

HOWE TOWNSHIP
PERRY COUNTY, PENNSYLVANIA

ORDINANCE NO. 30

AN ORDINANCE RESCINDING ORDINANCE NO. 4, ADOPTED JULY 15, 1974, REGULATING OPENING AND CUTTING OF TOWNSHIP ROADS AND ADOPTING A NEW ORDINANCE REGULATING THE SAME, AS WELL AS PROVIDING PENALTIES FOR VIOLATION OF SUCH ORDINANCE

WHEREAS, the Howe Township Board of Supervisors enacted Ordinance No. 4 on July 15, 1974, to regulate openings and cutting of Township roads and providing for permits, regulations and restrictions on such openings; and

WHEREAS, due to the increased amount of excavations and other intrusions within Township roads by developers, contractors and utilities thereby causing an increased need for street patching, repair and restoration, the Board of Supervisors of Howe Township have determined it to be in the best interests of the health, safety and general welfare of the Township residents to enact more comprehensive regulations for excavations and other intrusions within the rights-of-way of the Township.

NOW, THEREFORE, be it enacted and ordained by the Board of Supervisors of Howe Township, Perry County, Pennsylvania, as follows:

Section 1. Howe Township Ordinance No. 4, adopted July 15, 1974, is hereby deleted in its entirety and is replaced by the following Ordinance.

ROAD RIGHT-OF-WAY OCCUPANCY

§1. Title.

This article shall be known and may be cited as the "Township Road Cut Ordinance."

§2. Definitions; word usage.

A. For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural

number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

B. As used in this Ordinance, the following terms shall have the meanings indicated:

APPLICANT – Any person making written application to the Township for a Road Cut Permit hereunder.

BOARD OF SUPERVISORS – The Board of Supervisors of the Township of Howe, Perry County, Pennsylvania.

EXCAVATION WORK – The excavation and other work permitted under a Road Cut Permit and required to be performed under this Ordinance.

PERMIT – A document issued to an Applicant by the Township to authorize openings, cuts or excavations within a Township Road, as defined herein.

PERMITTEE – Any person who has been granted and has in full force and effect a Road Cut Permit issued hereunder.

PERSON – Any person, firm, partnership, association, corporation, company or other organization of any kind with the exception of any of the foregoing which is performing work for or on behalf of the Township or any authority created by the Township.

ROAD – Any Township, public right-of-way occupied by a road, lane, court, cartway, street, highway, alley, avenue, pedestrian walk or other public way in the Township.

SPECIFICATIONS – The requirements set forth by the Board of Supervisors by ordinance or resolution for the construction and repair of Township Roads or other improvements as specified herein, adopted from time to time. In the absence of requirements adopted by the Township, those current requirements for construction of roads or other improvements as specified herein as promulgated by the Pennsylvania Department of Transportation.

TOWNSHIP – The Township of Howe or its authorized employee, agent or delegee.

TOWNSHIP ENGINEER – The Township Engineer of the Township of Howe.

UTILITY – Any public provider regulated by the PA PUC of water, sanitary sewer, gas, electric, cable TV or internet service, telephone or other utility service.

§3. Permit required.

It shall be unlawful for any person to cut, dig up, break, excavate, tunnel under, undermine or in any manner damage any road or to make or cause to be made any excavation in or under the surface of any road for any purpose or to join any private driveway or road to any road or to place, deposit or leave upon any road any earth, stone, concrete, asphalt or other excavated material obstructing or tending to interfere with the free use of the road, or to place poles and cables in such road unless such person shall first have obtained a Permit therefor from the Township as herein provided.

§4. Permit application.

No Permit shall be issued unless a written application for the issuance of same is submitted to the Township. The written application shall state the name and address of the applicant; the nature, location and purpose of the work within the road right-of-way; the date of commencement and date of completion of the work; proof of PA On-Call Compliance and other data as may reasonably be required by the Township. The application shall be accompanied by plans showing the extent of the proposed work, the dimensions and elevations of both the existing ground prior to said work and of the proposed restored surfaces, the location of the work and such other information as may be prescribed by the Township. If, in the opinion of the Township Engineer, the work to be undertaken by the Permittee is such that it will affect the use of the properties abutting or adjoining the project the Permittee, at the Permittee's sole cost and expense, shall notify the affected property owners or tenants of the proposed work to be done.

