

SOUTH SHENANGO TOWNSHIP
CRAWFORD COUNTY, PENNSYLVANIA

Ordinance No. 2005 - 3

AN ORDINANCE REGULATING OPENING, CUTTING, OBSTRUCTING AND EXCAVATING OF PUBLIC/TOWNSHIP ROADS OR STREETS, REQUIRING PERMITS, AND PROVIDING PENALTIES FOR VIOLATION.

Be It Ordained by the Board of Supervisors of South Shenango Township, Crawford County, Pennsylvania, and it is hereby ordained and enacted by and with the authority of same as follows:

Section 1. Title. The title of this Ordinance is the South Shenango Township Road Occupancy/Excavation Ordinance.

Section 2. Definitions. The following words when used in this Ordinance shall have the meaning set forth below:

Driveway - Any area of land designated or to be used as a means of ingress or egress for vehicles from a public road to a parcel of land which used or intended for use for commercial, industrial, service and public utility purposes, or for the recovery of oil and gas or sand and gravel. An area which is used and is intended for use primarily as a means of ingress or egress from one or more residential dwellings, or which is devoted to agriculture use and which is used only incidentally for other purposes, shall not be deemed to be a "driveway" within the meaning of this ordinance.

Permittee - Any landowner, utility or contractor causing the work subject to this Ordinance to be performed and granted a permit in accordance with the terms of this Ordinance.

Person - Means any individual, partnership, corporation, association, institution, cooperative enterprise, governmental entity or agency, or any other legal entity which is recognized by law. In any provision of this Ordinance prescribing a fine or penalty, the term person shall include the officers and directors of any corporation or other legal entity having officers and directors.

Road or Roadway - The road surface together with the entire right-of-way of any road, street, alley or public thoroughfare maintained by the Township as part of the Township road system. The term shall also include the term street, highway, and roadway.

Township - South Shenango Township and South Shenango Township

Supervisors.

Utility - Any persons owning or operating facilities or equipment for the production, transmission, distribution or furnishing of water, sanitary sewer, storm sewer, gas, electric, communication or related services, whether private or public.

Section 3. Prohibited Activity. In accordance with the provisions of Section 2322 of the Second Class Township Code, as amended, no driveway connection shall be made; no gas, water, sanitary or storm sewer, electric, communications, or other pipe, conduit, or related facility or equipment shall be laid upon or in, any portion of a Township road; no telephone, telegraph, or electric light or power pole shall be erected upon or in any portion of a Township road; and no other utility equipment, structure or facilities, or any other obstruction be installed, constructed, placed or erected upon or in, any portion of a township road without a permit and except under such conditions, restrictions and regulations relating to the installation and maintenance thereof, as set forth in this Ordinance and as may be prescribed in permits granted by the township for such purpose.

A permit is not required for the following activities: for changing or modifying parts of existing permitted facilities, such as cable within conduit, cross arms or transformers on poles, or manhole riser rings prior to roadway resurfacing, if no surface opening is required; for stringing overhead utility lines; for accessing an existing utility facility through a manhole; For the performance of activities by the South Shenango Township Government, The Commonwealth of Pennsylvania or the North & South Township Joint Sewer Authority.

Section 4. Application. The application for a permit shall be on a form prescribed by the Township and submitted to the Township in duplicate. The application shall include:

- a) a narrative statement of the kind of work to be performed in the road surface and road right-of-way, the amount of road surface to be disturbed, depth of excavations, type of facilities or equipment involved and installed, estimated time of beginning and end of work, and any unusual circumstance or factors.
- b) for driveway construction, a statement of course, grade, structure, materials and drainage facilities, if any, involved in the construction of the driveway.
- c) two (2) copies of a sketch showing the location of the intended work, driveway, facility or equipment, location

of any existing facilities, driveway and equipment or structure, width of the traveled roadway, right-of-way lines and dimensions to the nearest intersecting streets.

