

AN ORDINANCE OF THE TOWNSHIP OF BETHEL,
BERKS COUNTY, PENNSYLVANIA ESTABLISHING
REGULATIONS GOVERNING EXCAVATIONS AND
OPENINGS OF TOWNSHIP STREETS AND
PLACEMENT OF UTILITY FACILITIES THEREIN;
PROHIBITING SUCH EXCAVATIONS, OPENINGS
AND PLACEMENT OF UTILITY FACILITIES WITHOUT
A PERMIT; PROVIDING FOR THE APPLICATION AND
ISSUANCE OF PERMITS; PROVIDING FOR THE
PERFORMANCE OF EMERGENCY WORK IN CERTAIN
CIRCUMSTANCES; PROVIDING SPECIFICATIONS
FOR REPAIRS; PROVIDING FOR SPECIAL
CONDITIONS; AND IMPOSING FINES AND
PENALTIES FOR VIOLATIONS

BE IT ENACTED AND ORDAINED by the Supervisors of the Township of Bethel, Berks County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

Section 1. Title. This Ordinance shall be known and may be cited as the "Bethel Township Street Occupancy Ordinance".

Section 2. Definitions. The following words and phrases when used in this Ordinance shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

(a) Adjacent Area. The area surrounding the immediate area of the permitted work which can reasonably be assumed to have been affected by the permitted work.

(b) Applicant. The person or entity filing an application under this Ordinance for a permit. Once a permit has been issued, the applicant, or his assignee if the assignment of the permit shall have been approved by the Township Engineer, shall be deemed the "permittee".

(c) Backfill. Material used to replace or the act of replacing material removed during construction.

(d) Base Course. The layer or layers of specified or selected material of designed thickness placed on a subbase or a subgrade to support a surface course.

(e) Bridge. A structure, including supports, erected over a depression or an obstruction, such as water, street or railway, and having a track or passageway for carrying traffic or other moving loads and having an opening measured along the center of the cartway of more than twenty feet (20') between supports.

(f) Cartway. That portion of a street improved, designed or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder.

(g) Clear Roadside Area. The portion of right-of-way beyond the pavement edge within which no existing obstructions are located.

(h) Culvert. Any structure under the cartway with an opening of twenty feet (20') or less measured along the center of the cartway.

(i) Design Manual, Part 5. A publication containing PennDOT's utility relocation and accommodation policies, including any amendment thereto and any substitution or replacement thereof.

(j) Detour. To send traffic by a circuitous route around a portion of a highway that has been closed in accordance with Section 13 of this Ordinance (relating to traffic control plan) or Section 28 of this Ordinance (relating to traffic protection and maintenance).

(k) Emergency. An unforeseen occurrence or combination of circumstances which calls for immediate action or remedy.

(l) Equipment. All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and completion of the work.

(m) Facility. Shall mean and include all privately, publicly or cooperatively owned lines and systems for producing, transmitting or distributing steam, waste and other similar commodities, which directly or indirectly serve the public, and all appurtenances and attachments thereto.

(n) Flexible Base Pavement. A pavement structure which maintains intimate contact with and distributes loads to the subgrade and depends on aggregate interlock, particle friction, and cohesion for stability.

(o) Improved Area. The area within the right-of-way which has been constructed for street purposes, including roadbed, pavement, shoulders, slope, sidewalks, drainage facilities and any other appurtenances.

(p) Construction Observer. The Township's authorized representative assigned to observe permit operations.

- (q) Pavement. The combination of subbase, base course and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.
- (r) PennDOT. The Pennsylvania Department of Transportation.
- (s) Permit. A street occupancy permit issued by the Township pursuant to this Ordinance.
- (t) Permittee. See definition of "applicant" above.
- (u) Person. Any natural person, firm, co-partnership, association, corporation or political subdivision.
- (v) Plowing. Placing utility cables underground by means of a plow mechanism.
- (w) Publication 46. A PennDOT publication containing design information for highway work, including any amendment thereto and any substitution or replacement thereof.
- (x) Publication 213. A PennDOT publication containing requirements for work area traffic control during highway maintenance operations and utility work, including any amendment thereto and any substitution or replacement thereof.
- (y) Publication 408, 1987 Edition. A publication containing PennDOT's highway construction specifications, including any amendment thereto and any substitution or replacement thereof.
- (z) Right-of-Way. The area between the right-of-way lines of a street.
- (aa) Rigid Base Pavement. A pavement structure which distributes loads to the subgrade having as one (1) course a portland cement concrete slab of relatively high bending resistance.
- (bb) Roadway Construction Standards. PennDOT Publication No. 72 containing design standards for roadway construction, including any amendment thereto and any substitution or replacement thereof.
- (cc) Shoulder. The portion of the cartway, contiguous to the traffic lanes, for accommodation of stopped vehicles, for emergency use and for lateral support of base and surface courses and pavements.

(dd) Subbase (No. 2A). Crushed stone as specified in PennDOT Publication 408, Section 703.2.

(ee) Street. A strip of land, including the entire right-of-way, open to vehicular use by the public. The term "street" shall include street, avenue, boulevard, road, highway, freeway, parkway, lane, alley or viaduct.

(ff) Structure. Any material or a combination of materials which are constructed or erected, the use of which requires location on or beneath the ground, or attached to something located on or beneath the ground.

(gg) Supervisors. The Board of Supervisors of the Township.

(hh) Township. The Township of Bethel, Berks County, Pennsylvania.

(ii) Township Engineer. The person so designated by the Supervisors or his representative so designated either by the Supervisors or by the Township Engineer.

(jj) Township Street. A street under the jurisdiction of the Township.

(kk) Utility. A person owning a utility facility, including any wholly owned or controlled subsidiary, and including any plumber or any other contractor hired or engaged by the owner.

