

ORDINANCE NO. 2021-01

An Ordinance amending Chapter 249, Article II “Excavations in Streets” and repealing Ordinance 1960-7, enacted September 9, 1960, and entitled: “Regulating openings and excavations in or under the Township streets” and prescribing permit fees and pavement restoration fees and Ordinance 1976-6, enacted April 14, 1976, and as well as amending Ordinance 1990-1, and replacing it as follows:

Section I. Conditions for street excavations.

No excavations, obstructions, or construction shall be made upon, within or under any portion of a road in Swatara Township (Township) unless or until a Street Opening Permit (permit) therefor has been issued as herein provided. All such work shall be performed under and subject to such specifications, regulations and conditions relating to the installation and maintenance thereof as may be prescribed in this ordinance and the permit. The specifications, regulations, and conditions incorporated herein by reference thereto shall be attached to the permit and shall be construed to be a part thereof. The Board of Commissioners may revise said specifications, regulations, and conditions by majority vote at any regular or special meeting, and such revisions shall be attached to and thus made a part of all permits issued from that date forward.

Section II. Definitions.

The following words and terms when used in this article, for the purposes of this article, shall have the following meanings, respectively, except in those instances where the context clearly indicates a different meaning:

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

EMERGENCY – An unforeseen occurrence or combination of circumstances which calls for immediate action or remedy.

EQUIPMENT – Machinery, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and completion of the work.

NEWLY PAVED STREET - Any street within the Township of Swatara that has been paved or repaired by the Township or an authorized agent of the Township, or the Township has accepted dedication of said street within the two years prior to a person’s application for a permit pursuant to the provisions of this Ordinance.

PERMITTEE – Any person, company, authority or agency that owns and/or maintains any utility or other facility located within the legal right-of-way of a street or thoroughfare located within the corporate limits of Swatara Township that intends to repair, replace or maintain said utility or other facility.

RIGHT-OF-WAY – The legal limits in which the Township’s street or thoroughfare is located including any curb, sidewalk, drainage facilities, or other improvements that are owned and maintained by the Township as illustrated on subdivision, land development, and easement plans recorded in the Recorder of Deeds for Dauphin County or otherwise.

TOWNSHIP – Swatara Township, Dauphin County, Pennsylvania

TOWNSHIP DESIGNEE – An individual, department, Township employee, or engineer assigned by the Township to act on behalf of the Township Board of Commissioners for the purposes contained in this ordinance.

Section III. Application Requirements for Permit.

Any person wishing to make any opening or excavation in any street of the Township shall submit an application for a permit to do such work. The application shall be made on a form prescribed by the Township a minimum of seven (7) calendar days prior to commencement of the work. The application shall be accompanied by fees for processing the application and for making the inspection of completed work as prescribed by the Township. In addition, the applicant shall submit a sketch showing such dimensions as the location of the proposed work, intended facility, size and location of the cut, depth of the cut, right-of-way widths within the project-paving widths, distance to the nearest intersection, sidewalk locations. In all cases the application shall be submitted in the name of the person making and/or legally responsible for the opening or excavation as well as, if applicable, the property owner for whom the cut or excavation is being undertaken. A separate application for a permit shall be submitted for each separate undertaking.

Section IV. Permit approval/disapproval.

A permit may be approved and issued to the applicant after all the aforementioned requirements have been filed and meets all of the requirements of this ordinance. If the application is disapproved, written notice of disapproval together with reasons therefor shall be given to the applicant. No permit shall be approved to excavate within or to open a Newly Paved Street except as needed for emergency repairs. Notwithstanding the foregoing, the Township may, in its sole discretion, grant a permit to excavate within or to open a Newly Paved Street subject to specific terms and conditions imposed by the Township.

Section V. Permittee responsible for compliance with terms of permit.

The permit shall be issued only in the name of the owner of the facility. The permittee shall cause its agents, contractors, successors and assigns to comply with all the terms and conditions of the permit.

Section VI. Emergency excavations.

A. In the event of any emergency in which a conduit, pipe, or utility in or under any street breaks, bursts or otherwise is in such condition as to immediately endanger the property, life, health or safety of any individual, the following procedure shall be followed:

(1) If the emergency occurs during normal working hours, the Township shall be notified immediately of the emergency, and work may proceed without a permit. However, an application for a permit together with fees must be submitted to the Township Designee not later than 72 hours after completion of work.

