

ORDINANCE NO. 1 of 2016

**AN ORDINANCE AMENDING ARTICLE II, OPENING AND CUTTING OF
STREETS, TO REPLACE SECTIONS 198-6 THROUGH 198-11**

BE IT ENACTED by the Foster Township Board of Supervisors, Luzerne County,
Pennsylvania, as follows:

Chapter 198

STREETS AND SIDEWALKS

**ARTICLE II
Opening and Cutting of Streets**

§198-6. Definitions.

As used in this Article, the following terms shall have the meanings indicated, except in those instances where the context clearly indicates otherwise:

APPLICANT- means the person applying for and issued a permit under this Article, which allows for the excavation, opening, or demolition within a Township Road. The term applicant includes a "Permittee".

CARTWAY- means that portion of a Township road which is improved by surfacing with permanent or semi-permanent material and is intended for vehicular traffic.

CODE ENFORCEMENT OFFICER- means the person appointed by the Foster Township Board of Supervisors for the administration and enforcement of the Code of Ordinance, including the enforcement of this Article.

DEMOLITION- means the partial or complete destruction and removal of any structure or manmade object, by any means, within a Township Road.

EXCAVATE OR OPEN- includes any activity within the right-of-way or cartway of a Township Road which involves cutting, breaking or disturbing the ground or its surface. The term includes the use of powered equipment or explosives in the movement of earth, rock or other material, and the anchoring, augering, backfilling, blasting, boring, digging, ditching, drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling within the right-of-way or cartway of a Township Road.

PERSON – means any natural person, individual, partnership, firm, association, corporation, political subdivision, municipal authority, public utility, the Commonwealth and its agencies and instrumentalities, or any other entity.

RIGHT OF WAY- means the right of the Township to use property of another whether improved or unimproved for public travel or uses associated with utilities.

SUPERVISORS- means the Foster Township Board of Supervisors.

TOWNSHIP – means Foster Township, Luzerne County, Pennsylvania.

TOWNSHIP ROAD – means any public right-of-way, streets, avenues, roads, squares, courts, alleys, highways, cartways, or other public places located in and maintained by the Township. This definition shall not include County roads, State highways, private roads, or private easements.

§198-7. Permit Required.

Except in the case of an emergency, it shall be unlawful for any person to excavate or open any Township Road without first obtaining a permit from the Code Enforcement Officer. Any person maintaining facilities within a Township Road may proceed to cut or open a Township Road without a permit when emergency circumstances demand the work to be done immediately, provided the person can show that the permit could not have been obtained beforehand. In the event of an emergency, the person shall apply for a permit on the first business day following the commencement of work, and the permit, when issued, shall be retroactive to the date when the emergency work started. All applicants shall pay a fee for a permit under this Article as established by resolution of the Supervisors.

§198-8. Road Opening Prior to Reconstruction or Resurfacing.

When the Township constructs, surfaces, reconstructs, or resurfaces any Township Road, the Township may first serve written notice by registered mail to all persons owning property abutting the road about to be improved, and to all public utility companies operating within the Township. Within 90 days from the mailing of the notice all notified persons shall complete or cause to be completed all necessary repairs and replacements of utility mains, service connections, or laterals existing under the Township Road to be constructed, surfaced, reconstructed or resurfaced. A person that has been notified shall complete or cause to be completed any new installations under the Township Road required for use within a two year period. All repairs, replacements, and new installations of utility mains, services connections, or laterals shall be in such condition that they cannot reasonably be expected to require repairs or replacement within a period of at least two years from the date the Township has completed the construction, surfacing, reconstruction or resurfacing any Township Road. A permit

shall be denied to any person making an application within two years from the date the Township has completed construction, surfacing, reconstruction or resurfacing of any Township Road when such notice has first been given by the Township under this Section unless that person is tunneling or boring beneath the pavement of the Township Road during that two year period.

§198-9. Work to Be Performed By Applicant.

A. The work authorized by the permit is subject to all the provisions of the Underground Utility Line Protection Act of December 10, 1974, P.L. 852, No. 287, 1 et seq. (73 P.S. § 176 et. seq.) as amended or supplemented from time to time. It shall be the applicant's responsibility to contact the utilities that have recorded their facilities in compliance with the Act.