Section 3. Permit Required. It shall be unlawful for any person including any municipal authority created by the Township, except any department of the Township, to perform any work, including opening or excavation in or under any Township street unless and until a permit therefore be secured from the Township for each separate undertaking. All work performed within the right-of-way shall conform to the provisions of PennDOT Publication 213. Notwithstanding the aforesaid, a permit shall not be required in the following instances:

(a) Emergency repairs of utility facilities may be performed by using an emergency permit card pursuant to Sections 17 through 19 of this Ordinance (relating to emergency work).

(b) Permit applications are not required for the placing of newspaper receptacles or mail boxes, although their location is subject to the maintenance requirements of the Township.

(c) Permit applications are not required for accessing the utility facility through a manhole; however, traffic control measures shall be provided in accordance with applicable PennDOT standards.

The Township Engineer or any duly authorized agent of the Township may prohibit any work being done without a proper permit or contrary to the terms thereof.

Section 4. Permit Application Requirements. Application in writing shall be made to the Township Office, or at such other address as Township Supervisors may from time to time designate by Resolution, on the appropriate form and signed by the person making the proposed street opening or excavation, setting out the location of the proposed work, opening or excavation, the size thereof and the purpose therefore. The person making and signing said application shall comply with all the provisions of this Ordinance as hereinafter set forth.

Section 5. Issuance of Permits. Permits will only be issued to utilities, unless authorized by the Supervisors.

Section 6. Time Extension Permit. A permit is valid for a one (1) year period as specified on the permit. If the permittee will not complete all authorized work by the completion date specified on the permit, an application shall be submitted at least 30 days prior to the specified completion date requesting a time extension on the permit. If approved, a supplement will be issued by the Township.

Section 7. Amendment of Permit Scope. Whenever the excavation, opening or trench exceeds the size set forth in the application, an amendment to the permit must be secured within forty-eight (48) hours to cover such extra excavation, opening or trench.

Section 8. Filing Fee and Certificates of Insurance. The application shall be accompanied by a filing fee as established from time to time by appropriate Resolution fully adopted by the Supervisors. In addition, a certification of insurance covering the utility who will be making the excavation opening or trench shall also be submitted as set forth in Section 52 of this Ordinance before the permit is issued.

Section 9. Municipal Exemption. Any municipal authority created by the Township shall be exempt from filing the permit fees, deposits and bonds, and from the observation requirements of Sections 8, 9, 10 and 14 of this Ordinance. Any Department of the Township shall be exempt from all regulations and requirements of this Ordinance.

Section 10. Blasting Bond and Pre-Blast Inspections. When the applicant anticipates that blasting operations will be necessary in order to perform the permitted work, an executed blasting bond shall be submitted with the application as set forth in Section 33 of this Ordinance. The Township Engineer shall determine the amount of the blasting bond. In addition, the Township Engineer shall also determine the need for pre-blast inspections of structures or facilities which may be affected by the permitted work. Costs for said inspections shall be borne by the applicant.

Section 11. Traffic Control Plan. When the applicant anticipates that it will be necessary to close a portion of a street to vehicular traffic in order to perform the

permitted work, the applicant shall submit a traffic control plan with the application for review and approval by the Township Engineer and the Township Police Department, if any, or the State Police, if so required, prior to issuance of the permit. All traffic control plans shall follow applicable PennDOT standards.

Section 12. Additional Observation Fees. If the Township Engineer determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one (1) or more Township Construction Observers to observe the permitted work on a more than spot observation basis, the applicant shall be charged for all salary, overhead and expenses incurred by each assigned Construction Observer and the Township Engineer.

Section 13. Authorization to Begin Work. Upon application duly made in accordance with the regulations set forth in this Ordinance, a permit will be issued by the Township Engineer subject to this Ordinance and the conditions contained on the permit and its attachments and supplements. The permit will be the applicant's authority to proceed with the work and will also serve as a receipt for the fees accompanying the application.

Section 14. Work Completion Notification. When all permitted work has been completed, the Township Engineer shall be notified within forty-eight (48) hours of the completion of all work.

Section 15. Additional Deposits and Fees. Should the costs of restorations and/or observations completed by the Township exceed the amount of the deposit or bond, the applicant shall, upon written notification by the Township, immediately reimburse the Township for any portion of the costs associated with making the said observations and/or restorations not covered by the deposit or bond.

Section 16. Return of Deposit or Bond. When the Township permits the applicant to make the restorations in accordance with the requirements of Sections 39 through 52 of this Ordinance, the Township shall, within forty-five (45) days of written notification of completion of final restoration, return the portion of the deposit or bond, other than the bond of a public utility corporation set forth in Section 10 above, which was being held as a guarantee for the performance of said restorations.

Section 17. Emergency Work Permit Administration Procedure. Emergency repairs involving the placing of facilities or opening of the surface within the right-of-way may be performed prior to obtaining a permit provided the following procedure is adhered to:

(a) The utility shall immediately notify the Township by telephone when the necessity for an emergency repair occurs.

(b) Prior to opening the surface or placing utility facilities within the right-of-way, the utility work crew shall enter the following information on the

emergency permit card hereinafter provided for in legible handwriting, using indelible ink:

- (1) the date the emergency work is started;
- (2) the time the emergency work is started;
- (3) the location of the emergency work site;
- (4) the description of the emergency work.

(c) The completed, original emergency permit card shall be located at the work site and shall be available for inspection by any representative of the Township. Reproduced copies of the original card are not valid.

(d) A regular permit shall be applied for within five (5) days to confirm and set forth, in detail, any work performed. The application number shall then be entered on the emergency permit card by the applicant.