§5. Commencement of work and expiration of Permits.

Work for which a Permit has been issued pursuant to this Ordinance shall commence within 30 days after the issuance of the Permit therefor. If not so commenced, the Permit shall automatically terminate. Every Permit issued hereunder shall expire at the end of the period of the time specified in the Permit. If the Permittee shall be unable to complete the work within the specified time, he shall, prior to the expiration of the Permit, present in writing to the Township a request for an extension of time, setting forth therein the reasons for the requested extension. If, in the opinion of the Township Engineer, such an extension is necessary and has been brought about by no fault of Permittee, the Permittee may be granted additional time for the completion of the work.

§6. Permit fees.

Before any Permit shall be issued, the Applicant shall pay to the Township a Permit fee as established by Resolution from time to time by the Board of Supervisors for any opening requiring a Permit hereunder. No fee shall be returned by the Township under any circumstances.

§7. Security.

The Township shall require the Applicant to execute an agreement or provide security, or both, as a prerequisite to issuance of the Permit. If security is required, it shall be delivered to the Township in a form and amount acceptable to the Township and shall guarantee restoration and maintenance of the road for a period of at least two years after the acknowledged completion of the permitted work. If the security is executed by a company registered and authorized to do business in this Commonwealth, the following documents are acceptable forms of security:

- A. An individual or blanket bond, in a form satisfactory to the Township Solicitor, executed by the applicant and naming the Township as obligee.
- B. An irrevocable letter of credit, in a form satisfactory to the Township Solicitor, signed by a bank officer naming the Township as sole beneficiary, to be honored upon presentment.
- C. An escrow account in a form acceptable to the Township Solicitor.
- D. Cash deposit.

§8. Insurance.

- A. A Permittee, prior to the commencement of work hereunder, shall furnish the Township satisfactory evidence in writing that the Permittee has in force and will maintain in force during the performance of the work and the period of the Permit, public liability insurance of not less than \$500,000, for any one person and \$1,000,000 for any one accident and property damage insurance of not less than \$250,000 duly issued by an insurance company authorized to do business in the Commonwealth of Pennsylvania.
- B. This section shall not apply to the joining of private driveways or streets to any roads.

§9. Routing of traffic.

The Permittee shall take appropriate measures to assure that during the performance of the work traffic conditions, as close to normal as practicable, shall be maintained at all times so as to cause as little inconvenience as possible to the occupant of the abutting property and to the general public, provided that the Township may permit the closing of roads to all traffic for a period of time prescribed by it if, in its opinion, it is necessary. The Permittee shall route and control traffic, including its own vehicles, as directed by the police department serving the Township. The following steps shall be taken before any road may be closed or restricted to traffic:

- A. At least forty-eight (48) hours prior to re-routing of traffic, the Permittee shall notify the applicable Fire Department, Police Department, School District and Township Public Works Department of any road proposed to be closed.
- B. Upon completion of construction work, the Permittee shall notify the Township, the Police Department, Fire Department and School District before traffic is moved back to its normal flow so that any necessary adjustments may be made.
- C. In all cases, flagmen shall be furnished by the Permittee at its own expense. Through traffic shall be maintained without the aid of detours, if possible. In instances in which this would not be feasible, the Township shall designate detours, which must be appropriately signed and posted by the Permittee at Permittee's expense. The Township shall maintain roadway surfaces of existing highways designated as detours without expense to the Permittee, but in case there are no existing highways the Permittee shall construct all detours at its expense and in conformity with the specifications of the Township Engineer. The Permittee shall be responsible for any damage caused to any road by the operation of its equipment.

§10. Clearance for fire equipment.

The work of any permit shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants.

§11. Protection of traffic.

The Permittee shall utilize and maintain suitable trench stabilization to reduce risk of collapse of trenches or other excavations in order to keep potential damage to roads and risks to traffic at a minimum. The Permittee shall construct and maintain adequate and safe crossings over excavations and across roads under improvement to accommodate vehicular and pedestrian traffic at all road intersections. Vehicular crossings shall be constructed and maintained of steel plates of adequate size secured in place to

accommodate vehicular traffic safely. Compliance with Township Specifications shall be required.

§12. Removal and protection of utilities.