B. No road in the Township may be completely closed to traffic at any time. One lane of traffic must be able to pass unobstructed at all times. Flag persons must be posted at the limits of work at all times to direct traffic through the work area, and all established traffic patterns must be maintained at all times. If all other means of traffic control have been exhausted, the Township may permit a road to be completely closed temporarily, only with the consent of the State Police and the Fire Chief. When an emergency exists, the Supervisors, the State Police and the Fire Departments shall be notified during the emergency.

C. During the progress of work, the applicant shall provide and maintain such barricades, warning signs and flag persons as may be deemed necessary by the municipality to prevent accidents to the public and/or adjoining tenants. Minimum precautions must include, but should not be limited to, advance warning signs on all approaches to the work, safe crossing for pedestrians a minimum of each 300 feet and barricades with flashers on each exposed side at fifty-foot intervals. All precautions shall be in accordance with the Manual of Uniform Traffic Control Devices, as adopted by the United States Department of Transportation, Federal Highway Administration, 1971 Edition, Part IV, Traffic Controls for Street and Highway Construction and Maintenance Operations (latest edition).

D. The applicant shall comply with the following specifications and procedures:

1. Excavated Material. In peak traffic areas as determined by the Township Road Foreman or Township Engineer, all excavated material shall be removed daily at the cessation of work. All gutters and drainage devices shall be kept clean of all debris and excavated material. Hydrants adjacent to the work shall be, at all times, readily accessible to fire apparatus and no material or obstructions shall be placed within 15 feet of any hydrant.

2. Suitable Material. The suitability of material to be used as backfill shall be determined by the Township Road Foreman or Township Engineer. All materials not conforming to the requirements of this Article, whether in place or not, shall be rejected. Such materials shall be removed promptly from the worksite.
3. Disposal of Material. Material which is unsuitable and any surplus of excavated material shall be considered waste and shall be disposed of by the applicant beyond the project limits at an approved or permitted site in accordance with all applicable federal, state and local regulations. In no case shall waste material be left at the worksite.
4. Fill Material.
 - a. The Township Road Foreman or Township Engineer shall determine the stability and suitability of the fill material. In no case will excessively wet or dry material be allowed as fill material. Fill must be compacted to a dry density at least equal to 98% of the maximum dry density attained by the Modified Proctor Test, ASTM D1557, latest revision, Method C or Method D, as designated by the Township Road Foreman or Township Engineer.
 - b. PennDOT 2A Coarse Aggregate, AASHTO #8 Stone or special bedding material as may be required by the particular Utility's bedding/conduit envelope specifications, as approved by the Township Road Foreman or Township Engineer, shall be deposited in the trench beneath and simultaneously on both sides of the pipe for the full width of the trench to a height of at least six inches above the top of the pipe, placed and hand-tamped to fill completely all spaces under and adjacent to the pipe. The contractor shall procure the required approved material for backfilling around the pipe at no cost to the Township.
 - c. Succeeding layers of backfill shall be placed utilizing PennDOT 2A Coarse Aggregate.
 - d. Whenever suitable material (PennDOT 2A Coarse Aggregate) exists within the upper four feet of the finished grade of the paved or traveled portions of the street or roadway and is removed by the excavation, the contractor may stockpile and place said material as backfill in the upper four feet of the finished grade. The Township Road Foreman or Township Engineer shall determine the suitability of such material for reuse within the excavated trench area, and all costs associated with any required testing to substantiate the

suitability of said material shall be the sole responsibility of the applicant.

- e. As an alternate, 250 psi flowable fill may be used. Flowable fill shall be in accordance with PennDOT Publication 408, Section 220 (Latest Edition) with a compressive strength not less than 150 psi.
- f. The refilling of the opening or excavation shall be done in such a manner as to prevent settling to the same condition as it was before excavation and the surface shall conform to the proper grade and be of the same covering as the part of the Township Road immediately adjoining the opening.

