

TOWNSHIP OF PENN

Lancaster County, Pennsylvania

ORDINANCE NO. *2021-03*

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF PENN TOWNSHIP, CHAPTER 21, STREETS AND SIDEWALKS, TO ADD A NEW PART 5, SMALL WIRELESS FACILITIES DEPLOYMENT, AND A NEW PART 6, STREET EXCAVATIONS.

BE AND IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Penn, Lancaster County, Pennsylvania, as follows:

Section 1. The Code of Ordinances of Penn Township, Chapter 21, Streets and Sidewalks, shall be amended by adding a new Part 5, Small Wireless Facilities Deployment, and a new Part 6, Street Excavations, which shall provide as follows:

Part 5

Small Wireless Facilities Deployment

§21-501. Short Title.

This Part shall be known and may be cited as The Penn Township Small Wireless Facilities and Use of Public Street Right-of-Way Ordinance.

§21-502. Legislative Intent.

The Board of Supervisors enacts this Part to govern use of public street rights-of-way and municipal poles in accordance with and as limited by Act 50 of 2021, The Small Wireless Facilities Deployment Act. The Board of Supervisors recognizes the limitations of the Act on its powers and desires to regulate the public street rights-of-way and municipal poles to the maximum extent allowed by such Act. The Board of Supervisors further desires to limit, to the extent legally permissible, conflicts with other uses of the public street rights-of-way.

§21-503. Word Usage and Definitions.

- A. Word usage. In interpreting this Part, the singular shall include the plural, and the masculine shall include the feminine and the neuter.
- B. Definitions. All words and phrases not otherwise defined herein shall have the meanings set forth in Section 2 of the Act.

ACT – The Small Wireless Facilities Deployment Act, the Act of June 30, 2021, P. L. _____, No. 50, 53 P.S. §11704.1 et seq., and as may be amended in the future.

ADA – The federal Americans with Disabilities Act, as amended, and all regulations adopted to implement such statute.

BOARD OF SUPERVISORS – The governing body of the Township.

CODE ENFORCEMENT OFFICER – The person designated by the Board of Supervisors to administer this Part.

FCC – The Federal Communications Commission or any agency successor thereto.

ONE CALL – The Pennsylvania One Call Act, the Act of December 10, 1974, P. L. 852, as amended, 73 P.S. §176 et seq., and all regulations adopted to implement such statute.

TOWNSHIP – The Township of Penn, Lancaster County, Pennsylvania.

UCC – The Pennsylvania Uniform Construction Code, as adopted and administered by this Township.

§21-504. Permit Application Requirements.

All persons who desire to install a small wireless facility within a right-of-way, whether by co-location or by the installation of a new utility pole, shall file an application in writing for a permit with the Code Enforcement Officer. In order to be considered a complete application, such application must include all of the following:

- A. A written application form identifying in detail the name of the applicant and contact information for the applicant and the name and contact information of the person who prepared the application and whether applicant proposes erection of a new utility pole or co-location on an existing utility pole.
- B. Precise location of all portions of the proposed small wireless facility, including pole mounted and ground mounted small wireless facility components.
- C. Identity of the owner of the utility pole if the Applicant proposes co-location on an existing utility pole.
- D. A report by a qualified engineering expert which shows that the small wireless facility will comply with all applicable FCC regulations. The report must identify the person who prepared the report and his or her qualifications.
- E. Construction drawings and supplemental information demonstrating compliance with Section 3 of the Act, the UCC (including as applicable a complete UCC permit application) and this Part.
- F. Plan showing the proposed small wireless facility installation sealed by a professional engineer which shall contain a certification that after installation of the facility any

sidewalk, curb, or curb cuts which may be impacted will comply with the ADA after installation of the small wireless facility. The plan shall meet all of the following requirements and include all of the following information:

1. Existing right-of-way width, sidewalk, curbing, and cartway with sufficient information to demonstrate that the small wireless facility will be located completely within the existing public street right-of-way and will not interfere with the safe operation of traffic control equipment, sight lines, or clear zones for vehicles or pedestrians.
 2. Location of all storm water management facilities within the public street right-of-way including swales, inlets, rain gardens, and pipes, with sufficient information to demonstrate that the small wireless facility will be located and installed in a manner that will not interfere with existing storm water management facilities.
 3. Location of all utility facilities within the public street right-of-way including but not limited to public water and sewer facilities, including all hydrants and manholes with sufficient information to demonstrate that the small wireless facility will be located and installed in a manner that will not interfere with existing utility facilities.
 4. Location of any driveway, mailbox, or utility serving the abutting property.
- G. Where the application proposes co-location on an existing utility pole which is not a municipal pole, written permission from the owner of the existing utility pole.
- H. Where the application proposes installation of a new utility pole, a self-certification that the applicant has determined in good faith that it cannot meet its service reliability and functional objectives of the application by co-locating on an existing utility pole or municipal pole. This self-certification shall include documentation of the basis of the determination which shall identify all existing utility poles and municipal poles in the vicinity and why they are not suitable.
- I. Where a new pole or excavation for any reason is proposed, an application for a street opening permit meeting all requirements of the Second Class Township Code with street opening permit fee and evidence of compliance with One Call.
- J. The fee established by this Part.

§21-505. Time and Manner of Submission of Applications.

All applications shall be submitted to the Township office on a day that the Township office is open to the public and during hours that the office is open to the public. Applications received within one hour of close of business shall be considered filed on the next day that the Township office is open for business.

§21-506. Consideration of Application and Issuance of Permit.

The Code Enforcement Officer shall review the application for completion within the time periods

required by the Act and, if incomplete, shall notify the applicant in accordance with the Act. The Code Enforcement Officer shall review and act upon the application in accordance with the Act.

- A. If the application meets all requirements of the Act and this Part, the Code Enforcement Officer shall issue a permit to authorize installation of the small wireless facility and an invoice for the right-of-way fee for the small wireless facility.
- B. The proposed collocation, the modification or replacement of a utility pole or the installation of a new utility pole with small wireless facilities attached for which a permit is granted under this Part shall be completed within one year of the permit issuance date.
- C. Subject to the permit requirements and the wireless provider's right to terminate at any time, the permit shall grant the wireless provider authorization to operate and maintain small wireless facilities and any associated equipment on the utility pole covered by the permit for a period of five years, which shall be renewed for two additional five-year periods if the permit holder is in compliance with the criteria set forth in this Part and the Act and the permit holder has obtained all necessary consent from the utility pole owner.

§21-507. Design Standards for Small Wireless Communications Facilities.

All small wireless facilities to be installed and maintained within the right-of-way shall meet all of the following requirements:

- A. The small wireless facility and all associated equipment shall meet the size limits and height limits of the Act.
- B. The small wireless facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the right-of-way. This shall include, but not be limited to, any interference with compliance with the ADA.
- C. A new pole shall not be located within 10 feet of an existing driveway or street intersection. A new pole shall not be located within any storm water management facility including, but not limited to, any swale or rain garden. A new pole shall not be located within 18 inches of the face of the curb.
- D. All equipment of the small wireless facility which is mounted on a pole shall have a clearance of not less than 18 feet if located over a cartway and not less than 10 feet if not located over a cartway.
- E. Ground-mounted accessory equipment, walls, or landscaping shall not be located within any storm water management facility including, but not limited to, any swale or rain garden or within 18 inches of the face of the curb.
- F. A new pole or ground mounted accessory equipment, walls or landscaping shall not be located an easement extending onto the lot adjoining the right-of-way without the written permission of the easement holder.