- d) the name and address of all persons responsible for the activity, for the actual installation or construction work, for the ownership and control of any facility or equipment installed, constructed or erected, and for engineering services.
- e) any other information as may reasonably be required to demonstrate the applicant's ability to completely discharge the construction, restoration, maintenance and financial responsibilities imposed by this Ordinance.
- f) satisfactory evidence that the proposed work facilities will not be detrimental to or inconsistent with the structural integrity of the right-of-way, the Township's maintenance responsibilities and the safe and convenient passage of traffic.

Section 5. Fees and Charges. There shall be submitted at the time of application a fee as set forth in a fee schedule adopted from time to time by the Pennsylvania Department of Transportation which shall include the fee for processing the application and the fee for Township inspections. The fee schedule shall be posted and made available to all applicants.

In the event the work involves substantial road cuts or openings involving more than 50 square feet or more than 100 lineal feet, the Permittee shall be charged and be liable to the Township for the reasonable actual costs of inspection by the Township's inspector or designated representative, unless in advance the Township and Permittee shall agree upon a unit cost inspection charge to be paid in advance.

Section 6. Surety. The Township Board of Supervisors may, in its discretion, where there is a substantial amount of work to be performed within the road right-of-way, require security, including, but not limited to:

- a) Surety bonds in a form and amount acceptable to the Township to guarantee restoration in a manner satisfactory to the Township and to guarantee necessary maintenance costs for the facility and the right-of-way in which it is

located for a period of at least two (2) years after the completion of the permitted work.

- b) An escrow account acceptable to the Township to fully secure the obligations set forth in clause (a) above as an alternative to obtaining surety bonds.

The amount of the security shall be based upon reasonable estimates of the cost to restore the affected portion of the roadway and for maintenance for a period of at least two (2) years after completion of the work, as determined by a qualified engineer or other person designated by the Township.

Section 7. Administration and Enforcement. This Ordinance shall be administered and enforced by a qualified enforcement officer designated by the Township Supervisors.

Section 8. Permit Issuance. The designated enforcement officer shall issue a permit upon completion of all application requirements, and upon a determination that the proposed location of the activity is suitable, that the proposed activity poses no hazard or danger to adjacent properties, other facilities, or the public safety and welfare and that the person granted the permit has the qualifications and resources necessary to complete the activity in accordance with the requirements of this Ordinance. Said permit and the rights created thereby shall be expressly conditional upon the applicant's compliance with all terms and provisions set forth in this Ordinance and in the permit, including any conditions added by the Township.

Section 9. Insurance Requirements. All permits shall be subject to the following insurance requirements:

- a) No work shall be undertaken without current and applicable policies of insurance in effect including workmen's compensation coverage and vehicle insurance coverage meeting the minimum requirements of Pennsylvania law.
- b) No work shall be undertaken without current and applicable policies of comprehensive general liability and contractors liability insurance in effect providing minimum coverage of \$300,000 per person and \$500,000 in the aggregate for bodily injuries, death and property damage claims on a per occurrence basis.
- c) Permittee shall require subcontractors or persons engaged in any construction or other work related to the project to

obtain and maintain in effect insurance meeting the same requirements as set forth above.

- d) Upon request, Permittee shall provide certificates of insurance to the Township and other information as may be required to confirm that the coverage required are in effect.

Section 10. Indemnification. As a condition of the permit, the Permittee shall agree to fully indemnify and save harmless the Township, its officers, agents and employees, of and from liability for damages or injury to persons or property arising out of any 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, the requirements of this Ordinance, or any other regulation or law.

Section 11. Driveway Connections.

- a) Driveway connections shall be designed and constructed to minimize adverse effects of storm water run-off, to prevent any increase in water drainage onto the road, to minimize any traffic hazards caused by the connection and to include a culvert of size and material meeting Township specifications.
- b) The Supervisors or their authorized agent shall issue a driveway permit if it has been determined that the proposed method of constructing and placement of the driveway will (a) minimize the adverse effect of storm water run-off resulting from said connection, (b) not cause damage to the road to which the driveway is to be connected, (c) not create or increase hazardous driving conditions for those persons using the road to which the driveway is to be connected, and (d) be constructed in accordance with Township specifications.
- c) All construction in any way related to the installation of the driveway shall be performed in strict conformity with the approved plans.
- d) Each driveway, whether serving the same premises or not,

shall require an individual permit.

