

ORDINANCE NO. 4 - 1996

TOWNSHIP OF CUMBERLAND
GREENE COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE TOWNSHIP OF CUMBERLAND,
GREENE COUNTY, PENNSYLVANIA, ESTABLISHING THE
CONDITIONS FOR THE OPENING OR EXCAVATING OF
TOWNSHIP STREETS, ROADS OR RIGHT OF WAYS BY
ANY CONTRACTOR, SUB-CONTRACTOR, UTILITY,
MUNICIPAL AUTHORITY, ETC., WITHIN THE
TOWNSHIP, AND PENALTIES FOR VIOLATION THEREOF.

WHEREAS, it is now deemed necessary for the protection
of the health, cleanliness, comfort and safety of the citizens of
the Township of Cumberland to enact this Ordinance.

NOW THEREFORE, pursuant to the authority conferred upon
it by the Pennsylvania Second Class Township Code, the Board of
Supervisors of the Township of Cumberland, Greene County,
Pennsylvania, do hereby ENACT AND ORDAIN the following:

SECTION 1. SHORT TITLE

This Ordinance shall be known and cited as the
Cumberland Township "STREET EXCAVATION ORDINANCE".

SECTION 2. GENERAL SCOPE

The subject matter of this Ordinance is the regulation
of the excavation or opening of streets by any contractor, sub-
contractor, utility, municipal authority, etc. upon any streets
within the Township of Cumberland and prescribing penalties for
violation thereof.

SECTION 3. DEFINITIONS

The following words, when used in this Ordinance, shall
have the meanings ascribed to them in this Ordinance, except in
those instances where the context clearly indicates otherwise.

TOWNSHIP - refers to the Township of Cumberland, Greene
County, Pennsylvania.

EXCAVATION - any activity within the right-of-way of any
street, alley, cartway, or road which involves cutting,
breaking or disturbing the surface thereof. In this
Ordinance the term "opening" shall have essentially the
same meaning as excavation.

PERSON - any natural person, partnership, firm, association, corporation or municipal authority.

SIDEWALK - any sidewalk, walkway, paved walk or other place for pedestrian travel adjacent to any roadway in the Township of Cumberland.

STREET - any right of way line to right of way line in any public street, avenue, road, square, alley, way, highway, or other public place located in the Township of Cumberland and established for the use of vehicles.

In this Ordinance, the singular shall include the plural and the masculine shall include the feminine and the neuter.

SECTION 4. LOCATION OF EXCAVATIONS

It shall be unlawful for any person to open, to dig or to make any excavation of any kind or type in any right of way line to right of way line in any street or sidewalk in the Township of Cumberland except in and upon those portions thereof established for the use of vehicles and as walkways.

SECTION 5. PERMIT REQUIRED TO MAKE EXCAVATIONS

Except in cases of an emergency, it shall be unlawful for any person to open, to dig or to make any excavation of any kind or type in any street or sidewalk in the Township of Cumberland without first securing a permit therefore, as hereinafter provided.

SECTION 6. APPLICATION FOR PERMIT, CONDITIONS

Any person who shall desire to make any opening or excavation in any street or sidewalk in the Township of Cumberland shall first make application to the Township Code Enforcement Officer in writing for the said purpose. Such application shall be made on forms to be furnished by the Township and shall set forth the name and address of the applicant; the location of the proposed opening or excavation; and the approximate length, width and depth thereof, and such other information as the Township Code Enforcement Officer shall require, and shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Township of Cumberland and the laws of the Commonwealth of Pennsylvania in relation thereto, and that the applicant shall well and truly save, defend and keep or save harmless the Township of Cumberland from and indemnify it against any and all actions, suits, demands, payments, costs and 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 relating thereto.

The applicant shall take out and maintain Public Liability and Property Damage Insurance in an amount sufficient to indemnify and save harmless the Township of Cumberland from all liability for damages or injury done to persons and property which may be incurred by reason of such opening or any failure to properly protect, maintain, barricade, light, backfill, and/or otherwise properly affect the same. The insurance shall not be in an amount less than twenty-five thousand dollars (\$25,000.00) for injury to persons and ten thousand dollars (\$10,000.00) for injury to property. The Township Code Enforcement Officer shall set the amount of insurance in accordance with the size of the opening.