- G. Ground-mounted accessory equipment that cannot be placed underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features. Any required electrical meter cabinets shall be screened to blend in with the surrounding area. Ground-mounted accessory equipment shall not interfere with access to any driveway or mailbox.
- H. All underground facilities shall be designed and installed in a manner which will not require the removal or relocation of any storm water management facility or underground utility.

§21-508. Maintenance of Small Wireless Facilities.

The wireless provider shall maintain the small wireless facility in a manner that meets or exceeds all of the design standards of this Part and all standards of the UCC. If the small wireless facility is the only facility on a pole, the wireless provider shall maintain the pole in accordance with this Part and all applicable requirements. The wireless provider shall remove any graffiti on the small wireless facility, including but not limited to ground-mount accessory equipment, within 30 days after notice from the Township to do so.

§21-509. Damage to Existing Facilities and Indemnification.

- A. A wireless provider shall repair all damage to the right-of-way or any other land so disturbed, directly caused by the activities of the wireless provider or the wireless provider's contractors, including installation of the small wireless facility or the failure to properly maintain the small wireless facility, and return the right-of-way in as good of condition as it existed prior to any work being done in the right-of-way by the wireless provider or damage resulting from the failure to maintain the small wireless facility. If the wireless provider fails to make the repairs required by the Township within 30 days after written notice, the Township may perform those repairs and charge the wireless provider the reasonable, documented cost of the repairs plus a penalty of \$500. The wireless provider who has failed to make the required repairs shall not be eligible to receive a new permit from the Township until the wireless provider has paid the amount assessed for the repair costs and the assessed penalty or deposited the amount assessed for the repair costs and the assessed penalty in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.
- B. A wireless provider shall fully indemnify and hold the Township and its officers, employees and agents harmless against any claims, lawsuits, judgments, costs, liens, expenses or fees or any other damages caused by the act, error or omission of the wireless provider or its officers, agents, employees, directors, contractors or subcontractors while installing, repairing or maintaining small wireless facilities or utility poles within the right-of-way.

§21-510. Annual Right-of-Way Fee.

In accordance with Section 3(c) of the Act, the Township hereby imposes an annual fee for the use of right-of-way in the amount of \$270 per small wireless facility or \$270 per new utility pole with a small wireless facility. The annual fee shall become effective beginning on January 1, 2022 and shall be imposed for each calendar year or portion thereof during which a small wireless facility is located in a right-of-way. The owner of each small wireless facility installed within the Township shall be responsible to pay such right-of-way fee whether or not such provider receives an invoice from the Township. The fee will be due by January 31 of the calendar year for the calendar year to which the fee relates.

- A. The failure to pay the annual right-of-way fee shall be a violation of this Part and shall be subject to the penalties and remedies in this Part.
- B. If the annual right-of-way fee is not paid in full by January 31 of the calendar year, a penalty of ten (10%) percent of the annual fee shall be added. If the annual fee plus penalty is not paid in full by March 31 of the calendar year, interest at the rate of one (1%) percent per month shall continue until the annual right-of-way fee, penalty, and interest are paid in full.
- C. The annual fee shall be adjusted upward by resolution of the Board of Supervisors if authorized by Section 7(c) of the Act.
- D. The owner of each small wireless facility installed within a right-of-way on the effective date of this Part shall provide the Township with a report identifying each existing small wireless facility identifying the location of such small wireless facility, the dimensions of such small wireless facility, and the date of installation of the small wireless facility. This report shall include the name and contact information for the owner of the small wireless facilities, including the address to send invoices for the annual right-of-way fee and any notices under this Part.
- E. The owner of each small wireless facility shall provide the Township with up-to-date contact information. If ownership of a small wireless facility changes, the new owner of the small wireless facility shall provide notice and new contact information to the Township within 30 days.

§21-511. Application Fees.

An applicant for a permit to install a small wireless facility shall include the following fees with its application:

- A. For an application seeking approval for between one and five co-located small wireless facilities: \$500.
- B. For an application seeking approval of more than five co-located small wireless facilities: \$500 plus \$100 for each co-located small wireless facility beyond five.
- C. For an application seeking approval of a small wireless facility that requires the installation

of a new or replacement utility pole: \$1,000.

- D. The fees established by this Section shall be adjusted upward by resolution of the Board of Supervisors if authorized by Section 7(c) of the Act.

§21-512. Removal of Small Wireless Facilities from Right-of-Way.

- A. Within 60 days of suspension or revocation of a permit due to noncompliance with this Part or the Act, the permit holder shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the permit holder's wireless facilities and associated equipment are the only facilities on the utility pole, after receiving adequate notice and an opportunity to cure any noncompliance.
- B. Within 90 days of the end of a permit term or an extension of the permit term, the permit holder shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the permit holder's wireless facilities and associated equipment are the only facilities on the utility pole.
- C. A wireless provider which elects to discontinue the use of a small wireless facility shall notify the Township in writing not less than 45 days prior to the discontinuance of use of the small wireless facility, which notice shall specify when and how the wireless provider will remove the small wireless facility and, if applicable, the pole. The wireless provider shall complete the removal within 45 days of the discontinuance of the use of the small wireless facility. A permit issued under this Part for a small wireless facility which is voluntarily removed shall expire upon the removal of the small wireless facility.

§21-513. Violations and Penalties.

- A. Violations. It shall be a violation of this Part to do or permit the following:
 - 1. To install a small wireless facility prior to obtaining the permit required by this Part.
 - 2. To install a small wireless facility in a manner other than that authorized by the permit.
 - 3. To place any false or misleading information on an application including, but not limited to, incorrectly identifying the right-of-way width, the identity of the owner of a utility pole, the precise location of the utility pole, or the size and location of any proposed or existing equipment.
 - 4. To fail to make any payment required by this Part or to make a payment by a means which is later dishonored.
 - 5. To violate any other provision of this Part.
- B. Penalties. Any person who violates or permits the violation of any provision of this Part

shall be liable upon summary conviction therefor to fines and penalties of not less than \$100.00 nor more than \$1,000.00 plus all costs of prosecution, including attorneys' fees, which costs, fines, and penalties may be collected as provided by law. Each day that a violation continues and each Section of this Part which is violated constitutes a separate violation.

Part 6

Street Excavations

§21-601. Legislative authority; purpose; definitions.

- A. The Township is empowered to regulate these activities by the authority of Section 2322 of the Second Class Township Code.
- B. It is in the public interest to regulate the location and construction of utility facilities, other structures, and excavations and openings within the Township street right-of-way for the purpose of ensuring the structural integrity of the street, economy of maintenance, preservation of proper drainage and safe and convenient passage of traffic.
- C. The following words and phrases, when used in this Part, shall have the meanings ascribed to them in this section:

ACKNOWLEDGEMENT OF COMPLETION – The date on which the Township records that permitted work appears to be completed under the permit and this Part.

APPLICANT – Any person who makes application for a permit. For the purposes of this Part, any public utility company or municipal authority required to obtain a permit shall be considered the applicant. An application shall not be submitted in the name of contractors of the public utility company or municipal authority.

BACKFILL – Material used to replace or the act of replacing material removed during construction.

BOARD OF SUPERVISORS – The Board of Supervisors of Penn Township.

CALENDAR YEAR – January 1 through December 31, inclusive.

CLEAR ZONE – The portion of right-of-way beyond the pavement edge within which, under PennDOT Design Manual, Part 5, no new obstructions may be located.

