

**TOWNSHIP OF PORTAGE,
CAMBRIA COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2012-1

AN ORDINANCE REQUIRING PERMITS FOR THE OCCUPATION, OPENING OR BORING OF TOWNSHIP ROADS, SETTING A FEE FOR THE SAME AND PRESCRIBING REPAIRS UPON COMPLETION, SAFETY SIGNS DURING WORK, STANDARDS FOR MAINTENANCE AND PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF.

WHEREAS, the Township of Portage is a Second Class Township, vested with responsibility to maintain its roadways in a clear, safe and unobstructed manner; and

WHEREAS, various utilities, property owners, and governmental agencies must from time to time lay pipe, cables conduit or similar facilities under the Township roads, or create manholes or other openings in and under Township roads;

WHEREAS, the Township Board of Supervisors are responsible to see that work done does not create a hazard for the public using the roadway and as trustee for the taxpayers of Portage Township must see that all such work is properly repaired so as not to place a burden or cost upon the taxpayers to repair the road because of inadequate repair or other damage to the roadway; and

WHEREAS, the Township of Portage desires to amend Ordinance #2011-6, which was adopted on August 3, 2011.

NOW THEREFORE, be it ordained and enacted by the duly elected Supervisors of Portage Township, Cambria County, at a regularly scheduled meeting, following advertisement of its intention to adopt this Ordinance in the manner prescribed by law, that:

SECTION 1. Definitions

Flexible Base Pavement: shall mean bituminous surfaced or tar and chip surfaced roadways which do not have an underbase of at least six inches of concrete.

Occupation: the erection or maintenance of any structure in, on or under the public right-of-way.

Opening: any cut in the surface of the road or right-of-way, excavation in the right-of-way, or boring under a roadway.

Road or Right-of-Way: any road shown on the most recent liquid fuels map of roads for the Township of Portage as prepared by the Pennsylvania Department of Transportation, including both cartway and the legal limits of the right-of-way.

Definitions not contained herein shall be as defined by the Pennsylvania Department of Transportation in Publication 408.

References to publication are references to manuals and standard specifications of the Pennsylvania Department of Transportation.

SECTION 2. Application and Fee

(a) All applicants for street opening or highway occupation permits shall make application for the same on a form prescribed by the Township and shall pay a fee of \$50.00 for each permit. Each separate opening shall require a separate application and fee. For an opening longer than 50 feet, the applicant shall pay an additional fee of \$1.00 per foot in length of opening. Applicants for highway occupancy permits, for mailboxes or drainage pipes, etc. which do not involve the placing of utility poles or digging trenches shall pay a fee of \$1.00 for each permit.

(b) Upon submission of a completed application and payment of proper fee, the Roadmaster may issue a permit, provided that he is satisfied that the permit will not cause or result in a risk to the traveling public. If the applicant has in the past failed to repair an opening, the Roadmaster may require a Surety Bond in an amount equal to the total cost of repair.

(c) Permits shall remain valid for a period of 90 days. The permits can be extended by the Roadmaster for a period of an additional 90 days.

(d) An opening must be closed and repaired within ten (10) calendar days of the opening.

PART I. OPENING IN PUBLIC RIGHT-OF-WAY

SECTION 3. Rule

No person, corporation or other entity shall cause any opening to be made in a Township road or right-of-way or any excavation or boring under a Township road or right-of-way without first obtaining a street opening permit prescribed herein and without complying in all respects with the rules and regulations pertaining thereto as set forth in this Ordinance hereinafter.

In the case of emergency repairs to existing facilities, the opening may be made immediately, provided it is in full conformance with all other aspects of this ordinance and further provided that an application is filed with the requisite fee within 48 hours making the opening.

SECTION 4. Requirements for Openings and Repairs

The Township hereby incorporates by reference the foregoing rules concerning purpose, location, creation, temporary maintenance and repair of openings in a road as set forth by the Pennsylvania Department of Transportation in the Pennsylvania Code Title 67, Chapter 459, Sections 459.2, 459.7, 459.8, 459.9 and 459.12, and further that references therein to the Department shall be read to refer to the Township of Portage, references to the district or district engineer shall be to the Roadmaster, and references to state roads or facilities shall be to Township roads. Remedies for violation or for removal or replacement of improper work shall be as set forth therein.

Irrespective of any other provision, a person making a perpendicular or near perpendicular road crossing shall over the ditch line and perpendicular to the direction of the road way, a distance of 2 feet from either side of the farthest reaching point of the ditch line.

Irrespective of any other provision, a person making an excavation lateral to the direction of the roadway, which affects any portion of the flexible based pavement of either the cartway or berm, shall place three inches of BC/BC Bituminous paving material in the ditch line, and a one and one-half (1 ½) inch overlay of ID 2 wearing course across the entire width of the road, and extending for a distance along the roadway at least 10 feet past each end of the excavation. The Township Engineer shall have the authority to approve alternate materials of equal or better quality.

Irrespective of any other provision, where the owner of an underground utility makes more than five crossings within 250 feet within a one year period, or where the existence of prior patches prevent the placement of a patch which will have structural integrity, the permittee shall be required to repave the road from berm to berm for the entire width of the disturbed area.