(e) All work performed under the authority of an emergency permit card shall conform to the regulations set forth in this Ordinance, including without limitation those regulations set forth in Sections 20 through 38 of this Ordinance (relating to general conditions), Sections 39 through 52 of this Ordinance (relating to special conditions - subsurface operations), and Sections 53 through 58 of this Ordinance (relating to special conditions - above-ground Facilities).

Section 18. Use of Emergency Permit Card. Each emergency permit card is valid for two (2) years or twenty-five (25) emergency repairs, whichever occurs first.

(a) Emergency permit cards may be obtained by a utility by letter of request addressed to the Township Engineer listed thereon the number of emergency permit cards desired. The fee for such cards shall be set by Resolution of the Supervisors.

(b) The holder of emergency permit cards is responsible for assigning the proper emergency permit cards to its work crews.

(c) Each emergency permit card shall be returned to the Township within fifteen (15) days after either the twenty-fifth (25th) emergency repair authorized by the card or two (2) years from the card issuance date, whichever occurs first.

Section 19. Exceptions to Emergency Permit Card Requirement. Emergency repairs to utility facilities within the right-of-way do not require an emergency permit

card in the following instances; however, the provisions contained in PennDOT Publication 213 and Publication 408 shall be adhered to:

- (a) Accessing the utility facility through a manhole.

Section 20. General Conditions. The conditions set forth in Sections 21 through 38 of this Ordinance shall apply to Permits issued pursuant to Sections 4 through 16 of this Ordinance.

Section 21. Scope of Permit. The permit shall be binding upon the permittee, its agents, contractors, successors and assigns.

- (a) The permittee shall be responsible for causing compliance with all terms and conditions of the permit by its agents, contractors and successors.

- (b) The permit shall be located at the work site and shall be available for inspection by any representative of the Township authorized to inspect permits.

- (c) The permit shall be maintained as a permanent record and remain in effect, subject to the permit conditions and regulations set forth in this Ordinance, as long as the facilities authorized by the permit occupy the right-of-way.

- (d) Responsibility for compliance with the terms of the permit cannot be assigned or transferred by the permittee without first obtaining approval from the Township Engineer. Any facility installed under the authority of said permit shall be subject to removal or relocation at the expense of the permittee.

Section 22. Additional Restrictions. All work authorized by the permit is subject to:

- (a) All applicable Federal, State and Township laws, ordinances, rules and regulations, including but not limited to:

- (1) Act No. 247, approved October 26, 1972 (P.L. 1017) (53 P.S. Section 1611), as amended, concerning environmental control measures related to pollution and the preservation of public natural resources.

- (2) Act No. 287, approved December 10, 1974 (P.L. 852) (73 P.S. Section 176 et seq.), or as amended, concerning protection of the public health and safety by preventing excavation or demolition work from damaging underground utility facilities.

(3) O.S.H.A. construction safety and health regulations, 39 F.R. 22801, June 24, 1974, as published in the Federal Register (29 C.F.R. Section 1926.1 et seq.) or as amended.

(b) Any rights of any person.

(c) The conditions, restrictions and provisions of the permit.

Section 23. Township Standards.

(a) The work shall be done at such time and in such manner as shall be consistent with the safety of the public and shall conform to all requirements and standards of the Township. If at any time it shall be found by the Township that the work is not being done or has not been properly performed, the permittee upon being notified by the Township shall immediately take the necessary steps, at its own expense, to place the work in condition to conform to such requirements or standards.

(b) Whenever any requirement or standard of the Township is superseded by a requirement or standard of the Federal government or the Commonwealth of Pennsylvania, the requirement or standard of the Federal government or the Commonwealth of Pennsylvania, as applicable, shall apply.

Section 24. Permittee Responsibilities.

(a) The permittee shall be responsible for all costs and expenses incident to or arising from the permitted work, including the prescribed fees for same, the cost of making and maintaining temporary restoration of the disturbed areas and making permanent restoration. The permittee shall reimburse the Township for any and all observation costs related to the permitted work, which the Township may deem it necessary to incur, within thirty (30) days after receipt of the Township's invoice.

(b) In the event of failure or neglect by the permittee to perform and comply with the permit or the regulations set forth in this Ordinance, the Township may immediately revoke and annul the permit and order and direct the permittee to remove any or all structures, equipment or property belonging to the permittee and/or its contractors from the legal limits of the right-of-way and to restore the right-of-way to its former condition. In the event the Township determines that such structures, equipment or property pose a threat to the public safety and the permittee fails to remove the same after notice from the Township to do so, any attorney or any court of record shall be authorized to appear for the permittee, and to enter an amicable action of ejectment and confess judgment against the permittee; and the Prothonotary shall be authorized to issue forthwith a writ of possession with costs, without leave of court.

(c) If work is stopped on a project for any reason, other than at the end of any normal work day, and any excavations or openings, in the opinion of the Township, remain open for an unreasonable period, the permittee, if so directed, shall refill the excavations or openings and work shall not be resumed until the permittee is prepared to proceed immediately with the work to its completion. In the event the permittee fails to refill the excavations or openings or proceed until completion of the work upon notice from the Township to do so, the Township may perform the necessary and required work and shall be reimbursed for the costs by the permittee within thirty (30) days after receipt of the Township's invoice.

(d) If the permittee, after making an opening in the surface to place or repair a facility or for any other purpose, fails to restore any portion of the right-of-way to conform with Sections 20 through 38 of this Ordinance (relating to general conditions), Sections 39 through 52 of this Ordinance (relating to special conditions - subsurface operations), and Sections 53 through 58 of this Ordinance (relating to special conditions - above-ground facilities) upon notice from the Township to do so, the Township reserves the right to do the work and the permittee shall reimburse the Township for the costs within thirty (30) days after receipt of the Township's invoice.