CONCRETE – Soil cement, plain cement concrete or reinforced cement concrete.

COST – Actual expenditures incurred by the Township for labor, equipment and materials, including, without limitation, all fringe benefits and overhead.

EMERGENCY – An unforeseen circumstance which calls for immediate action to protect or safeguard life or property or for the restoration or continuance of a public utility or other public service. The term includes, but is not limited to, damage resulting from a vehicle

accident or collision with a facility, a failed component or storm damage. The term does not include service connections or disconnections unrelated to a vehicle accident, a failed component or storm damage.

EXCAVATION – Any activity within the right-of-way of any street which involves cutting, breaking, crossing (either laterally or longitudinally), drilling, grading, digging, or disturbing the earth or other material making up the surface or subsurface of any street. In this Part, the term "opening" shall have the same meaning as excavation.

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 other appurtenances.

MUNICIPAL AUTHORITY – Any municipal authority created, in whole or in part, by the Board of Supervisors under the Municipality Authorities Act (53 Pa. C.S. §5601 et seq.) to administer a revenue-producing public enterprise.

PAVEMENT – The combination of subbase, base course and surface course placed on a subgrade to support the traffic load or distribute it to the roadbed, or both. The term normally includes the traveled portion of the street and extends to the face of the curb in a curbed section. The term does not include shoulders.

PENNDOT – The Pennsylvania Department of Transportation or any agency successor thereto.

PERMITTEE – Any applicant who has been issued a permit and who shall have, by acceptance thereof, agreed to fulfill all provisions of this Part.

PERSON – Any natural person, partnership, firm, association, corporation, municipal authority or similar entity.

POLICE DEPARTMENT – The Northern Lancaster County Regional Police Department or any successor municipal or multimunicipal police department having jurisdiction within the corporate boundaries of the Township.

PUBLICATION 213 – PennDOT Publication 213, Temporary Traffic Control Guidelines.

PUBLICATION 408 – PennDOT Publication 408, Specifications.

PUBLIC UTILITY – Any utility company, excluding municipal authorities, licensed by the Public Utility Commission of the Commonwealth of Pennsylvania.

SECOND CLASS TOWNSHIP CODE – The Act of May 1, 1933 P.L. 103, No. 69, as reenacted and amended by the Act of November 9, 1995, P.L. 350, No. 60, as amended.

SELECT GRANULAR MATERIAL or 2 RC – A material meeting specifications in Section 703.3 of Publication 408, when placed and compacted under §21-604.F.

SIDEWALK AREA – That portion of the street right-of-way reserved for sidewalks.

STREET – A public street, public easement, right-of-way, public highway, public alley, public way or public road accepted or maintained by the Township, or open for travel and use by the public whether or not so accepted or maintained, including the entire area within the right-of-way thereof.

SUITABLE MATERIAL – Soil, granular material or shale meeting specifications in Section 206.2 of Publication 408, when placed and compacted under §21-604.F.

TOWNSHIP – The Township of Penn, Lancaster County, Pennsylvania, or any individual authorized by the Board of Supervisors to act on behalf of the Township.

D. The language set forth in the text of this Part shall be interpreted in accordance with the following rules of construction:

- (1) Words used or defined in one tense or form shall include other tenses or derivate forms.
- (2) Words in the singular number shall include the plural number, and words in the plural number shall include the singular number.
- (3) The masculine gender shall include the feminine and neuter. The feminine gender shall include the masculine and neuter. The neuter gender shall include the masculine and feminine.
- (4) The words "shall," "must" and "will" are mandatory in nature and establish an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive.
- (5) The time within which any act required by this Part is to be performed shall be computed by excluding the first day and including the last day. However, if the last day is a Saturday or Sunday or a holiday declared by the United States Congress or the Pennsylvania General Assembly, it shall also be excluded. The word "day" shall mean a calendar day, unless otherwise indicated.
- (6) References to officially adopted regulations, standards, or publications of other governmental agencies shall include the regulation, publication, or standard in effect on the date when a permit application is first filed. It is the intent of the Township in enacting this section to incorporate such changes to statutes, regulations, and publications to the extent authorized by 1 Pa. C.S. §1937.

§21-602. Permit application procedure.

A. When required.

- (1) It shall be unlawful for any person to make any tunnel, opening, or excavation of any kind in or under the surface of any street without first obtaining a permit from the Township for each separate undertaking, except as provided in Subsection A(3), (4) and (5) below.

- (2) Any person working in the vicinity of a street who in any manner disturbs such street or who in any manner causes damage to a street shall be required by this Part to obtain a permit and to correct such damage in accordance with the standards of the Township.
- (3) Any person maintaining pipes, lines or other underground facilities in or under the surface of any street may proceed with an excavation without first obtaining a permit when emergency circumstances demand the work to be done completely, provided the permit could not be reasonably and practically have been obtained beforehand. The person shall thereafter apply for a permit within five days after completion of the work. In all cases where emergency excavations are necessary, the Police Department shall be notified prior to such excavation.
- (4) A permit application is not required for modifying parts of existing permitted facilities if no surface excavation is required, such as cable within an existing conduit, cross arms or transformers on poles, or accessing an existing utility facility through a manhole.
- (5) The obtaining of street excavation permits by Township departments shall not be required when work is to be performed by Township personnel.

B. Required application information. A permit application:

- (1) Shall be submitted in person or by mail on a properly completed form prescribed by the Township.
- (2) Shall be signed by the applicant.
- (3) Shall include at least four sets of plans detailing the location and pertinent horizontal and vertical dimensions of the excavation, the proposed utility installation and related street features, including specific street location, center line, edges of pavement, outside edges of shoulders, curbing, guide rail, street drainage structures and right-of-way lines.
- (4) Shall be accompanied by the fees, payable to the Township, as follows:
 - (a) Permit application fee. Application fees are charged to defray cost incurred by the Township in reviewing and processing the application and plans, including the preliminary review of the site location identified in the application, whether or not a permit is issued and processed. The application fee shall be in accordance with PennDOT regulations as required by Section 2322 of the Second Class Township Code.
 - (b) Inspection fee. General inspection fees are charged to defray costs incurred by the Township in spot inspections of permitted work or subsequent inspections after the permitted work has been completed and to monitor compliance with the permit. The inspection fee shall be calculated in accordance with Penn DOT regulations as required by Section 2322 of the Second Class Township Code. The area computed for the inspection fee and

the inspection fee shall be based on the actual size of the excavation, including any pavement that must be removed to enable an overlap of surface course on the existing base course.

(c) Degradation fee. Degradation fees are charged to defray a percentage of the costs for resurfacing and/or reconstruction of Township streets resulting from the depreciation of streets associated with street excavations. The degradation fee shall be set by resolution by the Board of Supervisors.

(5) Shall be submitted to the Township at least 30 days prior to the anticipated start of work. If the permitted work will be performed for the permittee by a contractor, the application shall, if possible, be submitted to the Township at least 60 days prior to soliciting bids for the permitted work so the permittee may notify bidders of permit requirements.

(6) Shall identify consulting engineers performing work related to the application.

C. Plans for occupancy of the pavement or shoulder. In addition to Subsection B, a permit application for occupancy of the pavement or shoulder shall include detailed plans which comply with the following:

(1) Plans depicting excavation of more than 500 linear feet of pavement or shoulder, or both, shall have a horizontal scale of one inch equal to no more than 50 feet. Plans depicting other occupancy of the pavement or shoulder shall specify dimensions from the near edge of the pavement.

