

ORDINANCE #55

STREET/ROAD OPENINGS AND EXCAVATIONS

BE IT ENACTED AND ORDAINED by the Township of Lackawaxen, Pike County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

An Ordinance requiring Permits for the occupation, opening, boring, or excavating of Township Roads, Streets, and Right-of-Ways, setting a fee for same, and prescribing procedure and standards for same, and prescribing penalties for the violation thereof.

Section 1 Definitions

The following words, when used in this Ordinance, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise:

CODE ENFORCEMENT OFFICER – The Code Enforcement Officer of Lackawaxen Township, either the Building Inspector, The Zoning Officer, or other designee as determined by the Township.

ENGINEER – The duly appointed Township Engineer of Lackawaxen Township or his/her authorized representative.

EXCAVATE – To cut, drill, grade, dig, scoop, and remove earth or other material making up the surface or subsurface of any street.

OPEN – To cut, drill, dig or otherwise penetrate through the surface of any street.

PERSON – Includes any natural person, partnership, firm, association or corporation.

ROADMASTER – Duly appointed person responsible for all Township Roads, Streets, and Right-of-Ways.

STREET – Any township street, avenue, road, square, alley, highway or other public place located in the township and established for the use of vehicles.

ROAD OR RIGHT-OF-WAY – Any road shown on the most recent liquid fuels map of roads of Lackawaxen Township as prepared by the PA Dept. of Transportation, including both cartway and the legal limits of the right-of-way.

SECRETARY – Duly appointed Township Secretary or his/her authorized representative.

Section 2 Permit required

No person shall open or excavate in any street/road in the township without first securing a permit therefore, as hereinafter provided.

Section 3 Permit application

A. Any person desiring to open or excavate in any street in the township shall file an application with the Roadmaster or Code Enforcement Officer on forms provided by the township. Such application shall contain the following information:

1. The name and address of the applicant.
2. The exact location of the proposed opening or excavation.
3. The approximate size and depth of the proposed opening or excavation.
4. The proposed dates and times of commencing and completing the work.
5. The method and progression of performing the work.
6. The purpose of the proposed opening or excavation.
7. Such other information as the Roadmaster and/or Code Enforcement Officer may deem pertinent.

B. Such application shall contain a statement, which shall be subscribed to by the applicant, to the effect that the applicant will comply with all relevant ordinances of Lackawaxen Township (including this Article) and laws of the Commonwealth of Pennsylvania and that the applicant will protect and save harmless the township in accordance with the provisions of **Section 12** hereof.

Section 4 Issuance of Permit; applicability

Upon being satisfied that the application is in proper form and upon receipt from the applicant of the fee prescribed in **Section 5** hereof, and the certificates of insurance prescribed by **Section 12** hereof, the Roadmaster or Code Enforcement Officer shall issue a permit. Such permit shall apply only to the specific work described in the application, shall expire on the date and time when the work is proposed to be completed and may contain such conditions or limitations as the Permit Issuer deems necessary for the protection of persons and property. The fee for each permit shall be as set, from time to time, by resolution by the Board of Supervisors.

Section 5 Permit fee

The fee for each permit shall be as set, from time to time, by resolution of the Board of Supervisors and shall be submitted to the Township Secretary prior to issuance of the permit.

Section 6 Emergency situations

In the case of any leak, explosion or other accident in any subsurface pipe, line, conduit, construction or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, conduit, construction or apparatus to commence an opening or excavation to remedy such condition before securing a permit, provided that application for a permit shall be made immediately and not later than the next business day thereafter and that all other provisions of this Ordinance are fully complied with. If any such emergency condition shall not be immediately attended to by the owner or person responsible for such pipe, line, conduit, construction or apparatus, Lackawaxen Township, after such notice as it shall deem necessary under the circumstances of the particular case, may proceed to have the work necessary and required by such emergency done and charge the cost thereof to such owner or person.

Section 7 Assumption of risks

Any person opening a street or right-of-way shall assume all risks for the presence or proximity of pipes, wire, poles, tracks, walls, buildings and other structures and property, of every kind and description, on or over his trenches, or in the vicinity of his work, whether above or below the surface of the ground; and he shall be responsible for all damages and assume all expense for direct or indirect damage, caused by his work, to any of them, or injury to any person or property, whether such structures are or are not shown on the drawings.

Section 8 Construction requirements

The following construction requirements shall apply to all openings or excavations in streets of the township:

- A. No work shall begin until all utility companies having facilities in the area have been notified by means of the Pennsylvania One-Call System, Inc. The work shall be conducted so as not to interfere with water mains, sewers or their connections with the house or any other subsurface lines or construction until permission of the proper authorities in connection with such subsurface lines or construction shall have been obtained. Any damage to such lines or construction shall be repaired immediately and shall be reported to the owner thereof.