SECTION 7. PERMIT FEES

Before any permit shall be issued under this Ordinance, the applicant shall pay to the Township Code Enforcement Officer, for the use of the Township, a permit fee of two hundred dollars (\$200.00) to cover the cost of inspection and other incidental services in connection therewith. Provided, emergency breaks or leaks may be repaired and a permit therefore secured as provided in Section 8 of this Ordinance upon payment of the aforesaid fee.

In the event the permit holder completes his work under the (provisions of this Ordinance) to the satisfaction of the Township Code Enforcement Officer, he or it shall receive a refund of one hundred seventy dollars (\$170.00) out of the aforesaid permit fee.

Whenever any public utility or municipal authority maintaining underground facilities shall contemplate more than one street opening or excavation it may post a bond to cover all work. The insurance requirements of Section 6 shall be waived upon receipt of notice of self-insurance by any public utility or municipal authority. In any case the bond shall be approved by the Township Code Enforcement Officer.

SECTION 8. REFILLING OF OPENING: RESTORATION OF DISTURBED SURFACES

Every person who shall open or excavate any improved street or sidewalk in the Township shall thoroughly and completely refill the opening or excavation with granulated slag or equivalent so as to prevent any settling thereafter and shall restore the surface to the same condition as it was before the opening or excavation. Such restoration shall be in accordance with the specifications of the Pennsylvania Department of Transportation, which are hereby adopted as specifications of the Township for restoration of surfaces of street and sidewalks in the Township. As restored, the surface shall conform to the proper grade and be of the same surface covering as the part of the thoroughfare immediately adjoining the opening. If within two (2) years after the restoration of the surface, as herein

provided, defects shall appear therein resulting from defective backfilling by the applicant, the applicant shall redo the work within the period of time set by the Township Code Enforcement Officer or reimburse the Township for the cost of all necessary repairs to the permanent paving.

Old fill, soil broken pavement, stones, roots and any other material or debris shall not be used in the aforesaid backfill.

SECTION 9. SUPERVISION OF WORK IN CONNECTION WITH EXCAVATIONS; COSTS; Township MAY DO WORK AND COLLECT COST FROM PERMITTEE

All other work in connection with openings in any street or sidewalk including excavation, protection, refilling and temporary paving shall be done by the permit holder at his expense, and all such work shall be subject to the provisions of this Ordinance and to the supervision and approval of the Township Code Enforcement Officer; provided, that the Township Code Enforcement Officer may require that cutting of the surface of improved streets or sidewalks and the backfilling of all excavations therein shall be done by the Township and the charge therefore shall be paid by the permit holder on the basis of actual costs of the work plus ten percent (10%).

SECTION 10. EXCAVATIONS REGULATIONS; MANNER OF DOING WORK

1. No opening or excavation in any street shall extend from the curb line into the highway a distance greater than one foot (1') beyond the center line of the street before being refilled and the surface of the highway restored to a condition safe and convenient for travel.

2. No more than five hundred feet (500') longitudinally shall be opened in any street at any one time.

3. The work of excavation shall be conducted so as not to interfere with access to fire hydrants, fire stations, the water mains, sewers or their connections with the house, or any other subsurface lines or constructions, until permission of the proper authorities in connection with such subsurface lines or constructions shall have been obtained.

4. No tunneling shall be allowed without the express approval of the Township Code Enforcement Officer and permission therefore endorsed upon the permit. The backfilling of a tunnel excavation shall be made only in the presence of the Township Code Enforcement Officer or inspector designated by him, and shall be done only in a method approved by him.

5. All openings or excavations shall be backfilled promptly with suitable materials and thoroughly compacted in layers, each of which shall not exceed six inches (6") in depth. On improved streets, the backfilling shall be placed to within ten inches (10") of the surface and in compliance with Section 5 of this Ordinance.

6. On unimproved streets, a temporary paving of suitable stony materials, thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving.