(2) Plans depicting excavation of more than 100 linear feet of pavement or shoulder shall identify utility facilities and other structures within the right-of-way that will be affected by the proposed excavation and shall include typical cross sections at each significant change in street cross-section features.

(3) Plans depicting installation of a facility longitudinally within more than 100 feet of pavement or shoulder, or both, shall verify there is no feasible space outside the pavement or shoulder available for placing the facility.

(4) A traffic control plan shall be submitted if it is necessary to close a portion of a travel lane or the entire street. Traffic control plans shall consist of one of the following:

(a) A reference to specific figures in Publication 213 if the referenced figures properly depict actual site conditions and address the necessary traffic control.

(b) Copies of figures from Publication 213 which have been modified to depict actual site conditions and the necessary traffic control for the specific project.

(c) Copies of a detailed drawing showing actual site conditions and the necessary traffic control requirements for the specific project.

D. Permit limitations.

- (1) No permittee shall permit any of the work authorized by such permit in any amount greater than that specified in the permit, except as provided in Subsection D(2) below.
- (2) Where the permittee desires to perform additional work not in excess of an amount greater than 10% of the amount specified in the permit, the permittee may apply to the Township for an amended permit for the additional work. If the additional work desired to be performed exceeds 10% of the amount specified in the original permit, an application for a new permit shall be made. Any deposit or bond posted in connection with the original permit shall be deemed to cover any such additional work as may be added pursuant to the issuance of an amended permit within the limit specified herein.

E. Commencement of work.

- (1) Work for which a permit has been issued shall commence within 30 days after the issuance of the permit.
- (2) If work has not commenced within 30 days after issuance of the permit, the permit shall be terminated automatically, unless the permittee applies for an extension of time within which to commence work. If such an extension is granted, the original permit shall remain in force for the period of time specified in the extension.
- (3) Permits which terminate by reason of failure to commence work within 30 days after issuance or within any time extension granted under Subsection E(2) may be renewed only upon the payment of an additional permit fee as originally required.
- (4) Permits shall be issued for a period not to exceed one year.
- (5) Any application to renew an expired permit shall be treated as a new application, including the payment of a new permit fee.

F. Permits not transferable.

- (1) Permits are not transferable from one person to another.
- (2) The work shall not be performed in any place other than the location specifically designated in the permit.

G. Expiration of permits.

- (1) Every permit shall expire at the end of the period of time which shall be set out in the permit.
- (2) If the permittee shall be unable to complete the work within the specified time, the permittee shall, prior to expiration of the permit, present, in writing, to the Township a request for an extension of time setting forth the reasons for the

requested extension. If the Township finds that the failure to complete the work under the permit within the time specified therein was due to circumstances reasonably beyond the control of the permittee and that an extension of time to complete the work under the permit is necessary and not contrary to the public interest, the permittee may be granted additional time for completion of the work.

H. Rights of Township. Every permit shall be granted subject to the right of the Township or of any other person entitled thereto to use the street for any purpose for which such street may lawfully be used not inconsistent with the permit.

I. Revocation of permits.

- (1) Any permit may be revoked by the Township, after notice to the permittee, for:
 - (a) Violation of any condition of the permit or of any provision of this Part.
 - (b) Violation of any other applicable provision of any other applicable ordinances or any law relating to the work.
 - (c) Existence of any condition or the doing of any act constituting or creating a nuisance or endangering the life or property of others.
- (2) A permittee shall be granted a period of three days from the date of the notice to correct the violation and to proceed with the diligent prosecution of the work authorized by the permit before the permit is revoked.
- (3) Written notice of any such violation or condition shall be served upon the permittee or his agent engaged in the work. The notice shall contain a brief statement of the reasons for revoking the permit. Notice may be given either by personal delivery to the person to be notified or by certified or registered United States mail addressed to the person to be notified.
- (4) When any permit has been revoked and the work authorized by the permit has not been completed, the Township shall do or cause to be done such work as may be necessary to restore the street or part thereof to as good a condition as before the excavation was made. All expenses incurred by the Township shall be recovered from the deposit or bond the permittee has made or filed with the Township.

§21-603. Permit issuance and conditions.

A. Permit issuance.

- (1) Upon approval of an application submitted under this Part, a permit will be issued by the Township, subject to this Part and the conditions contained in the permit and its attachments and supplements. The permit shall be the applicant's authority to proceed with the work specified in the permit.
- (2) A copy of the permit and relevant plans shall be available at the work site for review.

- (3) An applicant shall agree to save the Township, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under said period. The acceptance of a permit shall constitute such an agreement by the applicant, whether the same is expressed or not.
 - (4) A permit will only be issued to the applicant as defined in §21-601.C.
- B. Financial security. If the permittee will be authorized to perform a substantial amount of work within the right-of-way, the Township may, at its discretion, 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 acceptable to the Township Solicitor and shall guarantee restoration and maintenance of the street for a period of at least two years after the acknowledged completion of the permitted work.
- C. General conditions. The following conditions apply to permits issued under this Part:
- (1) Scope of permit. The permit is binding upon the permittee, its agents, contractors, successors and assigns.
 - (a) The permittee is responsible for causing compliance with the terms and conditions of the permit by its employees, agents and contractors.
 - (b) The permit shall be located at the work site and be available for inspection by representatives of the Township or the Police Department.
 - (c) The permit shall be maintained by the permittee as a permanent record and remain in effect, subject to the permit conditions and this Part, as long as the permittee's facilities authorized by the permit occupy the right-of-way.
 - (d) Responsibility for compliance with the terms of the permit may not be assigned or transferred by the permittee without first obtaining approval from the Township in writing. If a permit is assigned or transferred without first obtaining approval from the Township, the assignment or transfer is void. A facility installed under the authority of the permit shall be subject to removal at the expense of the applicant to which the permit was issued or its assignees, or both.
 - (e) The permittee is liable to the Township for failure to comply with the permit and this Part. The liability of the permittee to the Township does not preclude the permittee or the Township from bringing an action against the permittee's contractor, subcontractor, engineer, architect, assignee, agent, workers, employees or other persons.
 - (2) Additional restrictions. Work authorized by the permit is subject to:
 - (a) Applicable laws, rules and regulations, including but not limited to:
 - [1] The Act of December 10, 1974 (P.L. 852, No. 287), concerning

protection of the public health and safety by preventing excavation or demolition work from damaging underground utilities.

- [2] The Clean Streams Law (Act of June 22, 1937, P.L. 1987, No. 394).
 - [3] OSHA construction safety and health regulations at 29 CFR 1926.1 - 1926.1051.
 - [4] Title VI, Civil Rights Act of 1964 (23 U.S.C. §§140 and 315) and implementing regulations.
 - [5] *The Federal Highway Program Manual - Volume 6, Chapter 6, Section 3.*
 - [6] 66 Pa. C.S. §§2701 - 2706 (relating to railroads), in instances where the Pennsylvania Public Utility Commission has taken jurisdiction of a public rail-street crossing.
- (b) The rights of any person.
 - (c) The conditions, restrictions and provisions of the permit.
- (3) Work to conform to Township standards. Work shall conform to Township standards pursuant to §21-604 and §21-605.
 - (4) Permittee responsibilities. Permittee responsibilities include the following:
 - (a) The permittee shall pay the costs and expenses incident to or arising from the project, including the prescribed fees for the project, the cost of making and maintaining temporary restoration of the disturbed areas and making permanent restoration. The permittee shall reimburse the Township for inspection costs which the Township deems necessary to incur within 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 this Part, the Township may immediately revoke and annul the permit and order and direct the permittee to remove structures, equipment or property belonging to the permittee or its contractors, or both, from the legal limits of the right-of-way and to restore the right-of-way to its former condition.
 - (c) At the end of a workday, an excavation in the right-of-way shall be covered, backfilled or protected under §21-604.F. If work is stopped on a project, other than at the end of a normal workday, the permittee shall promptly backfill the excavation and restore the surface, and work may not be resumed until the permittee is prepared to proceed with the work to its completion. If the permittee fails to backfill the excavation or proceed until completion of the work, the Township reserves the right to do the work upon notice to the permittee, where practicable, and shall be reimbursed for the

costs by the permittee within 30 days after receipt of the Township's invoice.