Section 12. General Conditions of Permit.

- a. The permit is binding upon the Permittee, its agents, contractors, successors and assigns and the Permittee is responsible for causing compliance with the terms and conditions of the permit by its employees, agents and contractors.
- b. Responsibility for compliance with the terms of the permit may not be assigned or transferred by the Permittee without approval.
- c. No permits for opening or cutting a cartway or roadway surface shall be granted for work between November 1 and March 31 except for extraordinary reason.
- d. A permit shall establish a reasonable time for completion of the work, which shall not be less than 30 days, and the work shall be completed within that time unless an extension is requested and granted.
- e. A condition of the permit may be modified by the Township upon request and for cause shown.
- f. There shall be full compliance with all applicable laws, regulations and rules relating to the work to be performed including, but not limited to the One Call Law (Act No. 287 of December 10, 1974, P.L. 852, No. 287), the Clean Streams Law (Act of June 22, 1937, as amended, found at 35 P.S. 691.1 *et seq.*) and O.S.H.A. construction safety and health regulations.

Section 13. Conditions of Work Under Permit. All Permittees and persons who undertake activity which is the subject of this Ordinance shall:

- a. Locate, install and maintain all poles, wires, pipe,

underground conduits and facilities of every kind to cause minimum interference with the proper use of roads, and to assure that the safety, functioning and appearance of the property, and the convenience and safety of other persons and the public shall not be adversely affected thereby.

- b.** Provide and maintain such traffic control devices and personnel as may be necessary for the safe movement of traffic. The Township may require a traffic control plan and compliance with applicable Pennsylvania Department of Transportation regulations.
- c.** In case of disturbance of any road, sidewalk, paved area, or drainage way, replace and restore such street or paved area to its original condition, using the same or comparable materials, in a manner meeting the specifications of the Township and satisfactory to the Township, at no expense to the Township.
- d.** Comply with the General Provisions and Specifications Regulating Occupancy of Township Highway Right-of-Way as adopted from time to time by Resolution of the Board of Supervisors.
- e.** Comply with the conditions as adopted from time to time by the Pennsylvania Department of Transportation and set forth in the Pennsylvania Department of Transportation regulations for subsurface operations and above ground facilities found in Title 67 of the Pennsylvania Code at §§ 459.8 and 459.9 or amendments thereto.
- f.** Where structures or facilities are left in place, in, upon or along the right-of-way, the Permittee or successors shall maintain and keep them in good order and repair.
- g.** Be responsible for restoration of the road for two (2) years after completion of the activity which was the subject of the permit. If there is a failure of the road, including a slope or other appurtenance thereto, in the area of the permitted work within two (2) years after the completion of the permitted work and there is no similar failure of the highway beyond the area of the permitted work, the Permittee has absolute responsibility to make restoration of this area unless the Permittee delivers clear and

convincing evidence to the Township demonstrating that the highway failure was caused by another person. Having a bond, other security or an agreement to secure restoration costs does not relieve the Permittee of the restoration obligations imposed.

- h.** Relocate its facilities and equipment or take such other reasonable action as may be necessary to accommodate public improvements, such as alterations, changes or improvements to or on any road, drainage way, sidewalk or other public way, at no expense to the Township.
- i.** If at any time, a structure or facility installed by Permittee shall become a hazard from any cause whatsoever, the Permittee and its successors shall remain responsible for having the hazardous condition removed, repaired, or otherwise corrected within a period of 30 days after receipt of written notice, unless a shorter period of time is established by the Township due to the emergency nature of the circumstance.

Section 14. Inspections.

- a.** Before undertaking any construction or installation of equipment or facilities, the Permittee shall provide the Township with at least 48 hours advance notice of any plans relating to work to be performed including location and period of time involved in the undertaking.
- b.** The Township or its designated representative shall have the right to have its inspector or designated representative inspect the work at any time to be certain it is being done in accordance with the permit, the requirements of this Ordinance and other applicable laws and regulations.
- c.** The Township or its designated inspector or representative shall have the right to stop work that is not being performed in accordance with the requirements of this Ordinance and the permit.
- d.** When completed, a plan shall be submitted to the Township showing the location of facilities and equipment and identifying same.

