

AN ORDINANCE OF THE TOWNSHIP OF EXETER,
LUZERNE COUNTY, PENNSYLVANIA, REGULATING
STREET OPENINGS, EXCAVATIONS AND
PAVEMENT CUTS

BE IT ORDAINED AND ENACTED, by the Supervisors of the Township of Exeter as follows:

ARTICLE I. PERMIT

SECTION 1.1 PERMIT REQUIRED

It shall be unlawful for any person, firm, corporation, partnership or other entity (hereinafter referred to as "Person") to make any tunnel, opening or excavation of any kind in or under the surface of any street without first securing a permit from the Township for each separate undertaking; or without complying with the provisions of this article or in violation of or variance from the terms of any such permit. Nothing in this Ordinance shall be construed to require a permit in advance for emergency repairs necessary for the safety of the public or the restoration or continuance of public utility or other public service, but application for such permit and the fee shall be submitted as herein prescribed within 5 days after completion of the work, and thereafter the remaining provisions of this Ordinance shall apply. In all cases in which emergency openings are necessary, the Township Police Department shall be notified prior to such opening.

The definition of "street" shall mean and include a public street, public easement, public right-of-way, public highway, public alley, public way or public road accepted or maintained by the Township.

SECTION 1.2 STREET OPENINGS LIMITED

No Person to whom a permit has been granted shall perform any of the work authorized by such permit in any amount greater than that specified in the permit, except that upon approval by the Roadmaster additional work may be done under the provisions of the permit in such an amount as the Roadmaster shall deem appropriate and necessary to complete the work. Any deposit and bond posted in connection with the permit shall be deemed to cover any such additional work as may be approved pursuant to this section within the limit mentioned herein.

SECTION 1.3 COMMENCEMENT OF WORK

Work for which a permit has been issued shall commence within 10 days after the issuance of the permit therefor. If not so commenced, the permit shall be automatically terminated unless the permittee applies to the Roadmaster for an extension of time within which to commence work. If such an extension is granted,

the original permit shall remain in force for the period of time specified in the extension. Permits which terminate within 10 days after issuance or within any extension of time granted by the Roadmaster may be renewed only upon the payment of an additional permit fee as originally required.

SECTION 1.4 PERMITS NON-TRANSFERRABLE

Permits are not transferrable from one person to another and the work shall not be made in any place other than the location specifically designated in the permit.

SECTION 1.5 EXPIRATION OF PERMITS

Every permit shall expire at the time stated in the permit. If the permittee should not complete the work within the specified time, he shall, prior to expiration of the permit, present in writing to the Roadmaster a request for an extension of time, setting forth therein the reasons for the requested extension. If in the opinion of the Roadmaster such an extension is necessary and not contrary to the public interest, the permittee may be granted additional time for the completion of the work.

SECTION 1.6 STATE HIGHWAYS

The provisions of this Ordinance shall not be applicable in those instances where the highway is maintained by the Commonwealth of Pennsylvania, Department of Highways.

SECTION 1.7 RIGHTS OF TOWNSHIP

Every permit shall be granted subject to the right of the Township or of any other Person to lawfully use the street for any purpose, not inconsistent with the permit.

SECTION 1.8 REVOCATION OF PERMITS

Any permit may be revoked by the Roadmaster, after notice to the permittee, for:

A. Violation of any condition of the permit or of any provisions of this Ordinance;

B. Violation of any provision of any other applicable Ordinance or law relating to the work;

C. Existence of any condition or the doing of any act constituting or creating a nuisance or endangering life or property.

A permittee shall be granted a period of 3 days from the date of the notice to correct the violation and to proceed with the diligent prosecution of the work authorized by the permit before said permit is revoked.

Written notice of any such violation or condition shall be served upon the permittee or his agent engaged in the work. The notice shall contain a brief statement of the reasons for revoking the permit. Notice may be given either by personal delivery thereof to the Person to be notified or by certified or registered United States mail addressed to the Person to be notified.