- B. Wherever practicable, tunneling shall be used as a construction method in preference to disturbing the surface of the street, and the Permit Issuer may so specify on the permit. No tunneling shall be used unless the express direction or approval of the Roadmaster and/or Engineer is endorsed on the permit.
- C. Openings shall be made in the street surface by sawing two neat lines. Excavated material shall be immediately placed in trucks and removed from the construction site.
- D. All openings or excavations shall be backfilled with a crushed aggregate of a size and composition approved by the Roadmaster and/or Engineer. The materials shall be placed, rammed or compacted in layers, each of which shall not exceed six (6) inches in dept. On improved streets, the backfilling shall be placed to within ten and one-half (10 ½) inches of the surface. The trench shall then be enlarged one (1) foot on each side to a depth of ten (10) inches. A two-and-one-half-inch layer of ID-2 conforming to the township engineering specifications shall then be used to close the excavation or opening. A bead of asphalt cement shall be placed around the perimeter of the opening to seal the joint between the new and old materials. Backfilling of tunnels shall be done in a manner designated by the Roadmaster and/or Engineer.
- E. No opening or excavation in any street shall extend from the curb line into the street a distance greater than one (1) foot beyond the center line of the street before being backfilled and the surface of the highway restored to a condition safe and convenient for travel.
- F. No more than five hundred (500) feet longitudinally shall be opened in any street at any one (1) time.
- G. The applicant shall notify the Roadmaster and/or Engineer prior to backfilling and prior to placing the permanent surface (if the surface has been disturbed) and shall not proceed with such work until the Roadmaster and/or the Engineer has inspected the same and given his approval thereof.
- H. Every person to whom a permit is issued or by whom any opening or excavation is made shall take every necessary and reasonable precaution to keep the street in a safe and passable condition, both day and night, by the use of guards, barriers, lights and other devices.

Section 9 Maintenance of disturbed area; Performance Bonding requirements

The applicant shall maintain the portion of the street disturbed by the opening or excavation for a period of one (1) year from the date the backfilling is completed at a proper grade and condition free from ridges and depressions. Such maintenance work shall be done as often as may be necessary.

Section 10 Notification and correction of defects; failure to correct

If, within a period of one (1) year from the date the backfilling is completed, the Roadmaster and/or the Engineer determines that the backfilling, surface restoration or maintenance of the disturbed area is defective, he shall notify the applicant, in writing, to that effect. Promptly upon receipt of such written notice the applicant shall take immediate steps to correct such defects. If the applicant fails to take immediate corrective action, the Township may perform the work itself or cause the same to be performed by another person. The applicant shall be liable for all costs and expenses incurred by the Township in correcting such defects and for any penalty assessed as a result of the applicant's failure to take immediate corrective action.

Section 11 Notice prior to paving; opening of newly paved surfaces

The Roadmaster and/or Engineer shall give timely notice to all persons owning property abutting on any street within the township about to be paved or improved and to all public utility companies operating in the township, and all such persons and utility companies shall make all water, gas, sewer or other connections as well as any repairs thereto which would necessitate the opening or excavation of said street within sixty (60) days from the giving of such notice, unless such time is extended, in writing, by the Roadmaster and/or the Engineer. New paving shall not be opened for a period of one (1) year after the completion thereof, except in case of emergency only, the existence of which emergency and the necessity for the opening of such paving to be determined by the Roadmaster and/or the Engineer. If any person seeks to open or excavate a street within one (1) year after the completion of the paving thereof for any reason other than an emergency as above stated, the applicant shall make written application to the Board of Supervisors and a permit shall be issued only after express approval of the Board of Supervisors and only upon payment of a permit fee as shall be set, from time to time, by resolution of the Board of Supervisors.

Section 12 Liability of permit holder; indemnification of township

Every person to whom a permit is issued or by whom any opening or excavation is made shall assume all risks and be liable for all injuries or damages occasioned by the opening or excavation of the street or by the failure to properly protect the same, to backfill the same, to restore the surface or to maintain the surface or by any other action or inactions in connection therewith. Such person shall indemnify and save harmless the Township, its officials and employees of and from any such liability. In addition, such person shall submit to the Township Secretary, prior to issuance of the permit, a certificate or certificates of insurance for public liability and property damage, including blasting insurance where applicable, in amounts set by resolution of the Board of Supervisors. Said policies to name Lackawaxen Township as an additional insured.

Section 13 Remedies

In the event any person violates the provisions of this Article or the terms and conditions of any permit issued hereunder, the Permit Issuer and/or the Engineer may order a cessation of the work, order the performance of additional or corrective work by or on behalf of the applicant and at the applicant's expense, revoke the permit, institute such legal or equitable actions as may be appropriate, institute an action for the imposition of a fine under **Section 16** hereof or take such other actions as may be deemed necessary under the circumstances. The above remedies may be pursued simultaneously or consecutively. No person who has violated the provisions of this Article and has failed or refused to remedy such violation shall be eligible for the issuance of any other permit hereunder until such violation has been remedied.

Section 14 Plans required

No permit for opening or excavating in a street for the purpose of laying, constructing, extending or relocating a water line, gas line, sanitary sewer line, storm sewer line, electrical or communication cable or conduit or other similar facility shall be issued until a plan showing the proposed location thereof has been approved by the Board of Supervisors. Such a permit, when issued, shall require the applicant to furnish, upon completion of the work, as-build plans showing the exact location of the facilities.

