

ORDINANCE NUMBER 69

MUDDY CREEK TOWNSHIP, BUTLER COUNTY, PENNSYLVANIA

AN ORDINANCE REQUIRING PERMITS TO BE OBTAINED PRIOR TO PERFORMING OPENINGS, EXCAVATIONS, OR OTHER WORK IN THE TOWNSHIP'S PUBLIC ROAD RIGHTS-OF-WAY; REQUIRING THE SUBMISSION OF PLANS PRIOR TO THE ISSUANCE OF PERMITS; PROVIDING FOR THE PAYMENT OF PERMIT AND INSPECTION FEES; REQUIRING MAINTENANCE BONDS; AND ESTABLISHING PENALTIES FOR VIOLATIONS.

SECTION 1: SHORT TITLE.

This Ordinance shall be known and may be referred to as the "Muddy Creek Township Road Occupancy Permit Ordinance."

SECTION 2: PURPOSE AND LEGISLATIVE INTENT.

The purpose and the legislative intention of the Board of Supervisors ("Board") in enacting this Ordinance are as follows:

- A. Openings, excavations, and other work performed in the Township roadways and rights-of-way have resulted in damage, improper drainage, and uneven riding surfaces on Township roadways and have resulted in increased costs of repairs and maintenance of roads and rights-of-way and dangers and hazards to vehicular traffic.
- B. The Township desires to require proper repair of openings, excavations and other work performed in the Township roadways and rights-of-way in order to minimize damage to Township roads and rights-of-way and associated repair costs, and to eliminate hazards to the public.

SECTION 3: DEFINITIONS.

For the purposes of this Ordinance, the following terms shall be defined as follows:

Board - The Board of Supervisors of Muddy Creek Township, Butler County, Pennsylvania.

Contractor -The person or business entity installing or performing a project in a Township roadway or rights-of-way, including all agents, subcontractors, officers, or employees of that person or business entity.

Owner - The owner of the land or the owner of the facility for which a project is planned.

Person - Any natural person, firm, partnership, corporation, entity, association or other group of persons.

Permit - A *Road Occupancy Permit* issued by the Township pursuant to this Ordinance.

Permit Holder - The holder of a duly issued Road Occupancy Permit.

Public Road – Any road, street, alley, bridge, or public thoroughfare, including the entire area between right-of-way lines, either presently maintained by the Township, or, as shown on a subdivision or land development plan, dedicated by the developer for public use.

PENNDOT - Pennsylvania Department of Transportation.

Right-of-Way - The area which has been acquired by the Township for roadway purposes.

Township – Muddy Creek Township, Butler County, Pennsylvania, or its duly appointed representative.

SECTION 4: PERMITS REQUIRED.

A. No person shall hereafter perform opening, excavation, or other work within the Township's public road rights-of-way without first obtaining a *Road Occupancy Permit* from the Township.

B. Each opening, excavation or other work site within a public road right-of-way shall require an individual permit.

SECTION 5: PERMIT APPLICATION REQUIREMENTS, ISSUANCE, AND REVOCATION.

A. Every person intending to perform opening, excavation, or other work within a public road right-of-way shall, prior to obtaining a permit, file an application with the Township, on a form furnished by the Township.

B. The application shall contain at a minimum the following information:

1. Tax map and parcel number of the property on which the project is proposed.
2. The name, address, and telephone and fax number of the applicant.
3. A drawing or sketch of the exact location of the proposed project with respect to the public road right-of-way.
4. The purpose of the proposed project.
5. The method and proposed stages for performing the work.
6. The proposed dates and times of commencing and completing the work.
7. The approximate size and depth of the proposed project.

8. Such other information, diagrams, sketches, forms, and plans as the Township may deem necessary.
- C. The application shall be accompanied by such permit issuance fees and general inspection fees as determined by resolution from time to time by the Board. Issuance fees are used to defray costs incurred by the Township in reviewing and processing the application and plan(s), including the preliminary review of the site location identified in the application, and issuing and processing the permit. General inspection fees are used to defray costs incurred by the Township in spot inspection(s) during the progress of the work and after it has been completed to ensure compliance with the permit and these regulations.
- D. The application shall also be accompanied by such performance bonds, certificates of insurance, and blasting bonds, as the Township deems appropriate, in amounts determined by the Township and in forms acceptable to the Township.
- E. If the Township determines that the application and plan meet the criteria above, the Township shall issue the permit.
- F. If the application or plan is found to be deficient, or if in the opinion of the Township the plan should be revised in order to meet the criteria above, the Township shall notify the applicant of the deficiencies or changes to be made.
- G. Once the Township determines that the revised application and/or plan meet the criteria above, the permit shall be issued.
- H. Permits shall apply only to the work specified in the application, expire on the date and time specified, and may contain such conditions or limitations as the Township deems necessary for the protection of persons and property.
- I. Permits are Non-Transferable. Permits may not be transferred without the prior approval of the Township.
- J. Revocation. In the event of failure or neglect by the permit holder to perform and comply with the requirements of the permit, the Township may immediately revoke and annul the permit and order and direct the permit holder to remove any or all structures, equipment or property belonging to the permit holder and/or its contractors from the legal limits of the right-of-way and to restore the right-of-way to its former condition.
- K. All permit records shall be made available for public examination by the Township upon written request.