When any permit has been revoked and the work authorized by the permit has not been completed, the Roadmaster shall do such work as may be necessary to restore the street or part thereof to as good a condition as before the opening was made. All expenses thereby incurred by the Township shall be recovered from the deposit or bond the permittee has made or filed with the Township.

ARTICLE II APPLICATIONS

SECTION 2.1 DUTIES AND RESPONSIBILITIES OF APPLICANTS

It shall be the duty and responsibility of any applicant to:

A. Make written application for such permit with the Roadmaster on such form as he shall prescribe. No work shall commence until the Roadmaster has approved the application and plan and issued a permit and until the permittee has paid and provided all fees, deposits, certificates, and bonds required by this Ordinance.

B. Furnish in triplicate a plan showing the work to be performed under said permit. Two (2) copies of such plan shall be returned to the applicant at the time the permit is granted.

C. Agree to save the Township, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under said permit. The acceptance of any permit under this Ordinance shall constitute such an agreement by the applicant whether the same is expressed or not.

SECTION 2.2 DUTIES OF PERMITTEES

It shall be the duty and responsibility of any Person receiving a permit to:

A. Pay a permit issuance fee and permit inspection fee in accordance with the schedule of fees determined by the Pennsylvania Department of Transportation from time to time. The current Pennsylvania Department of Transportation fee schedule is attached hereto and made a part hereof as Exhibit "A".

B. Make a deposit to cover the cost of inspecting the work authorized by the permit and the cost of restoring the street

damaged by such work, all in accordance with the provisions of this Ordinance.

C. Furnish a bond as required by this Ordinance.

ARTICLE III MANNER OF EXCAVATING

SECTION 3.1 OPENING AND EXCAVATION RESTRICTIONS

A. No opening or excavation in any street shall extend beyond the center line of the street before being backfilled and the surface to the street temporarily restored.

B. No more than 50 feet measured longitudinally shall be opened in any street at any one time, except by special permission of the Roadmaster.

C. Pipe drains, pipe culverts, or other facilities encountered shall be protected by the permittee.

D. Monuments of concrete, iron, or other lasting material set for the purpose of location or preserving the lines of any street or property subdivision, or a precise survey reference point or a permanent survey bench mark within the Township shall not be removed or disturbed or caused to be removed or disturbed unless permission to do so is first obtained in writing from the Roadmaster. Permission shall be granted only upon condition that the permittee shall pay all expenses incident to the proper replacement of the monument.

E. When work performed by the permittee interferes with the established drainage system of any street, provision shall be made by the permittee to provide proper drainage to the satisfaction of the Roadmaster.

F. When any earth, gravel, or other excavated material is caused to roll, flow, or wash upon any street, the permittee shall cause the same to be removed from the street within 24 hours after deposit. In the event the earth, gravel or other excavated material so deposited is not removed, the Roadmaster shall cause such removal and the cost incurred shall be paid by the permittee or deducted from his deposit.

G. Every permittee shall place around the project such barriers, barricades, lights, warning flags and danger signs as shall be sufficient for the safety of the public. Barricading shall be in compliance with all regulations promulgated by the Commonwealth of Pennsylvania.

No Person shall willfully move, remove, injure, destroy, or extinguish any barrier, warning light, sign, or notice erected, placed or posted in accordance with the provisions of this Ordinance.

H. Access to private driveways shall be provided except during working hours when construction operations prohibit provisions of such access. Free access must be provided at all time to fire hydrants.

I. Excavated materials shall be laid compactly along the side of the trench and kept trimmed up so as to cause as little inconvenience as possible to public travel. In order to expedite the flow of traffic or to abate a dirt or dust nuisance, the Roadmaster may require the permittee to provide toe boards or bins; and if the excavated area is muddy and causes inconvenience to pedestrians, temporary wooden plank walks shall be installed by the permittee as directed by the Roadmaster. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, the permittee shall keep a passageway at least 1/2 the sidewalk width open along such sidewalk line.