- A. The Permittee shall not interfere with any existing utility without the written consent of the Township and the utility company or person owning the utility. If it becomes necessary to remove an existing utility, this shall be done by the utility. The cost of moving utilities shall be borne by the Permittee unless it makes other arrangements with the person owning the utility. The Permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them under, over, along or across said work. In the event any of said pipes, conduits, poles, wires or apparatus should be damaged, they shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the Permittee, and his or its bond and cash deposit shall be liable therefor. The Permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility and its bond and cash deposit shall be liable therefor. The Permittee shall inform itself as to the existence and location of all underground utilities and protect the same against damage.
- B. In the event a utility must be relocated due to work of the Township or Township Authority, the owner of the utility shall relocate the same within 120 days of written notification from the Township or Township Authority. The utility shall bear the costs of relocation pursuant to applicable law.

§13. Protection of adjoining property.

The Permittee 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. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the Permittee shall obtain written permission from the owner of such property for such purpose. The Permittee shall at its own expense shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the work and shall be responsible for all damage to public or private property or roads resulting from its failure properly to protect and carry out said work. Whenever it may be necessary to trench through any lawn area, compliance with Township Specifications is required. 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. The Permittee shall not remove, even temporarily, any

trees or shrubs which exist in parking strip areas or easements across private property without first having notified and obtained the consent of the property owner or, in the case of public property, the Township.

§14. Protective measures.

The Permittee shall erect such fence, railing or barriers about the site of the work as shall prevent danger to persons using the Township roads or sidewalks, and such protective barriers shall be maintained until the work shall be completed or the danger removed. At twilight there shall be placed upon such place of work and upon any excavated materials or structures or other obstructions to roads suitable and sufficient lights which shall be kept burning throughout the night during the maintenance of such obstructions. It shall be unlawful for anyone to remove or tear down the fence or railing or other protective barrier or any lights provided there for the protection of the public.

§15. Construction Specifications.

All work shall be in conformance with the Township Specifications, which may be amended by the Township Board of Supervisors from time to time.

§16. Restoration Requirements

- A. Permanent restoration of the road shall be made by the Permittee in strict accordance with the Township Specifications.
- B. If the Permittee opens pavement having bituminous concrete surface and the Township's wearing course is less than five years old, the Permittee shall, in addition to the restoration conditions outlined in the Permit and in this section, overlay the pavement in accordance with the following conditions:
 - (1) When any openings have been made by the Permittee within the paved area, the Permittee shall overlay the traffic lanes in which the openings were made, for 100 feet in either direction from the edges of excavation.
 - (2) If disturbed lanes adjacent to shoulders are overlaid, the shoulder shall be raised, with material and in a manner authorized by the Township for the type of existing shoulder, so that the overlaid pavement and shoulder edges are at the same elevation.
- C. Regardless of the age of the wearing course:
 - (1) When any openings have been made by the Permittee within the paved area, the Permittee may be required, at the sole discretion of the

Township, to overlay the traffic lanes in which the openings were made, for 100 feet in either direction from the edges of excavation.

(2) If disturbed lanes adjacent to shoulders are overlaid, the shoulder may be required to be raised, at the sole discretion of the Township, with material and in a manner authorized by the township for the type of existing shoulder, so that the overlaid pavement and shoulder edges are at the same elevation.

D. Acceptance or approval of any work by the Township shall not prevent the Township from asserting a claim against the Permittee under the cash deposit hereunder for incomplete or defective work if discovered within 24 months from the completion of the work. The Township's presence during the performance of any work shall not relieve the Permittee of its responsibilities hereunder.

§17. Township's right to restore surface.

A. If the Permittee shall have failed to restore the surface of the road to its original and proper condition upon the expiration of the time fixed by such Permit or shall otherwise have failed to complete the excavation work covered by such Permit, the Township, if it deems it advisable, shall have the right to do all work and things necessary to restore the road and to complete the excavation work. The Permittee shall be liable for the actual cost thereof plus 15% of such cost in addition for general overhead and administrative expenses. The Township shall have a cause of action for all fees, expenses, including but not limited to reasonable attorney's fees, as well as any other amounts paid out and/or due it for such work and shall apply in payment of the amount due it any funds of the Permittee deposited as herein provided.

