavement markings in the public right-of-way where there has been an excavation or cut resurfacing may not be required for minor maintenance.

SECTION 6: *Temporary Restoration:* No materials removed from the boring, excavation or cut shall be used as backfill material. This limitation applies to pieces of broken concrete or asphalt. The top six-(6) inches of backfill material shall be compacted to ninety-five (95) percent of maximum density as determined by the modified Proctor compaction test. The surface course shall consist of a two-inch application of cold mix asphalt for asphalt streets, concrete streets or streets with single or double penetration surface treatments. The applicant is permitted to use any or all of the following as backfill material:

- 1) Crushed rock and natural fines uniformly mixed
- 2) Crushed rock or other selected material approved by the Village that is free of debris and excess moisture, when compacted to a minimum of ninety (90) percent as determined by the modified Proctor compaction test.
- 3) Compacted river sand or lean mix concrete if the use of this material has been previously approved by the Village.
- 4) Materials recommended by the permittee's professional engineer.
- 5) A maximum of $\frac{3}{4}$ inch +/- vertically per four (4) feet will be tolerated for a period of one year on asphalt and concrete streets.

SECTION 7: *Permanent Restoration:* The applicant shall make all permanent restorations of any street or alley pavement in which there has been a boring, excavation or cut made pursuant to this ordinance. Permanent restoration of arterial and collector streets of concrete or asphalt streets designated as arterials or collectors by the master street plan shall be as follows:

- 1) All backfill and compaction requirements shall follow the guidelines of Section 6 concerning temporary restorations.
- 2) Backfill material shall be removed to a minimum depth of eight (8) inches for concrete streets and ten (10) inches for asphalt streets.
- 3) A maximum of $\frac{3}{8}$ inch +/- vertically per four (4) feet will be tolerated for a period of one year on asphalt and concrete streets.

- 4) Street cuts shall comply with the 3/8-inch tolerance for one year. However; if the street repair fails to maintain its required tolerance, within ten (10) days after notification by the department, the permittee shall restore or reconstruct street repair and shall guarantee the tolerance for another six (6) months.

SECTION 8: Sidewalks, driveways, curbs and drainage facilities: All removed or undercut sidewalks, driveways, curbs and drainage facilities shall be restored by the permit holder in accordance with this ordinance and other applicable ordinances. The applicant shall be responsible for protecting any shoulders, ditches and other drainage structures in the work area and, if damaged in any way whatsoever during the time of the permit, shall make all necessary repairs. Notification of completion shall be in compliance with the standards established by the Village.

- a) Sidewalks, curb and gutter shall be constructed to original condition or near original condition acceptable to the Village.

SECTION 9: Grasses and vegetation: To the extent possible, the applicant shall restore or replace all planted grasses and vegetation, including trees of the same height and character. The Village shall permit modifications to this aspect of the restoration plan in appropriate cases. Notification of completion shall be in compliance with the standards established by the Village. Also, the permittee shall notify the affected homeowners in writing prior to the beginning of construction who will be working in their yard, which shall include contact name and numbers.

SECTION 10: Excess material or debris: When any temporary or final restoration is completed, all excess material, debris, mud or other foreign materials shall be removed from the street, alley or other public property involved in the permit, and the surface shall, to the satisfaction of the Village, be restored to its original condition.

SECTION 11: In the event a stop order is issued, the person holding the permit and engaging in the work shall restore the work area to its proper condition and permit upon demand by the village and in the event such is not done within twenty-four (24) hours from receipt of notice to do so, the village shall be authorized to and may, at its election, take charge of work and restore the premises to the condition called for in this ordinance. The village is entitled to receive from the contractor the actual expense incurred by the village in so acting including, but not limited to, cost of labor, materials, overhead and reasonable rental of any equipment used by the village in restoring the site and for such purposes, the village shall have a right of action against any bond in effect running from the hold of the permit to the village conditioned upon compliance with the ordinances of the village in the performance of the work. If the village has to restore the street cut, the fees to be charged to the permittee shall be as follows:

1. Cut of up to one-half of width of street pavement \$750.00
2. Cut of more than one-half of width of street pavement \$1500.00
3. Road bore (applicant responsible for all work and cost) \$25.00
4. Street cut made prior to issuance of a proper permit \$350.00 (administrative fee for permit review not in due course, in addition to above fee).