J. Work authorized by a permit shall be performed between the hours of 7 A.M. and 7 P.M., Monday through Saturday, unless the permittee obtains written consent from the Roadmaster to do the work at an earlier or later hour. Such permission shall be granted only in case of an emergency or in the event the work authorized by the permit is to be performed in traffic-congested areas.

K. In granting any permit, the Roadmaster may attach such other conditions thereto as may be reasonably necessary to prevent damage to public or private property or to prevent the operation from being conducted in a manner hazardous to life or property or in a manner likely to create a nuisance. Such conditions may include but shall not be limited to: (1) limitations on the period of the year in which the work may be performed; (2) restrictions as to the size and type of equipment; (3) designation of routes upon which materials may be transported; (4) the place and manner of disposal of excavated materials; (5) requirements as to the laying of dust, the cleaning of streets, the prevention of noise, and other results offensive or injurious to the neighborhood, the general public, or any portion thereof; and (6) regulations as to the use of streets in the course of the work.

SECTION 3.2 BACKFILLING AND RESTORING OPENING

A. All pavement cuts, openings, and excavations shall be properly made, backfilled and relaid by the permittee to its original condition in accordance with the Township's specifications and/or the directions of the Roadmaster.

B. The Roadmaster must be notified by the permittee during the 48 hour period preceding beginning of back filling of the date and approximate time at which backfilling will be done.

C. After excavation is commenced, the work of making and backfilling the same shall be prosecuted with due diligence.

D. The Roadmaster shall make such inspection as he may deem necessary of all work authorized by a permit. The Roadmaster is empowered to provide a full time inspector if necessary to ensure compliance with the provisions of this Ordinance.

E. All inspection costs, including but not limited to salary, overhead and expenses of each inspector, shall be borne by the permittee.

F. The permittee shall notify the Roadmaster in writing upon completion of all work accomplished under the provisions of the permit. A certificate of final inspection shall be issued by the Roadmaster to each permittee not sooner than 2 years after the permanent restoration of the excavation has been made, provided the work authorized by the permit has been performed according to Township specifications and/or the directions of the Roadmaster.

G. If any settlement in a restored area or other defect occurs within a period of 2 years from the date of completion of the permit restoration, any expense incurred by the Township in correcting such settlement shall be paid by the permittee.

H. In no case shall any opening made by a permittee be considered in the charge or care of the Township, or any of its officers or employees, and no officer or employee is authorized in any way to take or assume any jurisdiction over any such opening, except in the exercise of the police power, when it is necessary to protect life and property; provided, however, the Township shall assume charge if and when it makes the final restoration.

ARTICLE IV DEPOSITS

SECTION 4.1 COMPUTATION OF DEPOSIT

The Roadmaster, upon receipt of a properly completed application, shall determine the amount of the deposit to be made by the permittee which amount shall equal the approximate expense to meet the requirements of this Ordinance; provided however, the minimum amount of the deposit shall be \$500.00. The deposit shall be paid at the time the permit is received, and the deposit shall be used to reimburse the Township for the cost of any work and/or materials furnished by it in connection with the work authorized by the permit, to cover all necessary inspections of said work, and for any other purpose set forth in this Ordinance. The Township may elect to waive this requirement insofar as it pertains to a public utility company if such company files with the Township its corporate bond in a form satisfactory to the Township Solicitor, conditioned upon the payment to the Township of all costs which would otherwise be covered by and paid out of such a deposit. In the event any public utility company elects to file such a bond, the Township shall bill such company monthly for such costs as they accrue.

SECTION 4.2 FORM OF DEPOSIT

The deposit may be either in the form of a certified, treasurer's, or cashier's check or in lawful money of the United States.

SECTION 4.3 INSUFFICIENT DEPOSIT

If any deposit is less than sufficient to pay all costs, the permittee shall, upon demand, pay to the Township an amount equal to the deficiency. If the permittee fails or refuses to pay such deficiency, the Township may institute an action to recover the same in any court of competent jurisdiction. Until such deficiency is paid in full, no additional permits shall be issued to such permittee.