- (d) If the permittee, after making an excavation in the surface to place or repair a facility or for another purpose, fails to restore a portion of the right-of-way to conform with this section and §21-604 and §21-605, the Township reserves the right to do the work upon notice to the permittee, if practicable, and the permittee shall reimburse the Township for the costs within 30 days after receipt of the Township's invoice.
- (e) If backfill or restoration work will be performed for the permittee by a contractor, the permittee shall identify to the Township both its contractor and its inspector-in-charge who shall be assigned to monitor backfill and restoration work performed within the improved area. The permittee's inspector-in-charge, as well as the permittee, is responsible for ensuring work is performed in compliance with the permit and this Part.
- (f) The permittee shall notify the Township Engineer or his designee at least three full workdays prior to the start of work when the permit identifies that the permitted work will be inspected on a more than spot inspection basis.

(5) Altering drainage prohibited.

(a) Unless specifically authorized by the permit, the permittee may 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 permit does not authorize the permittee to direct, divert, or otherwise drain surface waters over the property of another property owner.

- [1] The permit does not relieve the permittee from acquiring the consent, permission or other authorization from a property owner who may be adversely affected by drainage alterations.
- [2] The permittee is responsible for damage caused to property owners as a result of work done under the permit.

(c) A permit will not be issued to authorize the discharge of water into the right-of-way unless the water is surface drainage.

(6) Equipment damaging street. A street shall be protected in accordance with the following:

(a) To protect the pavement and shoulders, equipment shall have rubber wheels or runners and have rubber, wood or similar protective pads between the

outriggers and the surface, unless otherwise authorized by the permit.

- (b) If other than rubber-equipped machinery or equipment is used, the pavement and shoulders shall be protected from equipment damage by the use of matting or other suitable protective material, unless the permittee requests, in writing, a waiver from the use of protective material, thereby acknowledging its obligation and commitment to repair or reconstruct the pavement and shoulder, if damaged, to its former condition.
 - (c) If the equipment damages the pavement or shoulders, the permittee shall restore the damaged pavement or shoulder, or both, to its former condition, in a manner directed by the Township.
- (7) Work zone traffic control. Maintenance and protection of traffic shall be carried out by the permittee under 75 Pa. C.S. §6123 (relating to erection of traffic control devices while working), the approved traffic control plan and the applicable provisions of Publication 213.
- (8) Sharing facilities. Sharing facilities is encouraged and may be authorized under one permit in accordance with the following:
 - (a) Aboveground. Notwithstanding §21-603.C(1)(d), the permittee may authorize others to share and use facilities already authorized under a permit if attachments by others to its facilities are in compliance with this Part and the permit.
 - (b) Subsurface. The application shall identify a facility that will be sharing a trench or structure with the facilities of the applicant.
- (9) Indemnification. Indemnification of the Township for property and personal injury will be governed as follows:
 - (a) The permittee shall fully indemnify and save harmless and, if requested, defend the Township, its officers, agents and employees, of and from liability for damages or injury to persons or property in a claim or suit seeking to impose liability on the Township, its officers, agents or employees, arising out of an act or omission of a contractor, agent, servant, employee or person engaged or employed in, about or upon the work by, at the instance of or with the approval or consent of the permittee, including a failure of the permittee or a person to comply with the permit or this Part.
 - (b) The permittee shall have the Township added as an additional insured to its or its contractor's insurance policy to secure the permittee's indemnification of the Township for property damage and personal injury under this subsection. The coverage of the Township as an additional insured shall be limited to acts or omissions of the permittee or its contractor, as described in Subsection C(9)(a). The amount of insurance shall be at least \$250,000 per person and at least \$1,000,000 per occurrence, or other statutory limitations on damages as the General Assembly may establish. The policy

shall be of a duration satisfactory to the Township.

- (c) Upon request, the permittee shall deliver to the Township certificates of insurance evidencing that the coverage required under Subsection C(9)(b) has been obtained. The Township may accept a formalized plan of self-insurance as a substitute for the insurance described in this subsection.
- (10) Insurance. The permittee shall obtain, prior to the start of work, a policy of insurance, issued by an insurer having a certificate of authority and a licensed agent authorized to transact the business in insurance in this Commonwealth, in accordance with the following conditions:
- (a) The permittee or its contractor shall obtain insurance for public liability and property damage, in form, amount and duration satisfactory to the Township, to cover a loss that may be incurred for construction, reconstruction, repair, relocation or installation of the permitted structure or facilities.
 - (b) If blasting is authorized by the permit, the insurance coverage shall include property damage and personal injury occasioned by blasting. In addition, the insurance policy shall provide coverage for damage to the streets, street structures and appurtenances or other Township property and shall be in an amount satisfactory to the Township.
 - (c) Upon request, the permittee shall deliver to the Township certificates of insurance evidencing that the insurance coverage required under Subsection C(10)(a) and (b) has been obtained. The Township may accept a formalized plan of self-insurance as a substitute for the insurance described in this subsection.
 - (d) The permittee's obligations to indemnify the Township and obtain insurance to secure indemnification under Subsection C(9) and its obligations to restore the street and obtain a bond relating to restoration under Subsection C(14) are separate obligations from obtaining insurance for the purposes required by this subsection. Obtaining insurance under this subsection does not relieve the permittee of its obligations under Subsection C(9) and (14).
- (11) Blasting. Blasting requirements include the following:
- (a) No predrilling or blasting may be performed within the right-of-way unless authorized by the permit and until the permittee provides insurance for property damage and public liability under Subsection C(10).
 - (b) The blaster's license number shall be furnished upon request.
 - (c) No blasting will be performed within 50 feet of the nearest part of a bridge, box or culvert.
 - (d) The permittee's obligation for restoration of the street under Subsection

C(14) shall include failure of the street occasioned by blasting.