7. During the making of any excavation in any street or sidewalk every necessary and reasonable precaution shall be taken by the permit holder and the parties making the same to keep the street or sidewalk in a safe and passable condition both by day and night by guards, barriers, lanterns and other devices, and all excavating permits are granted under and subject to the express condition that the person to whom the same is issued shall indemnify, save and keep harmless the Township 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 placed in the said excavation.

8. The permit holder shall notify the Township Code Enforcement Officer when the opening or excavation is ready and the backfilling is to be done, and when the work is completed by proper backfilling in the case of unimproved streets and by temporary paving in the case of improved streets and sidewalks.

9. In the event that any work performed by or for a permit holder shall, in the opinion of the Township Code Enforcement Officer, be unsatisfactory, and the same shall not be correct in accordance with his instructions within the time fixed by him, or in the event that the work for which the permit was granted is not completed with the time fixed by the Township Code Enforcement Officer, the Township may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost thereof, plus ten percent (10%) to the permit holder.

10. On all improved streets prior to replacing surface, the permit holder shall place a six inch (6") thick concrete pad, underneath said surface and extending at least six inches (6") beyond the limits of the excavation in all directions.

11. The permit holder shall, at all times and at his or its own expense, preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. The permit holder shall at his or its own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the

excavation work and shall be responsible for all damages to public or private property or streets or sidewalks resulting from his or its failure to properly protect and carry out said work. Whenever it may be necessary for the permit holder to trench through any lawn area, said area shall be reseeded or the sod shall be carefully cut and rolled and replaced with the said cut sod or new sod after ditches have been backfilled as required by this Ordinance. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. Except in case of an emergency, the permit holder shall not remove, even temporarily, any trees, or shrubs which exist in parking strip areas, without first obtaining the consent of the Township Code Enforcement Officer. The permit holder shall replace any trees or shrubs removed from said area at his or its cost and expense.

12. As the excavation work progresses, all streets or sidewalks shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All clean up operations at the location of such excavation shall be accomplished at the expense of the permit holder and shall be completed to the satisfaction of the Township Code Enforcement Officer. From time to time, as may be ordered by the Township Code Enforcement Officer and in any event immediately after completion of said work, the permit holder shall, at his or its expense, clean up and remove all refuse and unused materials of any kind resulting from said work, and upon failure to do so within twenty-four (24) hours after having been notified to do so by the Township Code Enforcement Officer, said work may be done by the Township and the permit holder shall be liable to the Township for the cost thereof plus ten percent (10%).

13. After any excavation is commenced, the permit holder shall proceed with diligence and expedition all excavation work covered by the excavation permit and shall promptly complete such work and restore the street or sidewalk to its original condition, or as near as may be so as not to obstruct the public place or travel thereon more than is reasonably necessary.

14. The permit holder shall conduct and carry out excavation work in such manner as to avoid unnecessary inconvenience or annoyance to the general public and occupants of neighboring property. The permit holder shall take appropriate measures to reduce the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris and between the hours of 10:00 p.m. and 7:00 a.m. shall not use, except in case of emergency, any tool, appliance, or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

15. Only that material excavated which is suitable for backfilling unimproved streets or sidewalks shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets or sidewalk, and so that as little inconvenience as possible is caused to those using the street, sidewalk and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow street, the Township Code Enforcement Officer shall have the authority to require that the permit holder haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permit holders responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites. All suitable material excavated shall be laid compactly along the side of the trench and kept trimmed so as to cause as little inconvenience as reasonably possible to vehicular and pedestrian traffic or as specified by the Township Code Enforcement Officer. Whenever necessary in order to expedite the flow of traffic or to abate the dirt or dust nuisance, toe boards or bins may be required by the Township Code Enforcement Officer to prevent the spreading of dirt into traffic lanes.

SECTION 11. PERMIT APPROVAL/DISAPPROVAL

A permit may be issued to the applicant after all the requirements therefore have been filed. If the application is disapproved, written notice of disapproval together with reasons therefore shall be given to the applicant.