Section 25. Altering Vegetation Prohibited. This permit does not authorize the permittee, to cut, remove or destroy trees or shrubbery within the right-of-way unless specifically noted on the permit.

Section 26. Altering Drainage Prohibited.

(a) Unless specifically authorized by the permit, the permittee shall not:

(1) Alter the existing drainage pattern or the existing flow of drainage water.

(2) Direct additional drainage of surface water toward, onto or into or in any way affect the street right-of-way or street facilities.

(b) The issuance of a permit does not authorize the permittee to direct, divert or otherwise drain surface waters over the property of any other property owner.

(1) The issuance of a permit does not in any way relieve the permittee from acquiring the consent, permission or other authorization from any property owner who may be adversely affected by drain alterations.

(2) The permittee is responsible for any damage caused to any private or public property as a result of work done under the permit.

Section 27. Equipment Damage to Street.

(a) To protect the pavement and shoulders, all equipment shall have rubber wheels or runners and shall have rubber, wood or similar protective pads between the outriggers and the surface unless otherwise authorized by the permit.

(b) In the event that other than rubber equipped machinery is authorized for use, the pavement and shoulders shall be protected by the use of matting, wood or other suitable protective material having a minimum thickness of four inches (4"), unless the permit requires the permittee to repave the roadway full width.

(c) If the equipment damages the pavement or shoulders, the permittee shall restore the pavement or shoulders to their former condition, at the permittee's expense.

Section 28. Traffic Protection and Maintenance. Maintenance and protection of traffic shall be carried out in accordance with the requirements of PennDOT as set forth in Publication No. 43 and Publication No. 213.

(a) The permittee shall provide and maintain all necessary precautions to prevent injury or damage to persons and property in accordance with instructions furnished by the Township Engineer. A traffic control plan shall be submitted to the Township Engineer and approved by the Township Engineer and the Township Police Department, if any, or the State Police, if so required, before detouring any traffic.

(b) Warning signs shall be placed in advance of the actual operation in such a manner as to be visible to the traveling public and substantial barricades with adequate illumination shall be provided and maintained for any excavations or openings in the improved area.

(c) Designated employees of permittee shall be assigned by the permittee to direct one-lane traffic. Flagmen shall be provided as specified in the permit and in accordance with PennDOT Publication No. 213.

Section 29. Streets Under Construction. No permit application will be approved for occupancy of a section of right-of-way within which a street construction or reconstruction project is underway, or if a contract for such a project has been let, until the project is completed and accepted by the Township Engineer. The provisions of this paragraph shall not apply:

(a) in case of emergency, the permittee shall procure the consent of the Township's Engineer to do such work as may be deemed necessary to correct the existing emergency condition in accordance with Sections 17 through 19 of this Ordinance (relating to emergency work); or

(b) where the permittee has been authorized by the Township to relocate or adjust their facilities simultaneously with such street construction.

Section 30. Sharing Subsurface Facilities. The application shall identify any other utility's facility that will be sharing a trench or structure with the applicant's facilities.

Section 31. Indemnification. The permittee shall fully indemnify and save harmless and defend the Township of and from all liability for damages or injury occurring to any person, persons or property (i) through or in consequence of any act or omission of any contractor, agent, servant or employee of the permittee or other person engaged or employed in, about or upon the work, by, at the instance or with the approval or consent of the permittee; (ii) from any failure, of the permittee or any such person to comply with the permit or the regulations set forth in this Ordinance, and (iii) from the failure during the two (2) year period after completion of the permitted work, of the street in the immediate area of the work performed under the permit where there is no similar failure of the street beyond the area adjacent to the area of the permitted work.

Section 32. Insurance. The permittee shall submit to the Township a certificate or certificates of insurance for public liability and property damage, in form and amount satisfactory to the Township to cover any loss that may be incurred for or on account of any matter, cause or thing arising out of the construction, reconstruction, repair, relocation or installation of the permitted structures or facilities.

Section 33. Blasting. No predrilling or blasting shall be permitted within the right-of-way, unless authorized by the permit.

(a) If the permittee proposes to blast, the permittee shall make, execute and deliver a bond to the Township in an amount determined by the Township Engineer with surety by a company duly registered and authorized to do business in the Commonwealth of Pennsylvania, conditioned that the Township will be saved harmless from any damages whatsoever to the improved area and all other private and public property for a period of one (1) year from the date of the completion of the last work covered by the permit.

(b) When blasting is anticipated within one hundred feet (100') of any building or structure, a detailed plan of excavating, shoring, blasting and backfilling procedures shall be submitted with the application to the Township for review and approval. The Township Engineer may require pre-blast

inspections to be made of all structures or facilities which in his opinion may be affected by the permitted work.

(c) Only controlled blasting, as specified in Section 203.3(b) Item 1., PennDOT Publication 408, shall be permitted within the improved area.

Section 34. Maintaining Structure or Facility. As long as the permittee operates and leaves in place any structure or facility in, upon or along the right-of-way, the permittee shall maintain and keep it in good order and repair.

Section 35. Damaged Structure or Facility. If at any time the structure or facility shall become damaged from any cause whatsoever, the permittee shall have it removed, repaired or otherwise made safe immediately upon notification from the Township.

Section 36. Damage to Street.

(a) If there is a failure of the street, including slope or any other appurtenance thereto, in the immediate area of the permitted work within two (2) years after completion of the permitted work and there is no similar failure of the street beyond the area adjacent to the area of the permitted work, the permittee shall have absolute responsibility to make all temporary and permanent restoration, including restoration of the adjacent area if it has also failed.

