

LEHMAN TOWNSHIP  
PAVE CUT AND STREET EXCAVATION ORDINANCE  
ORDINANCE NO. 07212014 OF 2014

AN ORDINANCE OF THE TOWNSHIP OF LEHMAN, LUZERNE COUNTY, PA  
PROVIDING THAT IT SHALL BE UNLAWFUL FOR ANY PERSON TO OPEN OR TO  
MAKE ANY PAVE CUT OR EXCAVATION OF ANY KIND IN ANY OF THE  
STREETS IN THE TOWNSHIP OF LEHMAN WITHOUT FIRST SECURING A  
PERMIT AS HEREINAFTER PROVIDED.

NOW THEREFORE, THE TOWNSHIP OF LEHMAN, LUZERNE COUNTY,  
PENNSYLVANIA ORDAINS AND ENACTS THE FOLLOWING:

1. This ordinance shall be known as the LEHMAN TOWNSHIP PAVE CUT AND STREET EXCAVATION ORDINANCE, and may be referred to as the same.

**2. DEFINITIONS AND INTERPRETATIONS.**

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 states otherwise:

**PAVE CUT *and/or* EXCAVATION** - any activity within the right-of-way of any street, alley or cartway which involves cutting, breaking or disturbing the surface thereof. In this Ordinance, the term "opening" shall have essentially the same meaning as pave cut or excavation.

**STREET** - any public street, cartway, avenue, road, square, alley, highway, right-of-way, or other public place located in the Township of Lehman and established for the use of vehicles, but shall not include State Highways.

**PERSON** - any natural person, partnership, firm, association, corporation, municipal authority, or any other entity however created or styled.

**3. PERMIT REQUIRED TO MAKE OPENING OR EXCAVATION**

It shall be unlawful for any person to open or to make any excavation of any kind in any of the streets in the Township of Lehman without first securing a permit as hereinafter provided.

**4. APPLICATION FOR PERMIT**

Any person who shall desire to make any opening or excavation in any of the streets in the Township of Lehman shall make application to the Township Secretary in writing for that purpose. Such application shall be made upon blanks to be furnished by the Township of Lehman and shall set forth the name of the applicant, the exact location of the proposed opening or excavation, and the appropriate size or depth thereof, and shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinance of the Township of Lehman and the laws of the Commonwealth in relation thereto, and that the applicant shall well and truly save, defend and keep harmless the Township of Lehman from and indemnify it against any and all actions, suits, demands, payments, costs and charges for or by reason of the proposed opening or excavation, and all damages to persons or property resulting in any manner or occurring in the prosecution of the work connected therewith, or from any other manner, cause or thing relating thereto.

## 5. PERMIT FEE

Before any permit shall be issued to open or excavate any street in the Township of Lehman the applicant shall pay a permit fee in the amount fixed according to the Township of Lehman's fee schedule resolution.

## 6. ISSUANCE OF PERMITS RESTRICTED

Permits shall be issued only to persons furnishing public utility services or the owner or owners of the real property adjoining the location where such opening or excavation is to be made. In addition all contractors performing such work shall also show proof of Insurance which also names: THE TOWNSHIP OF LEHMAN AS AN ADDITIONAL PARTY INSURED. Minimum insurance shall be: (1) Liability of one million dollars (\$1,000,000) for personal injury or death per individual with a limit of three million dollars (3,000,000) for each occurrence for bodily injury. (2) Liability of five hundred thousand dollars (\$500,000) for property damage.

## 7. INFORMATION CONTAINED ON PERMIT

Any permit issued hereunder shall specify the exact location where the opening or excavation is to be made, the approximate permitted size or depth thereof and the time within which the work for which the permit is granted to be completed.

## 8. PERMIT APPROVAL

A permit may be issued by the Lehman Township Road Master to the applicant after all the requirements have been filled. If the application is disapproved, written notice of disapproval together with reasons shall be given to the applicant.

## 9. RESPONSIBILITY TO CONTACT UTILITIES

The work authorized by the permit is subject to all the provisions of the Act of December 10, 1974, P.L. 852, NO. 287, 73 P.S. 177 et seq., as amended or supplemented from time to time. It shall be the permittee's responsibility to contact all utilities in compliance with the Pennsylvania One Call System.

## 10. OPENING, EXCAVATING, REFILLING AND RESTORATION OF SURFACE; RESPONSIBILITY FOR DEFECTS OCCURRING WITHIN TWO (2) YEARS

Existing pavement shall be sawcut to the full depth of the existing pavement at the outer limits of any excavation prior to beginning excavation. Any person who shall open or excavate any street in the Township of Lehman shall thoroughly and completely refill the opening or excavation with 2A Modified Stone in such a manner to prevent any settling thereafter, and shall restore the surface to the same condition as it was before the opening or excavation or in the case of pavement areas, to the same thickness as the existing pavement or a minimum of 4 1/2" 19.0 mm Superpave Binder and 1 1/2" 9.5 mm Superpave Wearing Course, whichever is greater and such restoration shall be in accordance with the specifications of the Department of Transportation of the Commonwealth of Pennsylvania which are hereby adopted as specifications of the Township of Lehman for restoration of surfaces of streets in the Township of Lehman. Prior to replacement of the pavement, 1 foot outside of each edge of the opening shall be sawed the full depth of pavement and stone base in a neat straight line (1 foot cutback). The detached material shall be removed without damaging the adjacent pavement. The milled area shall receive a tac coat and edges shall be sealed with AC-20 joint sealer. As restored, the surface shall conform to the proper grade and be of the same surface covering as the part of the thoroughfare immediately adjoining the opening. When a longitudinal opening longer than 100 linear feet is made in the