5. Backfilling Requirements.

- a. The Township Road Foreman or Township Engineer must be notified at least 12 hours in advance of placing any backfill for inspection purposes. No backfill shall be placed without a Township designated inspector present. In backfilling, six-inch layers shall be placed in the deepest portion of the backfill, and as placement progresses, each six-inch layer shall be horizontally constructed. Compaction operations shall be continued using mechanical tampers until each layer of fill is compacted to a dry density at least equal to 98% of the maximum dry density attained by the Modified Proctor Test, ASTM D 1557, latest revision, Method C or D method, as designated by Township Road Foreman or Township Engineer.
- b. Backfilling shall be done in such manner as to obtain compaction through the entire length of backfill not less than that which exists adjacent to the excavation, but in no case less than the compaction requirements noted above. The method of backfilling shall be consistent with good engineering practice. Backfilling shall begin as soon as practical after the pipe or other construction has been placed and shall thereafter be carried on as rapidly as protection of the balance of the work will permit.
- c. Depositing of backfill shall be done so the shock of falling material will not injure the pipe or adjacent structures.
- d. All deficiencies in the quality of material for backfilling the trenches or for filling depressions caused by settlement shall be supplied by the applicant.

- e. In all cases, the applicant shall blade and compact the Township Road after the trench has been backfilled so that it shall be passable to traffic at all times. The applicant shall maintain the Township road in a condition acceptable to the Township Engineer or Township Road Foreman at all times until final approval of the entire work by the Township.
- f. The applicant shall remedy, at the applicant's cost, any defects that appear in the backfill for a period of two years following compaction.

6. Permanent Pavement Requirements.

- a. The Township Road Foreman or Township Engineer must be notified in advance of placing any permanent pavement for inspection purposes. No pavement shall be placed without a Township designated inspector present.
- b. Where the excavation is on a paved surface, the pavement shall be restored with not less than 6 inches of 2A Subbase, 4 ½ inches of 25 mm Superpave Base Course or the full depth of the adjacent permanent bases, whichever is greater, and 1 ½ inches of 9.5 mm Superpave Wearing Course. All materials and work shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Sections 350 and 409 respectively. Prior to replacement of the pavement, one foot (1') outside of each edge of the opening shall be sawed the full depth of pavement and stone base in a neat straight line (1 foot cutback). The detached material shall be removed without damaging the adjacent pavement. The final pavement joint between new and existing pavement shall be sealed with PG 64-22 or other sealant approved by the Township Road Foreman or Township Engineer to a width of four inches either side of the joint. The Township Road Foreman or Township Engineer shall be contacted to verify the sealant material to be used for all pave joints, in case the required sealant designation changes from that specifically provided herein. In cases where pave cuts are made between December 1 and April 15, the pavement restoration shall consist of cold patch or similar temporary material, as approved by the Township Road Foreman or Township Engineer. Final pavement restoration shall be completed as specified hereinabove during the next paving season, but in no event later than July 1st, unless prior approval is received from the Township Road Foreman or Township Engineer. Maintenance of the temporary patch shall be the responsibility of the applicant.

- c. When a longitudinal opening longer than 100 linear feet is made in the pavement, the entire roadway width shall be milled and overlaid with 9.5 mm Superpave within the area of the opening. When four or more transverse openings are made within 100 feet linear feet of pavement, the entire roadway width shall be milled and overlaid with 9.5 mm Superpave within the total opening length including those areas unexcavated. Overlay shall consist of 1 ½ inches (minimum) of 9.5 mm Superpave Wearing Coarse. A milled paving notch, with a minimum 10 feet transition, shall be provided at each end of the overlay.
- d. When any street is overlaid, the applicant shall construct new ADA curb ramps at each affected intersection. ADA ramp designs must be in accordance with current PA DOT standards and must be submitted to the Township Engineer for approval prior to construction.

7. Sidewalk Curb Restoration Requirements.

- a. The Township Road Foreman or Township Engineer must be notified in advance of placing any permanent pavement or concrete for sidewalks or curbing for inspection purposes. No pavement or concrete for sidewalks or curbing shall be placed without a Township designated inspector present.
- b. Where the removal of a portion of a curb, sidewalk, or curb and gutter is required to perform work, the curb, sidewalk, or gutter shall be restored as follows:
 - i. Asphalt sidewalks shall be a minimum of 2" of 9.5 mm Superpave Wearing Coarse or the thickness of the adjacent materials, whichever is greater.
 - ii. Asphalt curbs shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Section 636. The minimum allowable length of a replaced curb shall be four feet.
- c. Concrete sidewalks shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Section 676. The minimum allowable length of a replaced concrete sidewalk shall be four feet.