- (12) Maintaining structure or facility. As long as the permittee operates and leaves in place the structure or facilities in, upon or along the right-of-way, the permittee shall maintain and keep them in good order and repair.
- (13) Damaged structure or facility to be repaired. If a structure or facility becomes damaged, the permittee shall promptly have it removed, repaired or otherwise made safe. The permittee is responsible for repair or restoration of the portion of the street damaged by a structure or facility. The permittee's obligation to repair or restore the street necessitated by a damaged structure or facility under this subsection is separate from the obligations to restore the street and obtain a bond relating to restoration and maintenance of the street under §21-603.B. Compliance with Subsection C(14) does not relieve the permittee of its obligations under this subsection.
- (14) Damage to street. Responsibility of the permittee for restoration of the street includes the following:
 - (a) If there is a failure of a street, including a slope or other appurtenance thereto, in the area of the permitted work within two years after the acknowledged completion of the permitted work and there is no similar failure of the street beyond the area of the permitted work, the permittee has absolute responsibility to make temporary and permanent restoration of this area unless the permittee delivers clear and convincing evidence to the Township demonstrating that the street failure was caused by another person.
 - (b) In situations where the permittee has the responsibility to restore the street, including slope or another appurtenance thereto, under Subsection C(14)(a), the permittee has the duty to restore the improved area in accordance with the permit. If the permittee fails to restore the improved work properly, the Township has the authority to do the work at the expense of the permittee. The permittee shall reimburse the Township for the costs within 30 days after receipt of the Township's invoice.
 - (c) The obtaining of a bond, other security or an agreement described in §21-603.B to secure restoration costs does not relieve the permittee of the restoration obligations imposed by Subsection C(14)(a) and (b), nor does it relieve the permittee of its obligations under Subsection C(9) and (10). The obtaining of a bond, other security or an agreement will not act as a release of the permittee from liability under principles of tort law with respect to failure of the street in the permitted area occurring after the expiration of the bond, other security or agreement.
- (15) Future street changes. If, in the future, the street is altered for public convenience or necessity, the permittee shall, at its own cost and expense, change or relocate all or a part of the structures or facilities authorized by the permit which interfere with

the street alterations or which are inconsistent with the purpose of the street alterations.

- (16) Acknowledgement by inspector. Acknowledgement by the inspector of the Township that all or part of the permitted work has been completed does not constitute approval or acceptance of the work or agreement that the work was performed in accordance with the permit. Acknowledgement of completion by the inspector will not act as a release of the permittee of waiver by the Township of the right to seek performance or restitution from the permittee.
 - (17) Work hours. Work authorized by a permit shall be performed between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, unless the permittee obtained written consent from the Township to do the work at an earlier or later hour. Such permission shall be granted only in the case of an emergency or in the event the work authorized by the permit is to be performed in traffic-congested areas.
- D. Photo documentation. At least 15 days prior to excavating more than 500 linear feet of pavement or shoulder, or both, the permittee shall deliver photo documentation to the Township verifying the preconstruction condition of the pavement and shoulder surfaces in accordance with the following:
- (1) The pavement and shoulder that will be disturbed shall be photo-documented in their entirety in a format acceptable to the Township.
 - (2) If photo-documented pavement and shoulder surface conditions or locations are not discernible, complete or otherwise acceptable, the Township will either return the photo documentation to the permittee for resubmission or create its own photo documentation record and shall be reimbursed for the costs by the permittee within 30 days after receipt of the Township's invoice.
 - (3) The data of photo documentation shall be identified with each photograph or video.
 - (4) Photo documentation of longitudinal excavations less than 500 linear feet in pavements or shoulders is recommended to avoid responsibility for preexisting street conditions.
- E. Work completion notification. When permitted work has been completed, the permittee shall notify the Township in writing.
- F. The work authorized by the permit is subject to all applicable laws, rules and regulations. 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.
- G. In granting any permit, the Township may attach such other conditions as may be reasonably necessary to prevent damage to public or private property or to prevent the operation from being conducted in a manner hazardous to life or property. The conditions may include, but are not limited to, the following:
- (1) Limitations on the period of year in which the work may be performed;

- (2) Restrictions as to the size, weight, and type of equipment;
- (3) Designation of routes upon which materials may be transported;
- (4) Designation of the place and manner of disposal of excavated materials;
- (5) Requirements as to the laying of dust, the cleaning of streets, the prevention of noise, and other results offensive or injurious to the neighborhood, the general public, or any portion thereof; and
- (6) Regulations as to the use of streets in the course of work.

§21-604. Street excavation regulations.

A. Drilling, boring, driving or tunneling across improved area. Drilling, boring, driving or tunneling across improved areas shall comply with the following conditions:

- (1) When crossing under an improved area, the excavation for a utility facility shall be drilled, bored, driven or tunneled a minimum depth of three feet from the surface to the top of the excavation.
- (2) No excavations for the purpose of placing utility facilities or other structures under the improved area by drilling, boring, driving or tunneling may be made closer than three feet to the edge of the shoulder, unless the permit authorizes a lesser clearance.
- (3) A facility or other structure crossing under the improved area shall be constructed to assure the safety of the traveling public and to preclude the necessity of entering upon the improved area to affect future maintenance or replacement.

B. Trenching across the improved area.

- (1) The top of every utility facility shall be installed at least three feet beneath the surface.
- (2) Trenching across the improved area may be authorized by the permit where drilling, boring, and driving or tunneling are:
 - (a) Not feasible because:
 - [1] The subsurface is solid rock, as documented with satisfactory evidence such as drill records, or where boring was attempted without success.
 - [2] There are other facilities located longitudinally under the improved area and their location precludes methods other than trenching, as documented within a detailed plan.
 - [3] Adjacent development in a very congested urban area makes the construction of a tunneling or boring shaft impossible.

- (b) Not required because of one or more of the following:
 - [1] The street is unpaved.
 - [2] The Township's wearing course is older than 10 years.
- (3) When trenching is authorized by the permit, the trenching operation shall be performed by one of the following methods:
 - (a) Utility facility placed in one piece across street.
 - [1] Traffic shall be routed over 1/2 of 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 this section.
 - [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 this section.
 - (b) Utility facility placed in more than one piece across street.
 - [1] Traffic shall be routed over 1/2 of the pavement width.
 - [2] The closed half of the pavement shall be opened to the required depth and the facility placed and the trench backfilled and restored in accordance with this section.
 - [3] Traffic shall be shifted to the restored half of the pavement.
 - [4] The remaining half of the pavement shall be opened to the required depth, the facility placed and the trench backfilled and restored in accordance with the provisions of this section.
- (4) No more than 250 feet, measured longitudinally, shall be opened or excavated in any street at any one time, except by special permission of the Township. At the end of the workday, all trenches shall be either backfilled or plated.
- (5) Pipe drains, pipe culverts, or other facilities encountered shall be protected by the

permittee.

- (6) Monuments of concrete, iron, or other lasting material set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point or a permanent survey benchmark within the Township shall not be removed or disturbed or caused to be removed or disturbed unless permission to do so is first obtained, in writing, from the Township Engineer. Permission shall only be granted upon the condition that the permittee shall pay all expenses incident to the proper replacement of the monument.
- (7) All utility facilities shall be exposed sufficiently or definite location determined ahead of trench excavation work to avoid damage to those facilities and to permit their relocation, if necessary.
- (8) When any earth, gravel, or other excavated material is caused to flow, roll, or wash upon any street, the permittee shall cause removal of same from the street within four hours after deposit to permit safe flow of traffic. In the event the earth, gravel, or other excavated material so deposited is not removed as specified, the Township shall cause such removal, and the cost incurred shall be paid by the permittee or deducted from his deposit.
- (9) Access to private driveways shall be coordinated with abutting property owners and shall be provided to said abutting property owners during working construction operations.
- (10) The permittee shall protect its excavations to provide for the safety of the traveling public, including motorists, bicyclists and pedestrians.
- (11) The permit may authorize the placement at depths less than three feet of traffic signal detectors or other street facilities which are not capable of operating more than three feet below the surface.

C. Excavations parallel to the street. Requirements for excavations parallel to the street are as follows:

- (1) A utility facility shall be placed outside the pavement and shoulder unless there is no feasible space outside the pavement and shoulder for placing the facility, in which case occupancy within the pavement or shoulder may be authorized by the permit.
- (2) The top of a utility facility shall be installed at least three feet beneath the surface.
- (3) No excavation may be made for more than 200 linear feet at one time, unless authorized by the permit.
- (4) The permittee shall protect its excavations to provide for the safety of traveling public, including motorists, bicyclists and pedestrians.