(b) If there is a failure of the street, including slope or any other appurtenance thereto, in the area adjacent to the immediate area of the permitted work within two (2) years after the completion of the permitted work and there is no similar failure of the street 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.

(c) Where the permittee has the responsibility to restore the street, including slope or any other appurtenance thereto, under any of the above provisions, 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 original permit. If the permittee fails to restore the improved area properly, the Township shall have the authority to do the work at the permittee's expense. The permittee shall reimburse the Township for the costs within thirty (30) days after receipt of the Township's invoice.

Section 37. Future Street Changes. If at any time in the future the street, in which a permitted structure or facility is installed or constructed, is altered for public convenience or necessity, the owner of the facility shall, at its own cost and expense,

change or relocate all or any part of the structure or facility authorized by the permit which interferes with such street alterations or which is inconsistent with the purpose of the street alterations.

Section 38. Approval by Construction Observer. Approval by the Township's Construction Observer 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 Construction Observer act as a release of the permittee or waiver by the Township of its right to seek performance or restitution from the permittee.

Section 39. Special Conditions - Subsurface Operations. The special conditions described in Sections 40 through 52 of this Ordinance shall apply to all subsurface operations.

Section 40. Drilling, Boring, Driving or Tunneling Across Improved Area.

(a) When crossing under any improved area, the opening for a utility facility shall be drilled, bored or driven on a horizontal plane at a minimum depth of three feet (3') below the surface of the street and its swale ditches.

(1) The facility may be placed by tunneling when authorized by the permit. When tunneling, after the facility is placed, the hole shall be backfilled with 1:3:6 concrete of dry consistency and tamped.

(2) Wet boring is prohibited.

(b) No openings for the purpose of placing utility facilities or other structures under the improved area by drilling, boring, driving or tunneling shall be made closer than three feet (3') to the edge of the roadway, unless the permit authorizes a lesser clearance.

(c) Facilities and other structures crossing under the improved area shall be constructed so as to assure the safety of the traveling public and to preclude the necessity of entering upon the improved area to effect future maintenance or replacement. Such facilities shall comply with applicable provisions of PennDOT Design Manual, Part 5.

Section 41. Trenching Across Improved Area.

(a) No trenching shall be permitted across the improved area, unless authorized by the permit.

(b) Trenching across the improved area may be authorized by the permit where drilling, boring, driving or tunneling are not feasible because:

(1) The subsurface is solid rock.

(2) There are other facilities located longitudinally under the improved area and their location precludes methods other than trenching.

(3) Adjacent development or other existing structures or obstacles make the construction of a tunneling or boring shaft impossible.

(4) The Township superintendent determines that the disruption to traffic and length of exposure will be minimal.

(c) When trenching is specified in the permit and the utility facility is to be placed across the street in one piece, the trenching operation shall be performed by the following method:

(1) Traffic shall be routed over one-half (1/2) the pavement width.

(2) The closed half of the pavement shall be opened to the required depth and bridged with steel plates.

(3) Traffic shall be shifted to the bridged half of the pavement.

(4) The remaining half of the pavement shall be opened to the required depth.

(5) The facility shall be placed full width.

(6) The open trench shall be backfilled and restored half-width in accordance with Sections 39 through 52 of this Ordinance (relating to special conditions - subsurface operations).

(7) Traffic shall be shifted to the restored half of the pavement.

(8) The bridging shall be removed and the remaining half of the trench shall be backfilled and restored in accordance with Sections 39 through 52 of this Ordinance (relating to special conditions - subsurface operations).

Section 42. Installation While Street Closed. If the Township Engineer determines that the duration of trenching operation can be minimized to allow a temporary closing of the street, the entire cartway may be opened to install the facility. Permission to do so must be stated on the permit.

Section 43. Trench Openings Parallel to Street.

(a) Trench openings for utility facilities and other structures shall be made so that the near edge of the opening is at least three feet (3') outside the edge of the cartway unless the permit authorizes a lesser clearance, with a minimum depth of three feet (3') from the surface to the top of the facility.

(b) On an unpaved street, the near edge of the trench opening shall be at least twelve feet (12') from the general centerline of the traveled street, or as authorized in Subsection (a) of this Section.

(c) No trench opening shall be left open for a distance of more than two hundred feet (200') at any one time, unless authorized by the permit. In addition, no more than forty feet (40') of trench shall be left open on the shoulder of a street at the end of any work day, unless authorized by the permit.

Section 44. Plates or Bridging Required. Except for emergency repairs of utility facilities or as set forth on the permit, work shall be stopped prior to peak traffic hours that exist on a particular street on a particular day. Steel plates or bridging shall be placed over all openings made within the improved area which are less than six feet (6') in either length or width when work is stopped. The plates or bridging shall be extended a minimum of eighteen inches (18") from each edge of the opening and shall be secured in a safe manner.

Section 45. Plowing Installation of Utility Facilities.

(a) No plowing shall be permitted within the right-of-way unless authorized by the permit.

(b) Plowing operations will be authorized only in unpaved shoulders.

(c) Plowing operations are not allowed from November through March, inclusive, unless authorized by the permit.

(d) No plowing shall be permitted within three feet (3') from the edge of the cartway. A greater distance shall be attained whenever possible.

(e) The opening shall be a minimum depth of three feet (3'). If this depth cannot be consistently maintained, the proper depth shall be achieved by trenching.

(f) The utility facility shall be installed under any structures that are less than three feet (3') deep. All disturbed structures shall be repaired or replaced by the permittee.

(g) The disturbed area shall be restored in conjunction with the plowing operation. If heaving occurs, the disturbed area shall be reshaped, backfilled with subbase (No. 2A) and compacted until the disturbed area is restored to a condition equal to that which existed before plowing.

Section 46. Disposition of Materials.