SECTION 6: ROAD OPENING, EXCAVATION, AND OTHER WORK REQUIREMENTS.

A. Emergencies.

1. 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 no later than the next business day.
2. 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, the Township, after such notice, or attempt of notice, as it shall deem necessary under the circumstances of the particular case, may proceed to have the necessary and required work performed and charge the cost thereof to the owner or person responsible.

B. Drilling, Boring, Driving, or Tunneling Under Improved Areas.

1. When crossing under any improved area, the opening shall be drilled, bored, or driven on a horizontal plane at a minimum depth of three (3) feet below the surface of the road and its swale ditches.
2. When boring, the hole shall be backfilled with sand with ends grouted or flowable fill.
3. Wet boring is prohibited.
4. No opening under the improved area shall be made closer than three (3) feet to the edge of the roadway.
5. Facilities and other structures crossing under the improved area shall be constructed so as to assure the safety of the traveling public and to preclude the necessity of entering upon the improved area to effect future maintenance or replacement.

C. Trenching Across Improved Areas.

1. Generally, trenching across the improved area is prohibited.
2. Trenching across the improved area may be authorized where drilling, boring, driving, or tunneling are not feasible because:
 - (a) The subsurface is solid rock.
 - (b) There are other facilities located longitudinally under the improved area and their location precludes methods other than trenching.

(c) Adjacent development in a very congested area makes the construction of a tunneling or boring shaft impossible.

3. When trenching, the operation shall be performed by one of the following two (2) methods:

(a) Utility facility placed in one (1) piece.

- (i) Traffic shall be routed over one-half of the pavement width.
- (ii) The closed half of the pavement shall be opened to the required depth and bridged with steel plates.
- (iii) Traffic shall be shifted to the bridged half of the pavement.
- (iv) The remaining half of the pavement shall be opened to the required depth.
- (v) The facility shall be placed full width.
- (vi) The open trench shall be backfilled and restored half-width.
- (vii) Traffic shall be shifted to the restored half of the pavement.
- (viii) The bridging shall be removed and the remaining half of the trench shall be backfilled and restored.

(b) Utility facility placed in more than one (1) piece.

- (i) Traffic shall be routed over one-half of the pavement width.
- (ii) The closed half of the pavement shall be opened to the required depth, the facility placed and the trench backfilled and restored.
- (iii) Traffic shall be shifted to the restored half of the pavement.
- (iv) The remaining half of the pavement shall be opened to the required depth, the facility placed and the trench backfilled and restored.

D. Blasting. No pre-drilling or blasting shall be permitted within the right-of-way unless specifically authorized by the permit.

1. Only controlled blasting, as specified in Section 203.3 (d), PENNDOT Form 408, shall be permitted within the improved area.

2. When blasting is proposed, the permit holder shall make, execute and deliver a bond to the Township, in an amount determined by the Township, with surety by a company duly registered and authorized to do business in the Commonwealth, conditioned that the Commonwealth and Township will be saved harmless from any damages whatsoever to the improved area for a period of one (1) year from the date of the completion of the last work covered by the permit.

3. When blasting is anticipated within one hundred (100') feet of any bridge, box or culvert, the permit holder shall submit to the Township a detailed plan of excavating, shoring, blasting and backfilling procedures with the application.

4. Blasting shall be prohibited within twenty-five (25) feet of the nearest part of a bridge, box or culvert.

E. Maintenance and Protection of Traffic. The permit holder shall be required to provide the following traffic protection and maintenance measures at the work site:

1. A traffic control plan shall be submitted to and approved by the Township Engineer before implementing traffic detours.
2. Maintenance and protection of traffic shall be carried out in accordance with the requirements of the Pennsylvania Department of Transportation, as set forth in Publication No. 43 and Publication No. 90.
3. The permit holder shall provide and maintain all necessary precautions to prevent injury or damage to persons and property in accordance with instructions furnished by the PENNDOT district office.
4. Warning signs shall be placed in advance of the actual operation in such a manner as to be visible to the traveling public, and substantial barricades with adequate illumination shall be provided and maintained for any open trench or hole in the improved area.
5. The permit holder shall provide flagmen to direct one-lane traffic.