D. Daily stoppage of work requirements. At the end of each workday, an excavation in the

right-of-way shall be one of the following:

- (1) Covered with steel plates or bridging over excavations which are less than six feet in either length or width. The plates or bridging shall be extended a minimum of 18 inches from each edge of the excavation and shall be secured in a safe manner.
- (2) Backfilled under §21-604.F to the bottom elevation of the pavement or base course, or to the original surface elevation if outside the pavement and shoulder and protected under Publication 213 and an approved traffic control plan until the surface is restored to its former condition.
- (3) Protected under Publication 213 and an approved traffic control plan, if the permittee has delivered certificates of insurance under §21-603.C(10).

E. Direct burial operations. Direct burial of a utility by means of a plow-type mechanism which breaks the ground, places the utility line and closes the break in the ground in a single operation shall comply with the following:

- (1) No direct burial operations will be permitted within the right-of-way, unless authorized by a permit.
- (2) Direct burial operations will not be authorized in the pavement or paved shoulders.
- (3) Direct burial operations in unpaved shoulders are not allowed from December through March, inclusive, or at other times when there is frost in the top three feet beneath the surface.
- (4) No direct burial is authorized within three feet from the edge of pavement. A greater distance shall be attained wherever possible.
- (5) The excavation shall be a minimum depth of three feet. If this depth cannot be consistently maintained, the proper depth shall be achieved by trenching.
- (6) The utility facility shall be installed under any structures which are less than three feet deep. Disturbed structures shall be repaired or replaced by the permittee.
- (7) The disturbed area shall be restored in conjunction with the direct burial operation. Heaved surface shall be scarified to a depth of at least four inches, extending at least one foot on either side of the heaved area for the entire length of the heaved area. The disturbed area shall then be graded, backfilled where necessary, and compacted until the disturbed area is restored to a condition at least equal to that which existed before the direct burial operation. Disturbed shoulders shall also be restored under §21-604.H.

F. Backfilling and restoration. An excavation shall be backfilled by the permittee in accordance with the following:

- (1) Fine aggregate. The excavation may first be backfilled with fine aggregate material, meeting the requirements of Section 703.1 of Publication 408, or granular material

to protect the facility, placed to a height not to exceed one foot over the top of the facility, if the material is compacted in not more than four-inch loose layers or as authorized under Publication 408.

- (2) **Underground facility marking.** To help protect its facility from future excavations, the permittee shall place a permanent ribbon colored under §21-604.J at least one foot above its facility. If the facility is nonmetallic, the permittee shall place a metallic ribbon at a depth from which the ribbon can be sensed by typical metal-locating equipment.
- (3) **Backfill materials.** The excavation shall then be backfilled with select granular material, unless retained suitable material, as defined in §21-601.C, is authorized or other coarse aggregate material meeting the requirements of Section 703.2 of Publication 408 is specified in the permit. Select granular material or other aggregate material will be required for use as backfill of excavations in pavements, paved shoulders and improved shoulders as well as unimproved shoulders within three feet of the edge of the pavement. Retained suitable material will normally be authorized for use as backfill of excavations outside shoulders and in unimproved shoulders more than three feet outside the edge of the pavement and up to within three feet of the surface.
- (4) **Backfill compaction.** Backfill shall be compacted as follows:
 - (a) **General rule.** Except as provided in Subsection F(4)(b), backfill material shall be placed in loose layers not to exceed eight inches if vibratory compaction equipment is used or as authorized under Publication 408. Each layer shall be thoroughly compacted to preclude subsidence, under Section 601.3(e) of Publication 408.
 - (b) **Compaction outside pavement and shoulders.** At least 15 days prior to the start of work, the applicant may submit its written compaction plan to the Township requesting backfill in an excavation outside the pavement and shoulder to be placed in layers thicker than eight inches prior to compaction. The compaction plan shall include full details on equipment, materials and work methods as well as the permittee's acknowledgment of its obligation and commitment to regularly monitor the restored surface until two years after the acknowledged completion of the permitted work and to promptly correct failure of subsidence of the street. The Township may condition its approval of a compaction plan on the execution of a bond under §21-603.B if a part of the excavation is within the improved area.
 - (c) **Existing pavement elevation.** Compaction shall be completed to the bottom elevation of the existing pavement.
- (5) **Test holes** shall be backfilled, as soon as safely possible, with existing type material and other material authorized by the Township and sealed under §21-604.M. The Township may authorize test holes in the pavement or shoulder to be restored within a one-foot cutback of the surrounding surface.

- (6) The Township shall be notified by the permittee, during the 48 hour period preceding beginning of backfilling, of the date and approximate time at which backfilling will begin.
- G. Pavement restoration. Base and surface pavement restoration shall be performed under this subsection and as specified in the permit.
- (1) Prior to replacement of the base course, one foot outside of each edge of the excavation shall be sawed, in a neat, straight line, to the top elevation of the existing aggregate subbase or stone base course, and the detached material shall be removed. Other surface excavation methods such as cutting may be authorized if the methods result in the opened pavement having a neat, straight, vertical line.
 - (2) Exposed vertical and horizontal surfaces shall be prepared under Section 401.3(f) of Publication 408.
 - (3) The pavement specifications shall be in accordance with Chapter 22, Subdivision and Land Development. Each required pavement layer shall have a minimum depth as specified in Chapter 22, Subdivision and Land Development, or a depth equal to the existing pavement, whichever is greater.
 - (4) If the Township finds that paving surfaces adjacent to the street excavations may be damaged where trenches are made parallel to the street, or where a number of cross trenches are laid in proximity to one another, or where the equipment used may cause such damage, the Township shall, if the total linear length of the trench repair exceeds 100 linear feet or exceeds 25% of the length of the street, require a full-width overlay of the affected area. The Board of Supervisors may authorize a contribution from the permittee for the resurfacing of the entire roadway in lieu of patching or restoration. Such negotiations shall be carried on and contributions agreed upon prior to issuance of a permit.
- H. Shoulder restoration. Shoulder restoration shall be performed under this subsection and as specified in the permit.
- (1) Paved shoulders. Paved shoulder shall be reconstructed and restored to a serviceable condition, of the same type as existed before the start of work, under Section 651, 653, 654, 656, 657 or 658 of Publication 408 and Roadway Construction Standard RC-25.
 - (2) Other shoulders. Other shoulders shall be restored as follows:
 - (a) The surface shall be restored with at least two inches of select granular material or as authorized by the Township.
 - (b) If the length of the open shoulder exceeds 100 linear feet, the shoulder shall be graded and rolled.
 - (3) Outside existing shoulder. If the disturbed area extends outside the existing shoulder, the disturbed area outside the restored shoulder shall be properly graded

and a ditch line shall be constructed wherever necessary to maintain street drainage.

I. Temporary pavement restoration. Temporary pavement restoration is permitted for emergency excavations under §21-602.A(3) and when weather conditions are such as to prevent the completion of permanent restoration of the street surface at the time backfilling is completed. When temporary pavement restoration is permitted, the permittee shall install temporary surface and maintain the temporary surface in accordance with the following:

- (1) The base shall consist of compacted select granular material with a surface of two-inch bituminous material. If the existing pavement structure includes a course of subbase material, it shall be required to a depth equal to the existing course depth with material meeting the requirements of Section 350.2 of Publication 408.
- (2) Temporary pavement shall be completed before traffic is allowed to travel on the disturbed area. The temporary pavement may be kept in place for up to six months or as specified in the permit, if it is properly maintained.
- (3) When weather conditions permit, the temporary pavement shall be removed and permanent restoration performed under Subsection G or H.