Section 15 Excavation prohibited during winter months

No opening shall be made in any street, alley or public place, or any permit issued therefore, during the months of December, January, February, or March in any year except in the case of an emergency or absolute necessity, and then only upon express written authority of the Code Enforcement Officer and/or Roadmaster.

Section 16 Appeal to Supervisors

Any person aggrieved of a determination of the Roadmaster, Code Enforcement Officer, or Township Engineer may within thirty days (30) file a written request for reconsideration with the Township Supervisors.

Section 17 Violations and penalties

Any person, whether as principal, agent or employee, who shall violate or assist in the violation of any of the provisions of this Ordinance shall, upon conviction thereof before a District Justice, pay a fine of not more than one thousand dollars (\$1,000.00) plus costs of prosecution and, in default of the payment of such fine and the costs of prosecution, shall be sentenced to not more than thirty (30) days imprisonment in the Pike County Jail.

Section 18 Construal of township actions

Neither the issuance of a permit hereunder nor the taking of any other actions hereunder shall be construed as an express or implied acceptance by the township of the dedication of any street or road.

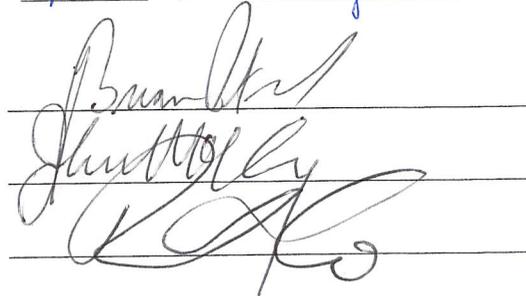
Section 19 Repealer and Severability

Any Ordinance or part of Ordinance inconsistent herewith is hereby repealed insofar as it is inconsistent herewith. The provisions of this ordinance are severable. If any sentence, clause, or section of this ordinance is for any reason found to be unconstitutional, illegal, or invalid, such decision shall not affect the validity of any of the remaining provisions of this ordinance. It is hereby declared as a legislative intent that this ordinance would have been adopted had such unconstitutional, illegal, or invalid provision had not been included herein.

Section 20 Street/Road opening permit form (attachment)

Section 21 Resolution By Lackawaxen Township Board of Supervisors setting, permit fees and dollar amounts required for Performance Bond and Certificate of Insurance (attachment)

ENACTED AND ORDAINED into law by the Board of Supervisors of Lackawaxen Township, Pike County, Pennsylvania, on this 16th day of May 2001.



Attest:





RESOLUTION #01-05

WHEREAS, the Lackawaxen Township Board of Supervisors has adopted a Street/Road Opening and Excavation Ordinance #55;

WHEREAS, said Ordinance provides for the Board of Supervisors to establish fees for permits and dollar amounts required for Performance Bonds and Certificates of Insurance;

NOW, THEREFORE, BE IT RESOLVED, that the following fee schedule for permits and dollar amounts required for Certificates of Insurance apply to applicants for Street/Road Openings and Excavation as required by the Lackawaxen Township Ordinance #55.

SCHEDULE OF PERMIT FEES

Per Application Fee - \$50.00

DOLLAR AMOUNTS REQUIRED FOR CERTIFICATE OF INSURANCE

As Set Forth by The PA Code Title 67, Dept. of Transportation Section 459.7.11(ii).

THEREFORE, BE IT RESOLVED, that the Board of Supervisors, Lackawaxen Township, Pike County, Pennsylvania have agreed to this resolution. Conducted this 16th day of May, 2001.

ATTEST:

Glenn Forz

Brian Stewart

John Mack

[Signature]

**LACKAWAXEN TOWNSHIP
STREET OPENING PERMIT**

Permit #: _____

Name of Applicant: _____

Address: _____

Phone (daytime): _____

Fax (business): _____

Township Road # and Name: _____

Location of Opening: _____

Length of Opening: _____ ft.

Maximum Depth: _____ ft.

Date Opening to be made: _____

Date Opening to be completed: _____

Purpose of Opening: _____

Party to be making Opening: _____

Method of Opening: _____

Is the Opening within the paved portion of the road	_____	yes	_____	no
Will traffic in either lane be impeded by activities?	_____	yes	_____	no
Are arrangements made to control traffic?	_____	yes	_____	no
Will warning signs be utilized?	_____	yes	_____	no
Will overweight vehicles be using Township Roads	_____	yes	_____	no

A sketch showing work to be done and narrative description of any warning or safety devices must be attached to this plan.

Any special conditions or variances shall be listed on reverse side and signed by Applicant and Roadmaster

I agree to comply with all provisions of the Lackawaxen Township Street/Road Opening Ordinance, and to restore the road upon completion to its original condition.

Authorized Applicant Signature

Date

FOR TOWNSHIP USE ONLY:

Permit Fee, Certificate of Insurance
Received by: _____
(Township Secretary)

Date: _____

Approved by: _____
(Permit Issuer)

Date: _____

Date Started: _____

Date Completed: _____