5. Administrative fees shall be in addition to penalties assessed by the court upon a finding of violation of this ordinance.

SECTION 12: The Village of Breedsville has a vested interest in assuring that any disruption of the flow of traffic, or the digging of any trench, excavation or cut, in the paved portion of the public right-of-way, be kept to a minimum. Street closures are strictly prohibited without first obtaining approval from the department.

SECTION 13: The fee schedule for obtaining a permit to excavate, cut or bore shall be \$5,000.00 per permit. A permit can include multiple cuts as shown on the application or plans.

SECTION 14: A surety bond of \$5,000.00 for street cuts and for bores shall be posted with the Village. The bond shall insure that the street will be repaired according to the specifications and methods set out the permit or village. The applicant shall post the required surety bond as an additional condition to the issuance of a permit to excavate, cut or bore in the public right-of-way. The failure to post this bond in a timely manner shall be the basis for denying a permit. This bond shall be renewed from year to year for continued coverage; in as far as the applicant continues to work within the corporate limits of Breedsville.

SECTION 15: Land development in the village frequently requires right-of-way dedications and boundary street improvements for public streets. Development within public right-of-way may include: street construction or reconstruction; street widening; street alignment and realignment (both vertical and horizontal); curb and gutter; curb and gutter alignment and realignment (both vertical and horizontal); standard drainage structures and piping; driveways; extension excavation for cuts or fill sections; extensive drainage structures (such as bridges or large culverts); and similar development that results in permanent construction. Significant engineering design, utility and construction problems have resulted when development has occurred without associated right-of-way dedication and roadway and drainage improvements. Lack of right-of-way dedication and associated roadway and drainage improvements can result in costly relocation of utilities and costly redesign and reconstruction of roadway and drainage improvements. Lack of roadway and drainage improvements may result in inadequate access to abutting property, traffic congestion, unsafe traffic operations, and otherwise adversely affect the safety and general welfare of the village. Therefore, this ordinance is intended to established requirements for boundary street improvements within rights-of-way; to establish requirements for dedication of rights-of-way for boundary street improvements; and to assure proper engineering design and construction boundary street improvements in the public right-of-way.

SECTION 16: The Village Board shall be responsible for requiring improvements in the public right-of-way. The Village shall be responsible for requiring improvements in the public right-of-way for all construction.

SECTION 17: Any parts of conflicting ordinances are repealed.

SECTION 18: If any part of this ordinance is declared void, it shall not affect the remaining parts.

SECTION 19: This ordinance is necessary for the orderly development of Village of Breedsville, therefore; an emergency is declared.

SECTION 20: This Ordinance shall take effect thirty (30) days from the date of its publication, and all Ordinances or a part of Ordinances in conflict with this Ordinance shall be repealed.

Adopted and passed by the Breedsville Village Council the 3rd day of December 2019
Signed this 3rd day of December 2019.

I hereby certify the foregoing constitutes a true and complete copy of Ordinance Number 14-120319 duly adopted by the Village Council of the Village of Breedsville, County of Van Buren, State of Michigan, at a regular meeting held on the 3rd day of December 2019, at which the following members were present:

S. Rogusta, T. Pensinger, L. Weniger, M. Kindig, D. Kindig, D. Starbuck, S. Cericola

and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, of the Public Acts of Michigan of 1976, as amended, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

I further certify that member L. Weniger moved for adoption of said Ordinance and that member D. Starbuck seconded said motion.

I further certify that the following members voted for adoption of said Ordinance:

S. Rogusta, T. Pensinger, L. Weniger, M. Kindig, D. Kindig, D. Starbuck, S. Cericola

and that the following members voted against such Ordinance:

No-one

I further certify that said Ordinance has been recorded in the Ordinance Book of the Village of Breedsville and that such recording has been authenticated by the signatures of the Village President and Village Clerk.

Steven Rogusta

Steven Rogusta, Village President

Linda Norton

Linda Norton, Village Clerk

I do hereby certify that a synopsis of this Ordinance, in accordance with statutory requirements was published on January 05, 2020, in the South Haven Turbine, a copy of which is attached hereto.

Linda Norton

Linda Norton, Village Clerk