- d. Concrete curbs shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Section 630. The minimum allowable length of a replaced curb shall be four feet.
 - e. Stone curbs shall be replaced in kind. A minimum length of replaced curbs shall be four feet.
 - f. Where curbing and/or sidewalks are composed of other materials (brick, pavers, granite, flagstone, etc.) every attempt should be made to save the original materials and replace them during restoration.
 - g. The replacement of all walks, curbs, gutters, etc. shall be made in-kind in accordance with the above-noted specifications.
8. Machinery to be Used. Power-driven concrete saws or air hammers shall be used on all cuts in Portland-cement-based pavements. The cuts must be of sufficient depth to provide a smooth edge. No pavement busters, such as drop hammers, hoe rams and the like, shall be used without the written permission of the Township Road Foreman or Township Engineer.
9. Replacement of Pavement Markings, Traffic Control Devices and Pins or Monuments. The applicant must replace, in kind, all pavement markings, traffic control devices and property pins or monuments damaged or removed during the work. If applicant fails to do so, the Township may do so at the applicant's cost.

E. Upon completion of excavation and after opening of a Township Road, the applicant shall restore the surface within 48 consecutive hours of the initial cut or opening during the normal working week, excluding holidays and weekends. Work on long cuts or large openings (those over 25 feet in length) shall proceed in a continuous manner in accordance with safety precautions. Permits for long cuts or capital improvements will not be granted during the months of November through March except by written permission of the Supervisors.

F. All work in connection with the excavation and opening of the Township Road, including excavating, protecting, refilling, and paving (temporary or permanent) shall be done by the applicant at the applicant's own cost.

G. The Township shall have the right to inspect and supervise the work of the applicant to make certain the work complies with this Article. If the Township employs the services of a professional engineer to inspect or supervise the work of the applicant, then the applicant shall be required to reimburse the Township the costs of the services of the professional engineer.

H. The applicant shall take all precautions to prevent damage by equipment to public and private roads while en route to the job site and while performing permitted work. The Township may impose such equipment restrictions as may be reasonably necessary to prevent damage to public or private property. Such conditions may include, but shall not be limited to, the use of equipment with rubber wheels or runners as well as rubber, wood or similar protective pads between the outriggers and the road surface. If equipment without the above mentioned protection is authorized for use, the pavement and shoulders shall be protected using matting, wood, or other similar protective material. In the event any damages to the pavement or shoulders occur, the applicant shall restore the pavement and/or shoulders at their own expense.

§198-10. Performance and Maintenance Guarantees; Insurance.

A. Performance Guarantee. Applicants for permits shall submit, together with the application, financial security by way of certified funds or cashier's check, an irrevocable letter of credit, or performance bond in the amount of \$1,000.00 for each permit for opening of a Township Road up to one hundred (100) square feet. For openings in excess of one hundred (100) square feet, or borings, the amount of financial guarantee shall be in the amount as calculated based upon the procedure outlined in the Foster Township Subdivision and Land Development Ordinance (SALDO).

B. Maintenance Guarantees. Upon completion of work, an applicant shall post maintenance security for a period of two years by way of certified funds or cashier's check, an irrevocable letter of credit, or a maintenance bond in the amount of \$500.00 for each permit for opening of a Township Road up to one hundred (100) square feet. For openings in excess of one hundred (100) square feet, or borings, the amount of the financial guarantee shall be in the amount as calculated based upon the procedure outlined in the Foster Township Subdivision and Land Development Ordinance (SALDO).

C. Inspection Fees; Costs of Work Performed By Township. The performance and maintenance guarantees shall be posted in addition to a permit application fee (as established by the Supervisors by resolution) and the reimbursement of inspection fees of any professional engineer retained by the Township to perform an inspection. If it is determined that the surface has not been properly restored, or within two years after the restoration of the surface, defects in the Township Road appear, the applicant shall reimburse the Township for the cost of all necessary repairs to the surface, or make the necessary repairs to the surface, as determined by the Supervisors. Payment for all work done or services contracted by the Township under this Article shall be made by the applicant within 30 days after an invoice is issued by the Township to the applicant. Upon the failure of an applicant to pay the invoice within 30 days, the Township may proceed by filing a civil action for the collection of unpaid invoice, and the Code Enforcement Officer may also proceed with an enforcement action under this Article as the non-payment of the invoice shall constitute a violation of this Article.