(2) If the emergency occurs after normal working hours or on a weekend or holiday the Township Police Department shall be notified immediately, and work to correct the emergency may commence and proceed without a permit. However, application for a permit together with fees must be submitted to the Township Designee not later than 72 hours after completion of work.

(3) These emergency procedures do not relieve the permittee of complying in all other respects with the provisions of this article, other Township ordinance, or applicable law.

(4) Prior to opening the surface, the following information should be recorded:

- a. Date emergency work is started.
- b. Time emergency work is started.
- c. Location of emergency work site.
- d. Description of emergency work
- e. Name and company of people performing work.

Recorded information shall be located at the work site and shall be available for inspection by any police officer or representative of the Township.

Section VII. Winter Provisions

A. Non-emergency street cut permits may be issued between November 15 and April 1. The following temporary restoration procedure shall be followed: backfilling of any trench or other excavation shall be accomplished as outlined in this article, and paving shall consist of a minimum of four inches of bituminous cold mix, compacted by approved methods, and

B. It shall be the responsibility of the permittee to repair and maintain all road cuts during the months between November 15 and April 1. It shall also be the responsibility of the permittee to make the necessary permanent repairs within 30 days after the local asphalt plants are opened and the HMA material is available.

Section VIII. Liability.

By acceptance of the permit, the applicant agrees to pay the entire cost and expense incurred in the replacement of the excavation and agrees to protect, defend, indemnify and hold harmless the Township and the officers, agents, and/or employees thereof from all claims, suits, actions and proceedings of every nature and description which may be brought against the Township, officers, agents, and/or employees thereof or for any injuries or damage to persons or public or private property due to any materials or equipment used in the work or by or on account of improper materials or workmanship or for or on account of any accident or any other act, negligence or omission of such applicant or his agents, employees, and the Township, the officers, agents, or employees thereof shall not in any way be liable therefor. The applicant agrees to abide by all the terms and conditions of this article whether specifically mentioned in the application or not. The grant of a permit by the Township does not relieve the applicant from obtaining any consent otherwise required from the owner or owners of the abutting property and does not confer upon the applicant the right to cut, remove, or destroy trees or shrubbery within the legal limits of the street or Township right-of-way.

Section IX. Responsibility to contact utilities.

The work authorized by the permit is subject to all the provisions of the Underground Utility Line Protection Act, the Act of December 10, 1974, P.L. 852, No. 287, as amended, November 30, 2004, P.L. 1567, No. 199. It shall be the permittee's responsibility to contact the utilities that have recorded their facilities in compliance with said Act.

Section X. Financial Security and Insurance Required

- A. Before a permit is issued, the applicant shall deposit with the Township, security in the form of a performance bond, irrevocable letter of credit, certified check, cash, or other security acceptable to the Township, to be held without interest, in the amount as set forth in the Township Schedule of Fees or as otherwise specified by the Township, and also a certificate or other evidence to the Township from an insurance company certifying that the permittee has comprehensive general liability insurance. The required security shall be conditioned upon completion of and maintenance of all work required as a result of the excavation which was made in the street and upon payment by the permittee of all costs incurred by the Township and/or others as a result of such work. The security shall remain in place for two years to allow for two years of seasonal temperatures prior to a final inspection. Prior to the Township releasing the bond, the Township shall inspect the excavation and determine whether all work was properly completed in accordance with the requirements of the permit, this article, and other governing regulation. The security shall not be released or reduced unless the Township has, in writing, certified the completion or partial completion of the required street restoration. The Permittee shall pay any inspection costs related to inspection made by the Township Designee.
- (1) The requirement to provide financial security shall not apply to opening or excavation work in a roadway that does not exceed 1,000 square feet as determined by the Township.
 - (2) Where the opening or excavation work in a roadway is in excess of 1,000 square feet, the amount of financial security shall be determined by the Township.
- B. The general liability insurance shall be written on a comprehensive form, including explosion coverage (if any blasting is to be involved), and hold the Township and its officers harmless against any and all claims arising from the Permit or for which the Township, Board of Commissioners or any Township officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee either in not properly guarding the excavation or for any other injury resulting from the negligence of the permittee. Recovery on such bond for any injury or accident shall not exhaust the bond, but it shall in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. In the event of any suit or claim against the Township by reason of the negligence or default of the permittee, upon the Township giving written notice to the permittee of such suit or claim, any final judgment against the Township requiring it to pay for such damage shall be conclusive upon the permittee.