SECTION 12. RESPONSIBILITY TO CONTACT UTILITIES

The work authorized by the permit is subject to all the provisions of the Act of December 10, 1974, P.L. 852, No. 287, Section 1 et. seq., as amended or supplemented from time to time. It shall be the permittee's responsibility to contact the utilities that have recorded their facilities in compliance with said Act. A partial list of utilities providing services in the Township and their office addresses may be obtained from the Township Office or the County Recorder of Deeds.

SECTION 13. RESPONSIBILITY OF PERMIT HOLDER FOR CERTAIN WORK

All other work in connection with openings in any street, including excavation, protection, refilling and temporary paving, shall be done by or for the person to whom or which the permit has been issued at his or its expense, and all such work shall be subject to the provisions of this Ordinance and to the supervision and approval of the designated official, provided that the Township Code Enforcement Officer may if he deems it necessary to the proper performance of the work, require that cutting of the surface of streets and the backfilling of all excavations therein

shall be done by the Township, in which event the applicant shall pay the actual cost of the work performed by the Township.

SECTION 14. RESTRICTIONS REGARDING TREES AND SHRUBBERY

The permission herein granted does not confer upon the permittee or its contractors the right to cut, remove or destroy trees or shrubbery within the legal right-of-way except under specifications, regulations and conditions as the Township may prescribe.

SECTION 15. PERMITTEE RESPONSIBILITIES FOR FUTURE RELOCATION OF WORK

If at any time in the future the roadway is widened, reconstructed or the alignment or grades are changed, the permittee further agrees to change or relocate all or any part of the structures covered by this permit which interfere with the improvement of the roadway at its own cost and expense.

SECTION 16. CONDITIONS FOR LAYING AND EXTENDING UTILITY LINES

No new water, sewer, steam or gas main or electric, telephone or other utility line shall hereafter be laid or constructed, and no such existing main or line shall be extended, in any of the streets of the Township until the plan therefore shall have been first filed with the Township and such plan, and the exact location of such main or line, approved by the Township.

SECTION 17. PAYMENT FOR WORK DONE BY THE TOWNSHIP

Payment for all work done by the Township under the provisions hereof shall be made by the person made liable therefore under the provisions hereof within thirty (30) days after a bill therefore is sent to such person by the Township. Upon failure to pay such charges within such time, the same shall be collectible by the Township in the manner provided by law for the collection of municipal claims.

SECTION 18. LIABILITY OF THE TOWNSHIP

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

SECTION 19. LOCATION OF RECORDS

Every public utility after the enactment of this Ordinance, shall maintain adequate records of its underground facilities, except relatively minor facilities which connect a particular premise or building to a facility serving more than one premise or building and except oil or gas gathering or field lines.

SECTION 20. AUTHORITY

The Township Code Enforcement Officer shall make such inspections as are reasonably necessary in the enforcement of this Ordinance. The Township Code Enforcement Officer shall have the authority to promulgate and cause to be enforced and carry out the intent of this Ordinance.

SECTION 21. PENALTIES

Any person, whether as principal, agent or employee, violating or assisting in the violation of any provision of this Ordinance, shall upon conviction thereof, be sentenced to pay a fine of not more than three hundred dollars (\$300.00), nor less than one hundred dollars (\$100.00) plus the costs; and/or to undergo imprisonment for not more than ninety (90) days. Each violation of any provision of this Ordinance, and each day the same is continued, shall be deemed to constitute a separate offense. All fines shall be made payable to the Township of Cumberland.

SECTION 22. REPEALER

Any ordinance containing any provision inconsistent herewith to the extent that such provision is inconsistent, that provision is also hereby repealed.

SECTION 23. SEVERABILITY

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Township Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 24. EFFECTIVE DATE

This Ordinance shall become effective immediately upon final enactment.

ORDAINED AND ENACTED INTO LAW by the Board of Supervisors of the Township of Cumberland this 5th day of August, 1996.

TOWNSHIP OF CUMBERLAND
BOARD OF SUPERVISORS

By: William Schifko
William Schifko, President

By: Homer Nicholson
Homer Nicholson, Vice President

By: LeRoy Baker
LeRoy Baker, 3rd Member

ATTEST:

Arlene M. Zetta
Secretary

(Seal)

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