D. Insurance. Prior to the issuance of a permit under this Article, the applicant shall be required to furnish certificates of insurance, including worker's compensation insurance for all employees. The certificate of insurance required of the applicant shall indicate that the applicant and the person performing the work is insured against claims for damages for personal injury as well as against claims for property damages which may arise from or out of the performance of the work, whether such performance be by the applicant, the applicant's subcontractor or anyone directly or indirectly employed by the applicant to perform the work. Such insurance shall include protection against liability arising from completed operations. Such insurance shall provide complete third party coverage for the Township. The liability insurance for bodily injury in effect shall be in an amount not less than three hundred thousand dollars (\$300,000.00) for each person and one million dollars (\$1,000,000.00) for each accident and for property damage in an amount of not less than two hundred fifty thousand dollars (\$250,000.00). Failure of applicant to file such certificate shall be grounds for denying a permit. Public utilities and authorities may submit annually such evidence of insurance coverage in lieu of individual submissions for each permit.

§198-11. Violations and Penalties.

A. Notice of Violation/Service; Corrective Measures.

1. Notice of Violation; Service. The Code Enforcement Officer shall have authority to give notice, by personal service, posting of the property, or by regular United States mail, postage prepaid, to any person violating this Article. The notice shall direct compliance with this Article within five calendar days following service of the notice. Any notice issued for a violation of this Article shall be sufficient to constitute notice of any subsequent violation provided that the violation occurs within the same calendar year.
2. Corrective Measures. When notice of a violation of this Article shall be served upon a person that person shall immediately take the necessary corrective measures before proceeding further with any work for which the permit was originally granted. When, in the opinion of the Code Enforcement Officer, a person has failed to take the necessary corrective measures and a condition or act constituting or creating a nuisance or endangering life or property exists, the Township may order the work to be performed by the Township or a person contracted by the Township and the cost incurred by the Township may be recovered from the financial security the applicant has filed with the Township. In the event that no financial security has been posted or is inadequate, the amount may be recovered by the Township in accordance with Section 198-10(C) above.

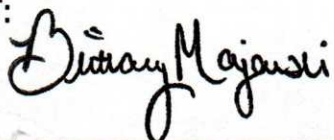
C. Penalty for Violation.

1. Any person who violates or permits the violation of this Article shall be guilty of a summary offense, and, upon conviction, shall be sentenced to pay a fine of not less than Three Hundred (\$300.00) Dollars and no more than One Thousand (\$1,000.00) plus the costs of prosecution, and, in default of payment of fine and costs, to imprisonment for a term of not more than thirty (30) days; OR
2. Any person who violates or permits the violation of this Article shall, upon being found liable thereof in a civil enforcement proceedings commenced by the Township or the Code Enforcement Officer, shall pay a judgment of One Thousand (\$1,000.00) Dollars, per day, plus all court costs, including reasonable attorney fees incurred by the Township as a result of bringing the enforcement proceeding.
3. The fines or penalties imposed or judgement entered under this section may be in addition to any costs and additional amounts collectible under this Article. Each day that a violation continues shall be deemed a separate offense.

This Article shall become effective immediately following its adoption.

ADOPTED THIS 13th **DAY OF** April, **2016**, by the Foster Township Board of Supervisors.

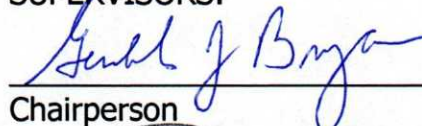
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Secretary

Secretary

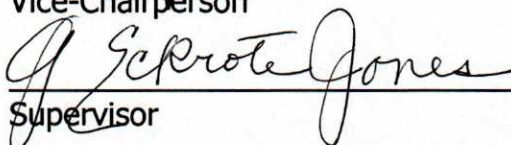
FOSTER TOWNSHIP BOARD OF
SUPERVISORS:



Chairperson



Vice-Chairperson



Supervisor