The aforesaid insurance policy for general liability is to protect the Township and others against damage or claims arising out of the work. In the event a Permittee's insurance policy is canceled or terminates prior to the expiration date provided on its certificate of liability insurance, then within 3 days of its expiration the Permittee shall provide written notice to the Township and proof the Permittee has obtained a replacement insurance policy acceptable to the Township. No permit shall be issued until said bond and certificate are submitted.

Section XI. Notice of commencement of work/follow-up inspections.

Prior to the commencement of work authorized by the permit, the permittee shall notify the Township's Designee indicating the date that work is scheduled to commence. Work shall begin no later than 60 calendar days after the date of permit issuance unless approved by the Township. Further, the permittee shall be required to notify the Township's Designee when paving and backfilling operations commence and schedule periodic inspections with a minimum of 72-hours' notice. Upon completion of the work, the permittee shall give notice thereof to the Township's Designee in writing. Thereafter, periodic inspections of the work shall be conducted by the Township for a period not exceeding two years, and if any settlement of the road surface or other defect appears in the work contrary to the conditions, restrictions and regulations of the Township, it may enforce compliance therewith. In the event that the Township's Designee, determines that repairs are necessary within the two-year period, the permittee shall be required to make such repairs at their expense.

Section XII. Rectification of Improper or Incomplete Work.

If the street opening/excavation is not properly restored to the satisfaction of the Township or if any settlement of the road surface or defect in the work occurs within the two-year period following receipt of the notice of the completion of the work authorized, and the permittee shall fail to rectify any such settlement, defect or unsatisfactory work within 60 days after written notice from the Township to do so, the Township may do the work or enter into an agreement with a responsible contractor to perform the necessary work. The Township shall impose upon the permittee the cost thereof, which may be recovered in an action in the Court of Common Pleas for Dauphin County or in any manner provided by law for the collection of municipal claims. The 60-day period of compliance may be extended by the Township at its sole discretion upon a showing of good and sufficient cause.

Section XIII. Revocation of permit; completion of work.

In the event that the permittee fails to undertake and complete work in accordance with the permit or in accordance with this article, the Township may revoke the permit.

Section XIV. Approval required for transfer of permit.

After a permit is granted by the Township, it shall not be assigned or transferred to an entity other than the approved permittee without written approval by the Township.

Section XV. Rubber tires required on equipment.

To protect the roadway surface on such projects, all equipment used shall have rubber tires on wheels or rubber tread on tracked equipment.

Section XVI. Maintenance and protection of traffic.

A. Maintenance and protection of traffic for work authorized by this permit shall be carried out in accordance with the Township requirements as outlined herein and in compliance with Pennsylvania Department of Transportation Publication Nos. 43 and 90, Sections 3102, 3104, 3326, 3714 and 6123 of the Vehicle Code, 75 Pa.C.S.A. §§ 3102, 3104, 3326, 3714, and 6123, which are incorporated herein by reference thereto. The permittee shall provide and maintain all necessary precautions to prevent injury or damage to persons and property from operations covered by this permit. A traffic control plan consistent with current Pennsylvania Department of Transportation Publication 213, guidelines for temporary traffic control (TTC), or the Manual for Uniform Traffic Control Devices (MUTCD) may be required as directed by the Township.

B. Warning signs shall be placed beyond each end of the operation in such a manner as to be visible by the traveling public and meet the requirements of the Township in accordance with TTC or MUTCD. Special employees shall be assigned by the permittee or his contractor to direct traffic when it becomes necessary to limit the flow of traffic to one lane or direction. Barricades with illumination shall be provided and maintained for any open trench or hole in the highway right-of-way in a manner approved by the Township.

C. On certain roadways within the Township, and when specially designated on the permit, plates, or bridging shall be required on all openings within the improved surface whenever work cannot be completed within the same day.