B. It shall be the duty of the Permittee to guarantee and maintain the site of the excavation work in the same condition it was prior to the excavation for two years after restoring it to its original condition.

§18. Trenches in pipe laying.

No more than 500 feet measured longitudinally shall be opened in any road at any one time until the surface of the road is restored to a condition safe and convenient for travel. Trenches shall be braced and sheathed according to generally accepted safety standards for construction work as prescribed by the Township. No timber bracing, lagging, sheathing or other lumber shall be left in any trench.

§19. Noise, dust and debris.

Each Permittee shall conduct and carry out the excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The Permittee shall take appropriate measures to reduce to the fullest extent practicable, in the performance of the excavation work, noise, dust and unsightly debris and during the hours of 8:00 p.m. and 7:00 a.m. shall not use, except with the express written permission of the Township or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

§20. Urgent work.

If, in its judgment, traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the Township shall have full power to order, at the time the Permit is granted, that a crew of men and adequate facilities be employed by the Permittee twenty-four (24) hours a day until the completion of such excavation work so that it may be completed as soon as possible.

§21. Emergency action.

In the event of any emergency in which a sewer, main, conduit or utility in or under any road breaks, bursts or otherwise is in such condition as to immediately endanger the property, life, health or safety of any individual, the person owning or controlling such sewer, main, conduit or utility, without first applying for and obtaining an excavation Permit hereunder, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such facility shall apply for a Permit not later than the end of the next succeeding day during which the Township office is open for business and shall not proceed with permanent repairs without first obtaining an excavation Permit hereunder.

§22. Preservation of monuments.

The Permittee shall not disturb any surface monuments or hubs found on the line of work until ordered to do so by the Township.

§23. Inspections.

The Township, or its agents, shall make such inspections as are reasonably necessary in the enforcement of this Ordinance. The Township shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this Ordinance.

§24. Drawings and maps.

Users of the subsurface of the road area shall maintain accurate drawings, plans and profiles showing current and abandoned installations. Corrected maps shall be filed with the Township within 60 days after new installations, changes or replacements are made.

§25. Applicability of provisions.

The provisions of this Ordinance shall not be applicable to any work under the direction of Township authorities by employees of the Township or by any contractor of the Township performing work for and on behalf of the Township or any Township Authority necessitating openings or excavations in roads.

§26. Liability of Township.

This Ordinance shall not be construed as imposing upon the Township or any official or employee any liability or responsibility for damages to any person injured by the performance of any work for which a 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 work.

§27. Revocation of Permits.

- A. Any Permit issued under this Ordinance may be revoked by the Township after notice for violation of any condition of the Permit or violation of any provision of this Ordinance or any other applicable ordinance or law relating to the work.
- B. In the event that any work performed by or for a Permittee shall, in the opinion of the Township, be unsatisfactory and the same shall not be corrected in accordance with its instructions within the time fixed by it or in the event that the work for which the Permit was granted is not completed within the time fixed by the Township, the Township may proceed to correct such unsatisfactory work or complete or cause to be completed any such work not completed and charge the costs thereof, plus 15% of such costs, to the Permittee or his surety. Written notice of such violation shall be served upon the person to whom the Permit was granted or his agent or employee engaged in the work. Such notice shall also contain a brief statement of the reasons for revoking such Permit. Notice may be given either by personal delivery thereof to the person to be notified or by United States Mail addressed to such person to be notified.

§28. Violations and penalties.

Any person violating any of the provisions of this Ordinance shall be determined guilty and, upon conviction thereof, shall be fined in an amount not exceeding \$1,000 or, in default of the payment thereof, be imprisoned in the county jail for a period not exceeding 30 days. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

Section 2. All Ordinances or parts of Ordinances, which are inconsistent herewith, are hereby repealed.

Section 3: In the event any section, subsection, sentence or clause of this ordinance is found to be invalid, for any reason, such decision or decisions shall not affect the validity of the remaining portions of this ordinance.

Section 4: This ordinance shall become effective five (5) days after enactment.

ENACTED AND ORDAINED this 6 day of September 2012.

ATTEST:

Nancy Carigioli
Secretary

HOWE TOWNSHIP

By: Dale M. Beaver
Chairman, Board of Supervisors
Earl C. King
Supervisor
Wayne R. ...
Supervisor