(a) The permittee shall keep the improved area free of all material which may be deposited by vehicles traveling upon or entering onto the street during the performance of work authorized by the permit.

(b) The permittee shall be responsible for controlling dust conditions created by its own operations.

(c) All excess material and material that is not suitable for backfill shall be removed and disposed of outside the right-of-way as the work progresses.

(d) All retained suitable material shall be placed or stored on the side of the operation farthest from traffic, unless otherwise authorized by the permit, and in such a manner that there will be no interference with the flow of water in any gutter, drain, pipe, culvert, ditch or waterway.

Section 47. Backfilling. All openings made in the cartway or in paved shoulders shall be backfilled by the permittee in accordance with the following standards.

(a) The opening shall be backfilled with subbase (No. 2A), compacted in not more than six inch (6") layers, with approved vibratory compaction equipment.

(b) Compaction shall be completed to the bottom of the existing pavement.

(c) Temporary or permanent restoration shall be placed at the end of each working day.

Section 48. Restoration of Flexible Base Pavements. Base and surface restoration of flexible base pavements shall be done in accordance with one (1) of the two (2) methods listed below, as specified in the permit.

(a) High Early Strength Concrete Restoration Method. (To be used when permanent restoration is made upon completion of backfill.) Prior to

replacement of the base course, one foot (1') from each edge of the trench shall be sawed or cut, in a neat straight line, to the bottom elevation of the existing base course, and the detached material shall be removed. Drilling shall not be permitted.

(1) The base course shall be replaced with a minimum of eight inch (8") high early strength concrete to the elevation of the existing crushed aggregate base course. The high early strength concrete shall then be cured in accordance with Section 501.3(k), PennDOT Publication 408. If a trench exceeds four feet (4') in width, No. 6 reinforcing bars shall be installed in the concrete base course, placed at six inch (6") centers measured longitudinally in the direction of the trench, with a two inch (2") clearance on each end and a three inch (3") clearance on the bottom.

(2) Following the concrete curing, a tack coat shall be applied in accordance with Section 460, PennDOT Publication 408.

(3) After the tack coat has cured, the bituminous binder and/or wearing course shall be placed so as to conform to the existing type of road binder and wearing courses, and shall be based upon the Superpave requirements as applicable to the specific road.

(4) The edges of the repair shall be sealed with the type and class of material designated for the surface course for a width of twelve inches (12") centered on the repair joint in accordance with PennDOT Publication 408, Section 401.3(j).

(b) Ninety (90) Day Temporary and Permanent Restoration Method.
(To be used when temporary restoration is made followed by a minimum ninety (90) day settlement period.)

(1) Temporary restoration:

(i) Temporary restoration shall be made and kept in place for a minimum of ninety (90) days after backfilling the trench. The subbase (No. 2A) shall be placed in accordance with Section 47 of this Ordinance with a surface of a two inch (2") compacted 2P-B bituminous stockpile mix.

(2) Permanent restoration:

(i) After the minimum ninety (90) day period, but before two hundred ten (210) days, the temporary restoration shall be removed and permanent restoration made.

(ii) Prior to making the permanent restoration, one foot (1') from each edge of the trench shall be sawed or cut, in a neat straight line, to the bottom elevation of the existing base course, and the detached material shall be removed. Drilling shall not be permitted.

(iii) The permanent base course shall consist of bituminous concrete meeting the requirements of Section 309, PennDOT Publication 408, and having a minimum depth of five inches (5") or a depth equal to the existing base course, whichever is greater, and shall be based upon the Superpave requirements as applicable to the specific road.

(iv) The permanent surface course shall be placed in accordance with the depths of the existing bituminous surface, but in no case shall the wearing course be less than one and one-half inches (1-1/2"), and shall be based upon the Superpave requirements as applicable to the specific road (Reference PennDOT Publication 408, Section 409).

(v) The edge of the repair shall be sealed with the type and class of material designated for the surface course for a width of twelve inches (12") centered on the repair joint in accordance with PennDOT Publication 408, Section 401.3(k).

Section 49. Temporary and Permanent Restoration of Plain or Reinforced Cement Concrete Pavements. Upon completion of the trench backfill, the subbase (No. 2A) shall be placed in accordance with Section 47 of this Ordinance with a temporary surface of compacted 2P-B bituminous stockpile mix. Permanent restoration can be made at any time prior to the expiration of two hundred ten (210) days from the backfilling of the trench. If permanent restoration is completed immediately after backfilling, temporary restoration is not required.

Prior to replacement of the base, one foot (1') from each edge of the trench shall be sawed or cut, in a neat straight line, to a depth of at least three inches (3"), and the detached material shall be removed. Drilling shall not be permitted where sawing or cutting is required.

(a) The replacement base shall consist of high early strength concrete equal in depth to the original concrete pavement.

(b) On existing reinforced cement concrete pavements, reinforcing steel and expansion tie bolts shall be placed in accordance with PennDOT Roadway Construction Standard RC-26.

(c) The surface shall be restored as follows:

(1) The surface shall be cured in accordance with Section 501.3(k), PennDOT Publication 408. After surface corrections have been completed and just before the concrete becomes non-plastic, the surface shall be given a textured finish in accordance with Section 501.3(j), PennDOT Publication 408.

(2) Surface restoration of a cement concrete pavement which has a bituminous surface shall be done in accordance with Subsection (a) of this Section.

(3) The edge of the repair shall be sealed with the type and class of material designated for the surface course for a width of twelve inches (12") centered on the repair joint in accordance with PennDOT Publication 408, Section 401.3(j).

Section 50. Shoulder Restoration.

(a) Paved and stabilized shoulders.