SECTION 4.4 DECISION ON COSTS

The Roadmaster shall determine the cost of any work done or repairs made by him or under his direction, pursuant to the provisions of this Ordinance. In the event a permittee disputes the amount charged by the Roadmaster for work done or repairs made by the Township, the Township governing board shall decide the amount due the Township.

SECTION 4.5 REFUND OF DEPOSIT

Upon notification by the permittee that all work authorized by the permit had been completed, and after restoration of the opening, and after the certificate of final inspection has been issued, the Roadmaster shall refund to the permittee his deposit less all costs incurred by the Township in connection with said permit. In no event shall the permit fee be refunded.

ARTICLE V BOND REQUIREMENTS

SECTION 5.1 BOND

No such permit shall be issued unless and until the applicant therefor has filed with the Roadmaster a Bond in an amount not less than One Dollar & 00/100 (\$1.00) and not greater than One Hundred Thousand Dollars & 00/100 (\$100,000.00), which specific amount shall be within the reasonable discretion of the Roadmaster and shall depend upon the work being performed by the Permittee. The condition of said Bond is to indemnify the Township for any loss, liability or damage to person or property that may result or accrue from or because of the making, existence or manner of guarding or construction of any such tunnel or excavation. Such Bond shall have as surety a Corporation license to do business in the state as a surety company.

ARTICLE VI GENERAL PROVISIONS

SECTION 6.1 STREET LIST REQUIREMENTS

A. Every Person owning, using, controlling, or having an interest in pipes, conduits, ducts, or other structures under the surface of any street used for the purpose of supplying or conveying gas, electricity, communication impulses, water or steam to or from the Township, or to or from its inhabitants, or for any other purposes, shall file with the Roadmaster, within 120 days after the adoption of this Ordinance, a written statement containing the names of the Township's streets wherein the aforementioned facilities owned by such a Person are located.

B. Within 90 days after the first day of January of each and every year, such Person shall notify in writing the Roadmaster of the changes necessary to maintain the street list required in Section 6.1 above.

SECTION 6.2 ABANDONED FACILITIES

A. Whenever any pipe, conduit, duct, tunnel, or other structure located under the surface of any street, or the use thereof, is abandoned, the Person owning, using, controlling or having an interest therein shall, within 30 days after such abandonment, file with the Roadmaster a statement in writing giving in detail the location of the structure so abandoned.

B. Whenever there are manholes or tunnels associated with abandoned underground facilities, such manholes or tunnels shall be filled in at the time of abandonment and the Roadmaster notified thereof in writing.

C. When the Township plans to pave or improve streets in which there are abandoned facilities, the owners of such facilities shall be required to remove them if in the opinion of the Board of Supervisors their removal is in the best interest of the Township. If the owner shall refuse to remove such facilities, the Township shall remove the abandoned facilities and the owner shall reimburse the Township for such removal.

SECTION 6.3 PENALTY FOR VIOLATIONS

Any Person violating any of the provisions of this Ordinance or any regulations and specifications adopted thereunder shall, upon conviction thereof before a Justice of the Peace of the Township, be sentenced to pay a fine of not less than \$100.00 for each offense, and costs of prosecution, and in default of payment of said fine and costs, to be imprisoned in the Luzerne County jail for a period not exceeding 30 days. Each day that a violation is permitted to exist after notice in writing shall have been served by the Roadmaster shall constitute a separate offense.

SECTION 6.4 SEVERABILITY

If any section, subsection, sentence, clause, phrase or portions of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

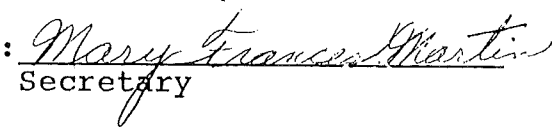
SECTION 6.5 REPEAL OF EXISTING ORDINANCES

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Enacted and ordained as an Ordinance this 6 th day of October , 1986 .

BOARD OF SUPERVISORS

BY: 

ATTEST: 

Secretary