- e. Acknowledgment by the Township's inspector 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. Acknowledgment of completion by the inspector will not act as a release of the Permittee or waiver by the Township of its right to seek performance or restitution from the Permittee.

Section 15. Emergency Work. Emergency repairs involving the placing of facilities or opening of the surface within the right-of-way may be performed prior to obtaining a permit under the following circumstances:

- a) Utility owners or operators may obtain emergency permit cards by submitting an application on company stationary, to the Township. The application shall be accompanied by payment of the fee established in the applicable schedule of fees.
- b) The utility facility owner or operator shall promptly notify the Township by telephone, when the necessity for an emergency repair has occurred and no later than the next business day.
- c) Application for a regular permit shall be made within 5 days of the emergency to confirm and describe, in detail, the reason for the emergency, the date, time and place the work was done; and a description of work performed. The application number shall then be entered on the emergency permit card by the applicant.
- d) Work performed under authority of an emergency permit card shall conform to the requirements of this Ordinance.
- e) An emergency permit card shall be valid for one (1) year. It must be renewed each subsequent year.
- f) The utility shall be responsible for assigning the proper emergency permit cards to its work crews.

Section 16. Consent of Adjoining Property Owners. The permission granted under this Ordinance does not relieve the Permittee

and/or its contractors from obtaining any consent otherwise required from the owner or owners of the abutting property and does not confer upon the Permittee and/or its contractor the right to cut, remove or destroy trees or shrubbery within the legal limits of the highway except under such conditions, restrictions and regulations as the Township may prescribe.

Section 17. Modification of Conditions. When a term or condition of this Ordinance cannot be met, an applicant or Permittee may request, in writing, that the Township modify that term or condition. If it is not required by law, the Township may make a modification under the following circumstances:

- a. The proposed modification represents the minimum feasible deviation from the term or condition to be modified.
- b. The requested modification is necessary to avoid hardship which is not mere economic hardship.
- c. The Township engineer or designated enforcement officer has approved of the modification.
- d. If a requested modification is granted by the Supervisors, the permit will specify the allowable modification.

Section 18. Remedies for Violation. Violation of this Ordinance or the permit requirements may result in any one or more of the following actions:

- a) Upon receipt of oral or written notice of violations from the authorized representative of the Township or a police officer whose jurisdiction includes the permitted work area, the Township may order the Permittee to cease any further work in the permitted area except to restore the area to a safe condition. No further work may commence in the permitted area until the violations have been remedied. Where the Permittee has received oral notice of the violations, written notice shall be sent to the Permittee within two (2) business days of receipt of the oral notice.
- b) The Township may revoke the permit or emergency permit card.

- c) The Township may order the removal of facilities installed without a permit or in violation of the provisions of this chapter.
- d) A proceeding before the District Justice or in a court of law to recover penalties as provided in this Ordinance.
- e) A civil action in a court of law to abate the violation.
- f) An action to recover the penalties imposed by this Ordinance which action may include obtaining and executing on a judgment or filing a municipal claim and lien for the amounts due.
- g) If the Permittee fails to rectify a defect which presents an immediate or imminent safety or health problem within 48 hours, or fails to restore a portion of the right-of-way to conform with Township standards or to correct any other defect within 30 days after written notice from the Township Supervisors to do so, the Supervisors or their agents may do the work and impose upon the applicant the cost thereof, together with an additional 20% of the cost, which may be recovered by any lawful means including but not limited to the entry of a municipal lien against the affected property. All fees received by the Township shall be paid into the Township treasury.
- h) Other action as may be allowed at law and necessary or proper to alleviate the violation, after consultation with solicitor.

Section 19. Revocation of Permit. A permit may be revoked under the following circumstances:

- a) Whenever the Township determines that the work is not being performed in accord with the requirements of this Ordinance or the permit, that the permitted facility is not being properly maintained, is in violation of a condition of the permit or this Ordinance, or where the activity or facility constitutes a hazard to traffic or interferes with the proper use of the highway by the Township or the public.
- b) For nonpayment of a fee required by this Ordinance including default of a check submitted for payment.