F. Matting. The permit holder shall protect the road pavement and shoulders by using matting, wood, or other suitable protective material having a minimum thickness of four (4") inches. The permit holder shall be responsible for restoring the pavement and shoulders to their pre-existing condition upon completion of the project.

G. Open Lane of Travel. No opening, excavation, or construction in any road shall extend from the right-of-way line into the road past the centerline, until the opened section is restored to a condition safe and convenient for travel.

H. Allowable Limits of Excavation. No more than one hundred (100') feet longitudinally shall be opened in any street at any one time, except for the installation of gas or water lines, or sanitary or storm sewers by private or public entities.

I. Plates and Bridging. Except for emergency repairs of utility facilities, all work shall be stopped each day from thirty minutes prior to thirty minutes after peak traffic hours as determined by the Township. By the time work is stopped, steel plates or bridging shall be placed over all openings made within the improved area, which are less than six (6') feet in either length or width. The plates or bridging shall be extended a minimum of eighteen (18") inches from each edge of the opening and shall be secured in a safe manner.

J. Disposition of Materials.

1. The permit holder shall keep the improved area free of all material which may be deposited by vehicles traveling upon or entering onto the roadway during the performance of work authorized by the permit.
2. The permit holder shall be responsible for controlling dust conditions created by project operations.
3. All excess material and material that is not suitable for backfill shall be removed and disposed of outside the right-of-way as the work progresses.
4. All retained suitable material shall be placed or stored on the side of the operation farthest from traffic, unless otherwise authorized by the permit, and in such a manner that there will be no interference with the flow of water in any gutter, drain, pipe, culvert, ditch, or waterway.

K. Overnight Parking. Where the project requires equipment to park at the site overnight, the parking area shall be located a minimum of four (4') feet from the edge of the road surface.

L. Project Delays. The permit holder shall immediately notify the Township if work is stopped, or delayed on the project. If any ditch or trench remains open at the time of stoppage or delay, the Township may require the permit holder to refill the ditch or trench until such time as the permit holder is ready to proceed.

M. Utility Connections. The permit holder shall be responsible for locating underground utility lines prior to commencing work and ensuring all work is conducted so as not to interfere with water mains, gas lines, sanitary or storm sewers, or their connections with structures, or any other sub-surface pipes, facilities, or structures unless and until written permission is obtained from the owner of such pipe, facility, or structure.

N. Altering Drainage. The permit holder is not permitted to:

1. Alter the existing drainage pattern or the existing flow of drainage water, or direct, divert or otherwise drain additional surface water toward, onto, or into, or in any way to affect the road right-of-way or roadway facilities without the prior written consent of the Township.
2. Direct, divert or otherwise drain any surface water over adjacent or abutting property without the prior written consent of the property owner and/or the Township.

O. Removal of Vegetation. The permit holder is not permitted to remove or destroy trees or shrubbery on adjacent or abutting parcels or within the road right-of way without written consent from the owner of the adjacent or abutting property and/or the Township.

P. Temporary Surface. On improved roads, the permit holder shall install a minimum two (2") inch, temporary paving of hot mix thoroughly bound and compacted flush with the surface of the adjoining paving. Permanent paving must be completed within sixty (60) days of excavation or following completion of site work related to the project.

Q. Project Completion, Inspections, and Defects.

1. The permit holder shall notify the Township, in writing, when the project is completed.
2. The Township may inspect the work at any time during construction and up to eighteen (18) months from the date that backfilling is completed. In the event the Township determines that the backfilling, surface restoration, or maintenance of the disturbed area is defective, it shall notify the permit holder, in writing, of the defect. Promptly upon receipt of such written notice the permit holder shall take immediate steps to correct such defects.
3. In the event the permit holder fails to rectify a defect which presents an immediate or imminent safety or health problem within forty-eight (48) hours or any other defect within sixty (60) days after written notice from the Township to do so, or in the event that the work for which the permit was granted is not completed within the time fixed by the Township, the Township may do the necessary and required work or cause the same to be performed by another person and impose upon the permit holder the cost thereof, together with an additional twenty (20%) percent of the costs, which may be recovered by the Township.

R. Maintenance of Disturbed Area; Bonding Requirements. The permit holder shall maintain the portion of the road disturbed by the opening or excavation for a period of eighteen (18) months 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. To guarantee proper restoration of the surface and proper maintenance of the disturbed area, the permit holder shall deposit with the Township, prior to issuance of the permit, a bond in an amount set by the Township, with corporate surety guaranteeing the proper performance of the work and the proper maintenance of the disturbed area for the required period of time. Utilities and other persons who open or excavate in roads on a regular basis may, with the permission of the Township, keep on deposit a single bond in an amount set by the Township and applying to the work included in all of the permits at any time outstanding.