J. Paint identification.

- (1) Upon completion of pavement or paved shoulder restoration, the restoration date shall be painted immediately adjacent to the restored cut but not in an area where tires normally contact the pavement.
- (2) The painted date shall indicate the month and year numerically. The numerals shall be six to nine inches in height.
- (3) The paint shall be color-coded as follows: blue (water), yellow (gas-petroleum), red (electric), orange (communications) and green (sewer).
- (4) The paint shall be maintained for two years after the acknowledged completion of the permitted work.
- (5) If the pavement or shoulder is being overlaid for more than 100 linear feet, the Township may, upon request, exempt the permittee from complying with this subsection.

K. Additional restoration. Disturbed portions of the street, including, but not limited to, slopes and appurtenances and structures such as guide rails, curbs, signs, markings, drainpipes, driveways and vegetation, shall be restored by the permittee to a condition at least equal to that which existed before the start of work authorized by the permit. Additional restoration may be required, upon written notification, to restore the structural integrity of the pavement or shoulder.

- (1) If any settlement in a restored area occurs within a period of one year from the date of completion of the permanent restoration, and the permittee fails to make such

correction after notification, any expense incurred by the Township in correcting such settlement shall be paid by the permittee or recovered from his bond, unless the permittee submits proof satisfactory to the Township that the settlement was not due to defective backfilling.

L. Repairs prior to resurfacing or reconstruction.

- (1) When the Township shall propose to reconstruct or resurface any street, the Township may give written notice of such improvement to all persons owning property abutting the road about to be improved and to all public utility companies and municipal authorities operating in the Township.
- (2) If the Township gives notice under Subsection L(1), the following shall apply:
 - (a) All notified persons shall complete or cause to be completed all necessary repairs and replacement of utility mains, service under the street and designated curb and sidewalk areas within 90 calendar days from receipt of such notice.
 - (b) Notified persons shall also complete any new installation under the street and designated curb and sidewalk areas required for use within a five-year period thereafter. All repairs, replacement and new installations shall be in first-class condition so that the same cannot reasonably be expected to require repairs or renewal within a period of at least five years thereafter.
 - (c) Upon failure of any notified person or persons to comply with the notice from the Township to place the same in first-class condition as hereinbefore provided, the Township shall cause existing utility mains, service connections and/or laterals to be placed in first-class condition as aforesaid or to be entirely removed if not used or necessary for public convenience, whereupon the Township shall be entitled to collect the cost of such renewals, repairs, removal or other work from the aforesaid responsible person or persons, either by invoicing the person or persons or, in case of water or sewer house connections, by filing municipal liens therefor against the abutting properties benefited by such connections.
 - (d) This section shall not forbid, however, the installation by tunneling, after successful petition to the Board of Supervisors, of new pipes, conduits or other services or structures or the repair, replacement or removal of those already existing in or under the portions of such streets improved as aforesaid, in accordance with applicable rules and regulations, upon obtaining a permit and payment to the Township of the same fees as prescribed by the provisions of this Part for making a surface excavation in the street.

M. Sealing. Restored openings in the pavement or paved shoulder shall be sealed under Section 401.3(j)(3) of Publication 408.

N. Abandoned facilities. Whenever any pipe, conduit, duct, tunnel, or other structure located

under the surface of any street is abandoned, or the use thereof abandoned, the person owning, using, controlling, or having an interest therein shall, within 30 days after such abandonment, file with the Township a statement, in writing, giving in detail the location of the structure so abandoned. Whenever there are manholes or tunnels associated with any abandoned underground facilities, such manholes or tunnels shall be capped at the time of abandonment and the Township notified thereof in writing.

§21-605. Aboveground facility requirements.

- A. General rule. The Township shall not issue a permit to install aboveground facilities at a location which the Township determines to have a high crash potential.
- B. Location of aboveground facilities. New poles and other aboveground facilities shall be installed outside the street clear zone as near the right-of-way line as practicable.
- C. Location of wires, cables or conductors. A wire, cable or conductor which overhangs a portion of the right-of-way shall be placed to provide a minimum vertical clearance of 18 feet over the pavement and shoulder, except where the National Electrical Safety Code requires vertical clearances in excess of 18 feet due to voltage or span lengths.
- D. Guys. A guy shall be placed and insulated as follows:
 - (1) A guy shall be placed to avoid interference with vehicular or pedestrian traffic.
 - (2) A guy shall be insulated and grounded in compliance with the National Electrical Safety Code.
- E. Identification of poles. A pole shall bear the name or initials of the facility owner and the pole numbers assigned by the facility owner.

§21-606. Bond requirements.

- A. Performance bond. To guarantee proper restoration of the surface and proper maintenance of the disturbed area, the applicant shall provide, prior to the issuance of the permit, a bond in an amount set forth by the Township, which shall not be less than \$2,000. The bond shall be with corporate surety guaranteeing the proper performance of the work and the proper maintenance of the disturbed area for 24 months after the date the backfilling is completed at proper grade and in a condition free from ridges and depressions. Utilities and other persons who open or excavate in streets on a regular basis may, with the permission of the Township, keep on deposit a single bond in the amount set by the Township and applying to the work included in all permits at any time outstanding.
- B. Maintenance bond. If, within a period of 24 months from the date the backfilling is completed, the Township determines that the backfilling, surface restoration or maintenance of the disturbed area is defective, the Township shall notify the permittee, in writing, of the defects. Promptly upon receipt of such notice, the permittee shall take immediate steps to correct such defects. If the permittee fails to take corrective action, the Township shall provide notice in accordance with §21-606.C.

- C. Default in performance. Whenever the Township shall find that a default has occurred in the performance of any term or condition of the permit, written notice thereof shall be given to the principal and to the surety on the bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the Township to be reasonably necessary for the completion of such work.
- D. Completion of work. After receipt of such notice, the surety must, within the time therein specified, either cause the required work to be performed or, failing therein, indemnify the Township for the cost of doing the work as set forth in the notice.

§21-607. Violations and penalties.

Any person who violates or permits the violation of any provision of this Part shall be liable upon summary conviction therefor to fines and penalties of not less than \$100.00 nor more than \$1,000.00 plus all costs of prosecution, including attorneys' fees, which costs, fines, and penalties may be collected as provided by law. Each day that a violation continues and each Section of this Part which is violated constitutes a separate violation.

Section 2. All other sections, parts and provisions of the Code of Ordinances of the Township of Penn shall remain in full force and effect as previously enacted and amended.

Section 3. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such invalidity, illegality or unconstitutionality shall not affect or impair the remaining provisions, sections, sentences, clauses or parts of this Ordinance, it being the intent of the Board of Supervisors that the remainder of the Ordinance shall be and shall remain in full force and effect.

Section 4. This Ordinance shall take effect and be in force five (5) days after its enactment by the Board of Supervisors of the Township of Penn as provided by law.

DULY ORDAINED AND ENACTED this 22nd day of November, 2021, by the Board of Supervisors of the Township of Penn, Lancaster County, Pennsylvania, in lawful session duly assembled.

TOWNSHIP OF PENN
Lancaster County, Pennsylvania

Attest: *Walter Hunt*
(Assistant) Secretary

By: *B. B. B.*
(Vice) Chairman
Board of Supervisors