Section 20. Penalties.

- a) Civil Penalty Assessed by Township. Any person who violates or permits the violation of this Ordinance shall be assessed a civil penalty which shall be assessed by the enforcement officer designated by the Township Supervisors in accordance with the following schedule:

For first violation	-	
\$100.00		
For second violation	-	\$200.00
For third violation	-	\$300.00
For fourth violation	-	\$400.00
For fifth violation	-	\$500.00
For sixth and subsequent violations	-	\$600.00

The Permittee shall be notified in writing of the civil penalty assessed. The penalty hereby assessed shall be due and payable within 10 days of the date assessed. This schedule of penalties may be modified by reduction with approval of the Supervisors if the circumstances warrant such consideration.

- b. Penalty Imposed by Court. Any person who violates or permits the violation of this Ordinance shall, upon being found liable therefor in a civil enforcement proceeding, pay such fine as shall be established in accordance with this Ordinance or the court, not to exceed \$600, together with all court costs including reasonable attorney's fees, incurred by the Township. Each day a violation shall continue shall constitute a separate violation except for periods of time allowed by the Township for correction or elimination of the violation. No judgment shall be imposed until the date of the determination of a violation by the district justice or court.

Section 21. Enforcement Procedures.

- a) Notice of Violation. Upon determining that a violation has occurred or is occurring, the designated enforcement officer shall provide the violator(s) with a written notice of the violation which shall include the following information:
- The ordinance being violated, together with reference to the sections involved.
 - The conduct which constitutes the violation, together with specific location, dates and persons involved.
 - The penalty imposed under this Ordinance due to the violation.
 - The action to be taken to remedy the violation with a reasonable period of time to make corrections, as appropriate, not to exceed 30 days.
 - The person(s) to contact concerning remedial action or other concerns.
 - The additional enforcement action that may be taken if the violation does not cease.
- b) Service of Notice. The notice required above shall be either served personally upon the violator(s) or by registered mail, return receipt requested, or as a last resort by regular mail to the last known address as reasonably ascertained from the public records.
- c) Appeals. A violator receiving a notice of violation may appeal to the Township Supervisors and request a hearing in accordance with the Local Agency Laws of Pennsylvania. An appeal must be filed with the Township within 10 days of the date of the Notice of Violation.

Section 22. Repealer. All ordinances and parts of ordinances inconsistent herewith are hereby repealed including Ordinance No. 122, adopted July 1, 1974.

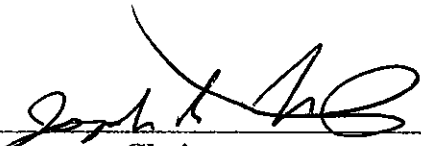
Section 23. Severability. Should any section, part or provision of this

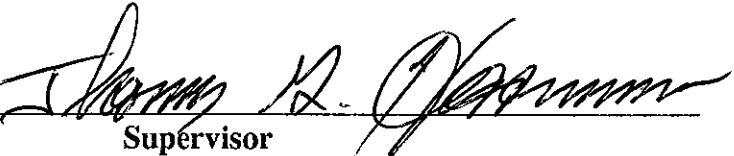
Ordinance be declared by appropriate authority to be unlawful or unconstitutional, all other terms, conditions, provisions and parts hereof, and of any Code of which this Ordinance may be or may be considered to be part, shall continue in full force and effect as if the provision declared to be unlawful or unconstitutional had been omitted as of the date of final enactment hereof.

Section 24. Effective Date. This Ordinance shall become effective five (5) days after enactment

Ordained and Enacted into law by the Board of Supervisors of Bloomfield Township this 8th day of August, A.D., 2005.

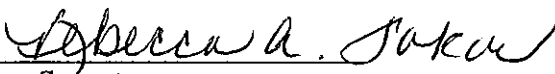
South Shenango Township Board of Supervisors

By: 
Chairman

By: 
Supervisor

By: 
Supervisor

Attest:

By: 
Secretary

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