D. The Township will assume no liability for the permittee's failure to control traffic or to provide adequately installed barricades or illumination as required by the Township. Permittee shall assume all risks and be liable for all damages by reason of the openings and excavations and by reason of any failure to properly fill the hole or trench and maintain the disturbed surface in a safe condition and shall acknowledge that the permittee shall indemnify the Township from any and all claims related to the excavation of the street identified in the application for a permit.

E. Whenever the permittee is required to remove traffic control devices maintained by the Commonwealth or Township for performance of work authorized by the permit, the permittee shall be responsible for controlling traffic during the period of time the work authorized remains uncompleted. During such times that work is in progress and the permittee is not controlling traffic or at such time that the work authorized is completed, all traffic control devices so removed shall be erected or replaced.

F. The permittee must ensure that public access along the road and to private property within the limits of work remains open during the duration of work.

G. If a permittee fails to institute adequate protective measures as required in this section, the Township may in its discretion and in consideration of the public health, safety and welfare provide adequate safety measures. The permittee shall be responsible for any and all costs, including personnel time, which the Township may incur, in any

attempt to provide for the safety of pedestrians and/or vehicular traffic due to permittee's failure to institute adequate safety measures as required by this section. In no case shall the Township assume liability for any of its attempts to provide for the safety of pedestrians and/or vehicular traffic and the permittee shall indemnify the Township of any liability. Any costs charged under this subsection shall be paid within thirty (30) days of being invoiced to the permittee and shall be collected in any manner provided for by law.

Section XVII. Construction Requirements.

A. Open excavations in paved areas shall be cut in a straight line with a saw to the width of one foot on either side of the maximum trench width. The amount of trench opened shall at all times be subject to the decision of the Township's Designee. No trench or excavation shall be undercut or have a greater width at the bottom than at the top. In case of slips or slides of the sides of the excavation, the same shall be trimmed to solid earth and the top surface cut back to the limit of the same before any backfilling is commenced. When necessary or required in accordance with OSHA requirements, the sides of a trench shall be sheathed and braced and rendered secure until the construction has been laid therein and the trench refilled.

B. Only excavate and open the amount of trench that can be backfilled by the end of that day's work. As a temporary overnight repair, 2A stone may be placed in the trench up to the top of the existing pavement. No open pavement cuts shall be permitted at the end of the day's work.

C. Care shall be taken not to move or disturb other subsurface structures, and in crossing these or running parallel with or near them, they shall be securely hung, braced and supported in place until the work is completed. The applicant shall maintain their respective services and shall repair all damages done to any of such structures.

D. In rock excavation, all drilling and ripping shall be conducted with the greatest possible care and all possible precautions taken to guard against accidents. Blasting shall not be permitted.

E. No part of an open trench or excavation shall be tunneled or undermined so as to leave the surface undisturbed, but all materials shall be removed to the full length, width and depth of the excavation, except in such cases as may be approved by the Township's Designee. The charges for the permit, however, shall be the same as if the surface had been removed.

Section XVIII. Repair of Township facilities and roads.

A. In the event that four (4) feet or more in width of roadway is disturbed, damaged, or excavated during the course of work, the permittee shall have the entire existing paved cartway width milled and overlaid with surface course for a depth of 1-1/2 inches over the entire limits of work.

B. Whenever an existing Township controlled facility such as storm sewer, tile drain or any other facility is encountered during the course of work, the Township Designee, shall be contacted immediately. If the facility is damaged, it shall be replaced or restored

by the permittee in a manner approved by the Township, and the permittee shall be liable for the cost thereof.

C. All excess material shall be removed from the legal limits of the roadway as the work progresses. The permittee shall keep the roadway, gutters and drainageways free of any material which may be deposited by equipment or vehicles traveling upon or entering onto any highway during the performance of the work. Excavated material shall not be permitted to be stored on paved areas without proper protection of the existing pavement. Any soil or other material located on the road after the road restoration is complete must be cleaned with a street sweeper or similar equipment. If sediment, silt or other objectional material falls into the street stormwater collection system, the permittee shall be responsible for the cleaning and flushing of said storm drains. Materials shall be removed and disposed of in accordance with local, state and federal regulations. Materials shall not be sent down stream or flushed into the discharge point of the pipe.

Section XIX. Restoration materials and methods.