(1) Temporary restoration:

(i) Temporary restoration shall be made and kept in place for a minimum of ninety (90) days after backfilling the trench. The subbase (No. 2A) shall be placed in accordance with Section 47, or any substitution or replacement thereof, of this Ordinance with a surface of a two inch (2") compacted 2P-B bituminous stockpile mix.

(2) Permanent restoration:

(i) After the minimum ninety (90) day period, but before two hundred ten (210) days, the temporary restoration shall be removed and permanent restoration made.

(ii) Prior to making the permanent restoration, one foot (1') from each edge of the trench shall be sawed or cut, in a neat straight line, to the bottom elevation of the existing base course, and the detached material shall be removed. Drilling shall not be permitted.

(iii) Paved and stabilized shoulders shall be reconstructed and restored to a serviceable condition, of the same type as existed before the start of work.

(b) Unpaved Shoulders.

(1) Retained material which complies with Section 206.2, PennDOT Publication 408, may be used for backfill, up to within eighteen inches (18") of final grade. The final eighteen inches (18") of backfill shall consist of subbase (No. 2A). The width of the shoulder shall be no less than four feet (4').

(2) If the length of the facility exceeds fifty feet (50'), the shoulder shall be graded, rolled and penetrated with RT-2C or MC-30 bituminous material at a minimum rate of one-quarter (0.25) gallon per square yard and chipped or lightly sanded to prevent tracking of oil onto the pavement.

Section 51. Appurtenances to Underground Installations.

(a) The top of every manhole, valve box or other access to the facility shall be at the same elevation as the surface in which it is located.

(b) The surface surrounding manhole or valve covers located in shoulders shall be paved in such a manner as to prevent washouts.

Section 52. Additional Restoration.

(a) All disturbed portions of the street, including all appurtenances and structures such as guide rail or drain pipes, shall be restored to a condition equal to or better than which existed before the start of any work authorized by the permit.

(b) If the permittee opens the street pavement, whether to install a new facility or to modify an existing facility or for any reason other than to perform emergency work pursuant to Sections 17 through 19 of this Ordinance (relating to emergency work), and the wearing course is less than five (5) years old, the permittee shall, in addition to the minimum restoration conditions outlined in Sections 39 through 52 of this Ordinance (relating to special conditions - subsurface operations), overlay the street pavement in accordance with the following conditions:

(1) When a longitudinal opening longer than ten feet (10') and wider than three feet (3') is made in the street pavement, the permittee shall overlay the traffic lane(s) in which the opening was made, for the entire length of street that was opened.

(2) When two (2) or more transverse trench openings are made by the permittee in the street pavement less than one hundred feet (100') apart, the permittee shall overlay all traffic lanes in which the openings were made for the entire length of the street between such openings.

(c) Regardless of the age of the wearing course, when both longitudinal and transverse trench openings are made in the street pavement, the Township may require the permittee to overlay all traffic lanes in which such openings were made, for the entire length of street that was opened, if the Township Engineer determines that the present serviceability of the street has been impaired by the openings.

Section 53. Special Conditions, Above-Ground Facilities. The special conditions described in Sections 53 through 58 of this Ordinance shall apply to all above-ground facilities.

Section 54. General Rules. Permits will not be issued to install above-ground facilities which the Township Engineer determines to have a high accident potential.

Section 55. Location of Above-Ground Facilities.

(a) New poles, guys and other above-ground facilities shall be installed outside the street's clear roadside Area as near the right-of-way line as practicable, in accordance with Section 9.08 B(1) of PennDOT Design Manual, Part 5.

(b) Replacement of poles, guys and other above-ground facilities shall comply with Section 9.08 B(2 and 3) of PennDOT Design Manual, Part 5.

(c) Installation of poles, guys and other above-ground facilities in locations where highway curb exists shall comply with Section 9.08 B(4) of PennDOT Design Manual, Part 5.

Section 56. Location of Wires, Cables or Conductors. All wires, cables or conductors which overhang any portion of the right-of-way shall be placed so as to provide a minimum vertical clearance of eighteen feet (18') over the roadway, except where the National Electrical Safety Code required vertical clearances in excess of eighteen feet (18') due to voltage and/or span lengths.

Section 57. Guys.

(a) Guys shall be placed so as to avoid interference with vehicular or pedestrian traffic.

(b) Guys shall be insulated or grounded in compliance with the National Electrical Safety Code.

Section 58. Identification of Poles. Each pole shall bear the name or initials of the facility owner and the pole number(s) assigned by the facility owner.

Section 59. Record Examination. All permit records, restoration records and emergency work records shall be made available for examination by an authorized representative of the Township upon request.

Section 60. Enforcement. Any violation of the regulations set forth in this Ordinance shall constitute grounds for imposition of any or all of the following penalties:

(a) Upon receipt of oral or written notice of any violation(s) from the Township's authorized representative, the permittee shall cease to perform any further work in the permitted area except to restore the area to a safe condition. No further work shall commence in the permitted area until the violation(s) has been remedied. Where the permittee has received oral notice of the violation(s), written notice shall be sent to the permittee within five (5) days of receipt of the oral notice.

(b) Confiscation of the applicant's permit or emergency permit card by the Township Engineer.

(c) Revocation of the applicant's permit or emergency permit card by the Township Engineer.

(d) Removal by the utility facilities' owner of facilities installed without a permit or in violation of the regulations set forth in this Ordinance.

Section 61. Penalties. Any person who shall violate any provision of this Ordinance shall upon conviction thereof in a summary proceeding before a District Justice be sentenced to pay a fine of not more than Six Hundred Dollars (\$600.00), together with costs of prosecution, and in default of payment of such fine and costs, said person (including an officer of a corporation if a corporation is the person involved) shall be subject to imprisonment in the county jail for a term not to exceed thirty (30) days. The continuation of such violation for the person or persons allowing or permitting the continuation of a violation may be punished as provided above for each separate offense.