Where an excavation encounters a underroad culvert, catch basis or drainage pipe, the pipe shall be replaced either the entire width of the roadway, or, for a drainage facility lateral to the roadway, through the entire area affected plus a distance of ten feet on each side of the affected area.

The Roadmaster, with the concurrence of the township engineer, in writing, shall have authority to waive the specific requirements set forth above, where compliance would serve no beneficial purpose to the township.

SECTION 5. Existing Permits

Permits heretofore issued for street opening shall remain valid and no reapplication or additional fee shall be required. Such previously issued permits shall have a duration of 90 days from the date of enactment of this Ordinance. All such previously issued permits shall be subject to the standards for safety signs and repair as set forth in Sections 4 and 5 of this Ordinance. Openings which are not completed within 90 days of the enactment of this Ordinance shall at that time become void and of no effect. At that time the applicant shall submit an application and pay a fee as prescribed in Section 2 of this Ordinance.

PART II. OCCUPATION OF PUBLIC RIGHT-OF-WAY

SECTION 6. Rule

No person or entity shall erect or maintain any structure or obstruction within the public right-of-way, including but not limited to drainage pipes or culverts, mailboxes, meter or valve pits, buildings, poles and signs without a permit issued by the Township. Each separate obstruction or structure shall require a separate permit. Permitted occupation shall be subject to such reasonable conditions as may be determined by the Roadmaster in the interest of maintaining the safety and convenience of the public on or around township roads, or meeting other valid requirements of the Township such as regulation of the Municipal Separate Storm Sewer System (MS4).

SECTION 7. Existing Obstructions

Subject to the provisions of Section 9, set forth below, a highway occupancy existing on the date of this Ordinance may remain, provided it is maintained in a proper and safe manner and does not create a risk of danger or harm to the public. Where the Roadmaster determines that a risk to the public exists or otherwise as set forth in Section 9, he may order the owner of a facility occupying a portion of the public right-of-way to remove the same or to apply for a permit under this Ordinance and establish conditions for the future maintenance of the obstruction..

PART III. GENERALLY APPLICABLE CONDITIONS

The foregoing sections relate to both street openings and highway occupancy.

SECTION 8. Indemnity and Insurance

(a) As a condition of the issuance of any street opening permit, the permittee shall agree and sign an indemnity clause on the application for permit which shall provide for the Township to be indemnified and held harmless from any injury or property damage to any person, corporation or entity arising or occurring, in whole or in part from the applicant's activities in opening the street or road.

(b) Applicant for a street opening permit shall provide a certificate of insurance showing at least \$100,000.00 of coverage if applicant is a person or \$500,000.00 if applicant is a corporation (municipal, private or not for profit) for public liability insurance and which names thereon, the Township as an additional insured.

(c) Applicant shall deliver to the Township a certificate of insurance naming the Township as additional insured prior to commencement of work.

SECTION 9. Conditional Nature of Permit

If, in the future, the highway is altered or additional facilities are located in the highway by the Township for public convenience or necessity, the permittee shall, at its sole and entire cost and expense, change or relocate all or a part of the structures or facilities or pipelines authorized by the permit(s) which in the sole discretion of the Township Supervisors interfere with the highway alteration or other public facility or which is inconsistent with the purpose of the changes initiated by the Township.

SECTION 10. Appeal to Township Supervisors

The Roadmaster shall enforce the provisions of this Ordinance. The Roadmaster shall have the power to make all determinations for the Township as provided for herein. Any person aggrieved of a determination of the Roadmaster may within thirty (30) days of the determination file a written request for appeal or reconsideration with the Township Board of Supervisors.

SECTION 11. Penalties

Failure to comply with provisions of this Ordinance shall be prosecuted as a summary offense and upon conviction result in a fine not exceeding \$600.00 for each and every day that the violation continues, plus the cost of the required permit, costs to the Township of making the proper repairs, and Court costs.

SECTION 12. Revisions to Fees

The Township Supervisors may modify the fees charged herein by resolution, from time to time, on the basis of experience in administering this Ordinance and costs actually incurred in inspection or emergency correction of matters subject to this Ordinance.

SECTION 13. Provisions are Severable

It is the intent of the municipality that the provisions of this Ordinance are severable and the invalidity of any section, subsection, clause or provision of this Ordinance shall not affect to impair the validity of any other part of this Ordinance which can be given effect without the invalid part or parts.

SECTION 14. Repealer

All Ordinances or parts of Ordinances inconsistent herewith, be and the same are hereby repealed insofar as inconsistent only. The provisions of this Ordinance, so far as they are consistent with those Ordinances and regulations in force immediately prior to the enactment of this Ordinance, are intended as a continuation of such prior Ordinances and regulations and not as new enactments.

SECTION 15. Effective Date

This Ordinance shall be effective immediately, or as soon as legally permissible and shall remain in effect unless and until subsequently appealed or amended.

ORDAINED and ENACTED at a duly assembled public meeting by the Township of Portage, Cambria County, Pennsylvania, this 1st day of February, 2012.

ATTEST:

By: Laura Tully
Secretary

By: Richard O'Showsky
Supervisor

By: Jane P. Kiser
Supervisor

By: Paul Seligson
Supervisor