S. Permit Holder Responsibilities.

1. The permit holder shall pay all costs and expenses incident to or arising from the project, including but not limited to the cost of making and maintaining temporary and permanent restorations of all disturbed areas.

2. The permit holder owner shall be responsible for repairing damage to any portion of the road, including shoulders, caused by equipment en route to or used at the work site and to adjacent or abutting property as a result of work done on the project at the permit holder's expense.
3. The permit holder shall reimburse the Township for any and all inspection costs, which the Township may deem necessary to incur, within thirty (30) days after receipt of the Township's invoice.
4. Maintaining Structure or Facility. As long as the permit holder operates and leaves in place any structure or facility in, upon, or along the right-of-way, the permit holder shall maintain and keep them in good order and repair.
5. Damaged Structure or Facility. If at any time the structure or facility shall become damaged from any cause whatsoever, the permit holder shall have it removed, repaired, or otherwise made safe immediately upon notification from the Township.
6. Indemnification. The permit holder shall fully indemnify and save harmless and defend the Township of and from all liability for damages or injury occurring to any person or persons or property through or in consequence of any act or omission of any contractor, agent, servant, employee or person engaged or employed in, about or upon the work by, at the instance or with the approval or consent of the permit holder; from any failure of the permit holder or any such person to comply with the permit or these regulations; and, for a period of two (2) years after completion of the permitted work, from the failure of the roadway in the immediate area of the work performed under the permit where there is no similar failure of the roadway beyond the area adjacent to the area of the permitted work.
7. Insurance. The permit holder shall, upon request, submit to the Township office a certificate or certificates of insurance for public liability and property damage, in form and amount satisfactory to the Township, to cover any loss that may be incurred for or on account of any matter, cause or thing arising out of the construction, reconstruction, repair, relocation or installation of the permitted structures or facilities.

T. Above Ground Facilities - General Rule. Permits will not be issued to install aboveground facilities at locations which the Township determines have a high accident potential.

U. Location of Above Ground Facilities.

1. New poles, guys and other aboveground facilities shall be installed outside the shoulder of the public road as near the right-of-way as practicable.
2. Installation of poles, guys, and other aboveground facilities in locations where curbs exist shall be placed off the roadway but as close to the curb as possible.

V. Wires, Cables, or Conductors. All wires, cables, or conductors which overhang any portion of the right-of-way shall be placed so as to provide a minimum vertical clearance of eighteen (18') feet over the roadway, except where the National Electrical Safety Code requires vertical clearances in excess of eighteen (18') feet due to voltage and/or span lengths.

W. Guys.

1. Guys shall be placed so as to avoid interference with vehicular or pedestrian traffic.
2. Guys shall be insulated or grounded in compliance with the National Electrical Safety Code.

X. Poles. Each pole shall bear the name or initials of the facility owner and the pole number(s) assigned by the facility owner.

Y. PENNDOT Requirements. When an excavation or other work is proposed in a state highway, the owner shall comply with all PENNDOT requirements, including the requirement to obtain a permit from PENNDOT. A separate road occupancy permit from the Township is not required for projects proposed in a state highway.

SECTION 7: AMENDMENTS.

From time to time, the Board of Supervisors may adopt, by amendment, additional specifications, and requirements, revising, supplementing, or modifying the specifications set forth in this Ordinance.

SECTION 8. PENALTIES.

Any person who violates any provision of this Ordinance shall, upon being found liable therefore in a civil enforcement proceeding, pay a fine not to exceed six hundred dollars (\$600) per violation, including additional daily penalties for continuing violations, plus all court costs and reasonable attorney's fees incurred by the Township. Each day of violation shall constitute a separate offense and be subject to the penalty set forth herein.

SECTION 9: SEVERABILITY

1. If any sentence, clause, phrase or section of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, phrases, sections or parts of this Ordinance.
2. It is hereby declared as the intention of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, phrase, section or part thereof not been included therein.

SECTION 10: REPEALER

Ordinance No. 21, and all other ordinances, or parts of ordinances inconsistent herewith are hereby repealed.

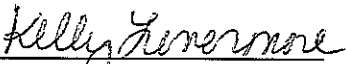
SECTION 11: EFFECTIVE DATE

This Ordinance shall become effective five (5) days after adoption.


ORDAINED AND ENACTED this 21st day of January 2015, by the Board of Supervisors of Muddy Creek Township in lawful session duly assembled.


ATTEST:

MUDDY CREEK TOWNSHIP
BOARD OF SUPERVISORS


Kelly Livermore
Secretary

By: 
Dale R. Kerr, Chairman

By: 
Eric Saunders, Vice Chairman

By: 
Robert J. Jesteadt, Supervisor