A. After installation of an underground utility or surface improvement requiring excavation is completed, the excavation shall be backfilled with 2A aggregate in layers not to exceed six inches, each layer to be compacted with approved vibratory compaction equipment, to eight (8) inches above the underground utility. If suitable, the excavated material may be used as backfill up to the bottom of the stone base. Such material shall be placed in layers not to exceed six inches, each layer to be compacted with approved compaction equipment.

B. Prior to replacement of the HMA base course, the existing base and surface pavement shall be sawed or cut in neat straight lines one foot on each side of the trench and removed.

C. The stone base shall consist of eight (8) inches of PADOT 2A stone compacted in two lifts meeting the requirements of Pennsylvania Department of Transportation Publication 408, the latest revised edition, which is incorporated herein by reference thereto.

D. The base course shall consist of four (4) compacted inches of HMA 19 mm PG64-22, 0.3 to 3 million ESALs, meeting the requirements of Pennsylvania Department of Transportation Publication 408, the latest revised edition, which is incorporated herein by reference thereto. Immediately after the HMA base course is put in place, it shall be uniformly compacted by roller or another approved vibratory compaction equipment.

E. The surface course shall consist of 1-1/2 compacted inches of HMA 9.5 mm PG64-22, 0.3 to 3 million ESALs, meeting the requirements of Pennsylvania Department of Transportation Publication 408, the latest revised edition, which is incorporated herein by reference thereto. Immediately after the HMA surface course is placed and spread, and the surface irregularities are adjusted, the HMA surface course shall be thoroughly and uniformly compacted by roller or another approved vibratory compaction equipment.

F. The entire periphery of the cut shall be sealed with an asphalt material as specified in § 469 of Pennsylvania Department of Transportation Publication 408, the latest revised edition, which is incorporated herein by reference thereto, after the HMA surface course is placed.

G. Excavation in grassed areas of street rights-of-way shall be backfilled with excavated material, compacted in eight-inch lifts. Excavated sod shall be removed and preserved for replacement after excavation. If the excavated sod is destroyed, new sod shall be replaced over excavation.

H. If any curb, sidewalk, or other improvement is removed or damaged during the course of work, such improvements shall be replaced in equal or better condition.

Section XX. Special conditions for subsurface operations:

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

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

(a) If the facility is more than 12 inches in diameter, the bored cylindrical space surrounding the facility shall be filled with grout.

(b) Wet boring shall be prohibited.

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

(3) Facilities and other structures crossing under the improved area shall be constructed to ensure the safety of the traveling public and to preclude the necessity of entering upon the improved area to effect future maintenance or replacement.

Section XXI. Violations and penalties.

Any person, firm or corporation who shall violate any provision of this article, upon conviction thereof in an action brought before a district justice in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not less than \$300 nor more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. In the event a violation shall be committed by a corporation or partnership, the officer of said corporation, or any of them, and the partners in said corporation, or any of them, shall be liable to the penal provisions of this article. After the Township has given written notice of the violation of any provision of this article, each day that the condition constituting the violation continues to exist after receipt of said written notice shall constitute a new and separate offense for which a separate and additional penalty may be imposed in accordance with this Section.

Section XXII. Permit fee waived for governmental units.

Notwithstanding any of the other terms of this article, no fee shall be collected for a permit issued to any permittee which is a federal, state or local government authority or agency. However, the approximate reasonable cost incurred by the Township in making the first inspection of work authorized by the permit upon completion thereof shall be paid by any permittee which is a federal, state or local government authority or agency.

Section XXIII. Waiver

The Township reserves the right to alter or waive any requirements in this ordinance after considering extenuating circumstances related to the review of the permit application.

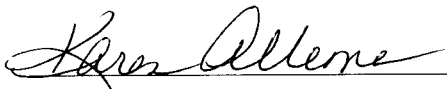
Section XXIV. Repealer

All provisions of previous Ordinances of the Township which are contrary to this Ordinance are expressly repealed.

Section XXV. Effective Date

This Ordinance shall be effective upon enactment.

ENACTED, ORDAINED, AND APPROVED this 9 day of JUNE 2021, by the Board of Commissioners of Swatara Township.



Township Secretary



President, Board of Commissioners

(SEAL)