Section 62. Inconsistency with Subdivision and Land Development Ordinance. Notwithstanding anything set forth above in this Ordinance, whenever the provisions of this Ordinance shall be inconsistent with the provisions of the Subdivision and Land Development Ordinance of the Township, and the Zoning Ordinance of the Township, as each of the aforesaid are from time to time amended, and the provisions of any of said ordinances are more restrictive or contain more stringent requirements than are set forth in this Ordinance, the provisions of said ordinances shall prevail and be applicable.

Section 63. Waiver of Requirements. The provisions of this Ordinance are intended as minimum standards for the protection of the public health, safety and welfare of the residents and inhabitants of the Township. If an applicant for a permit is able to demonstrate to the Supervisors, at a public meeting of the Supervisors, that the literal compliance with any provision of this Ordinance will be unreasonable and will cause undue hardship as applied to the applicant, the Supervisors may grant a waiver of such provision, if the waiver will not be contrary to the public interest.

Section 64. Severability. The provisions of this Ordinance are severable and if any section, subsection, paragraph, sentence, clause, phrase or provision of this Ordinance is for any reason found to be unconstitutional, illegal or invalid by a court of competent jurisdiction, such findings shall not affect or impair any of the remaining sections, subsections, paragraphs, sentences, clauses, phrases or provisions of this Ordinance. It is hereby declared to be the intent of the Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid section, subsection, paragraph, sentence, clause, phrase or provision not have been included herein.

Section 65. Fee Schedule.

(a) Permit Issuance Fees. Issuance fees are used to defray costs incurred by the Township in reviewing and processing the application and plan(s), including the preliminary review of the site location identified in the application, and issuing and processing the permit. Permit issuance fees shall be determined and set from time to time by Resolution of the Supervisors.

(b) General Permit Observation Fees. General observation fees are used to defray costs incurred by the Township in spot observation(s) of permitted work and/or subsequent observation(s) after the permitted work has been completed, to insure compliance with the permit and these regulations. Permit observation fees shall be determined and set from time to time by Resolution of the Supervisors.

(c) Additional Observation Fees. If the Township determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one (1) or more Construction Observers to observe said work, on more than a spot observation basis, the permittee shall be charged for all salary, overhead and expenses incurred by each Construction Observer and the Township.

(d) Temporary and Permanent Restoration Fees. (Public utilities franchises in the Township are exempt.) Restoration fees cover the cost for the Township to make necessary temporary and permanent restoration of trenches. A deposit of the required fee by the applicant shall be held by the Township to guarantee that the restorations have been made. If the restorations are to be made by the Township, the deposit shall be used to cover the cost to make the restorations. Restoration fees shall be determined and set from time to time by Resolution of the Supervisors.

If the costs to the Township to make the restorations and/or observations exceed the amount on deposit, the applicant, upon written notification by the Township, shall immediately reimburse the Township for the costs incurred with said observations and/or restorations.

If the applicant makes said restorations, upon completion of final restoration and receipt of written notification by the Township, the Township shall within forty-five (45) days make a refund for the deposit portion of the cost of the restorations' guarantee to the applicant.

(e) Upon completion of all required restorations, and when the same shall have been approved by the Township Engineer, the applicant agrees to tender the following documents to the Township:

(1) Deeds of dedication (in triplicate) in customary form satisfactory to the Township Solicitor dedicating to the Township all required easements for any and all water lines, sewer lines and storm sewer lines, if any, together with any other easements for public improvements, open space, walkways and the like required as may be affected such restorations; and

(2) Financial security assuring the Township payment of an amount equal to fifteen percent (15%) of the actual cost of installation of such restorations to secure the structural integrity of the restorations as well as the functioning of said improvements, in accordance with their design and specifications, for a term not to exceed eighteen (18) months from the date of acceptance of dedication or approval of the work by the Township. The actual costs of installation of the improvements and the restorations shall be established by the submission by the applicant to the Township of such costs and approval thereof by the Township; and

(3) An amount equal to the cost of recording such deed or deeds of dedication, together with the Township's legal expenses, if any, incurred in the preparation or review of said deed(s) of Dedication or requisite maintenance financial security.

(f) Township Authorities Exempt. Any municipal authority created by the Township shall be exempt from the permit fees, general permit observation fees, additional observation fees, temporary and permanent restoration fees and bonds of public utilities as provided herein. Township authorities, however, are not exempted from obtaining a permit as provided for in this Ordinance.

(g) Blasting Bond Amounts. When blasting will be required, a blasting bond shall be provided in amounts to be determined and set from time to time by Resolution of the Supervisors.

Section 66. Application for Street Occupancy Permit Form. The form for an Application For Street Occupancy Permit shall be determined and set from time to time by Resolution of the Supervisors.

Section 67. Emergency Permit Card Form. The form for an Emergency Permit Card shall be determined and set from time to time by Resolution of the Supervisors.

Section 68. Repealer. All ordinances or parts of ordinances which are inconstitence herewith are hereby repealed insofar as they are inconsistent with the provisions hereof.

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Section 69. Effective Date. This Ordinance shall become effective five (5) days from the date of enactment hereof.

DULY ENACTED AND ORDAINED this 26 day of May, 2009.

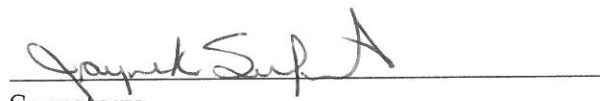
TOWNSHIP OF BETHEL,
BERKS COUNTY, PENNSYLVANIA


Chairman


Supervisor


Supervisor

Attest:


Secretary

SEAL