pavement, the entire roadway width shall be overlaid where the opening is made. When four or more transverse openings are made within 100 linear feet of pavement, the entire roadway width shall be overlaid where the openings are made. Overlay shall consist of 1½ inches of 9.5 mm Superpave Wearing Course. A milled paving notch, with a minimum 10 feet transition, shall be provided at each end of the overlay. This work may require the permittee to mill additional existing pavement as directed by the Lehman Township Engineer or Road Master. All manhole castings, curb boxes and any other structures meant to be flush with the finish pavement surface shall be adjusted to the new finish grade. If within two (2) years after the restoration of the surface, as herein provided, defects shall appear therein resulting from detective backfilling or other workmanship by the applicant, the applicant shall make the repairs with thirty (30) days of notice or reimburse the Township of Lehman for the cost to have of all necessary repairs made to the permanent paving.

#### **11. RESPONSIBILITY OF PERMIT HOLDER FOR CERTAIN WORK; RIGHT OF TOWNSHIP OF LEHMAN TO DO CERTAIN WORK; CHANGES THEREOF**

All other work in connection with openings in any street, including excavation, protection, refilling and temporary paving, shall be done by or for the person to whom or which the permit has been issued at his or its expense, and all such work shall be subject to the provisions of this Ordinance and to the supervision and approval of the designated official, provided that the Board of Supervisors may, if they deem it necessary to the proper performance of work, require that cutting of the surface of streets and the backfilling of all excavations therein shall be done by the Township of Lehman, in which event the applicant shall pay the actual cost of the work performed by the Township.

#### **12. REQUIREMENTS FOR WORK; CORRECTION OF UNSATISFACTORY WORK; COMPLETION OF INCOMPLETE WORK**

- A. No opening or excavation in any street shall extend from the edge of pavement line into the highway a distance greater than one (1) foot beyond the center line of the street before being refilled and the surface of the highway restored to a condition safe and convenient for travel.
- B. No more than five hundred feet (500') longitudinally shall be opened in any street at any one time.
- C. The work of excavation shall be so conducted as not to interfere with the water mains, sewers or their connections with the houses, or any other subsurface lines or constructions, until permission of the proper authorities in connection with such subsurface lines or constructions shall have been obtained.
- D. No tunneling shall be allowed without the express approval of the Township of Lehman and permission endorsed upon the permit. The backfilling of a tunnel excavation shall be made only in the presence of an inspector designated by the Board of Supervisors, and shall be done only in a method approved by him.
- E. All openings or excavations shall be backfilled promptly with 2A MODIFIED STONE and thoroughly compacted in layers, each of which layers shall not exceed eight inches (8") in depth. Backfilling shall be placed to within six inches (6") of the surface.
- F. A temporary paving of cold patch premix, thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving and maintained for a period of ninety (90) days.
- G. On a concrete base streets, such base shall be replaced with concrete and the minimum size of the opening or excavation shall be sixteen (16) square feet.

H. During the making of any excavation in the street, every necessary and reasonable precaution shall be taken by the applicant to keep the street in safe and passable condition both day and night by guards, barriers, lanterns and other devices, and all excavating permits granted hereunder are granted under the subject to the express condition that the person to whom the same is issued shall indemnify, save and keep harmless the Township of Lehman from any loss in damage, or otherwise whatsoever, which may or shall be occasioned at any time by the said excavation, or by any leak, explosion or other injury from any pipe, apparatus, conduit, or any other matter placed in the said excavation.

I. The applicant shall notify the Board of Supervisors when the opening or excavation is ready for backfilling before any backfilling is done, when backfilling work is completed, when the temporary paving has been installed and when the street has been permanently restored so that inspections may be made.

J. In the event that any work performed by or for a permit holder shall, in the opinion of the Board of Supervisors, be unsatisfactory and the same shall not be corrected in accordance with their instructions within the time fixed, or in the event that the work for which the permit was granted is not completed within the time fixed by the Board of Supervisors, the Township of Lehman may proceed to have corrected such unsatisfactory work or have completed any such work not completed, and charge the cost thereof, plus twenty percent (20%) to the applicant.

### **13. EMERGENCY OPENINGS**

In the case of any leak, explosion or other accident in any subsurface pipe, line, construction or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, construction or apparatus, to commence an 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 construction, or apparatus, the Board of Supervisors, after such notice he shall deem necessary under the circumstances of the particular case, shall proceed to whatever is necessary and required by such emergency, and charge the same on the basis of cost plus twenty percent (20%) to such owner or person.

### **14. RESTRICTIONS REGARDING TREES AND SHRUBBERY**

The permission herein granted does not confer upon the permittee or its contractors the right to cut, remove or destroy trees or shrubbery within the legal right-of-way.

### **15. WORK NECESSITATING OPENING OR EXCAVATION TO BE DONE PRIOR TO STREET IMPROVEMENT AND NOT UNTIL FIVE (5) YEARS THEREAFTER**

The Board of Supervisors shall give timely notice to all persons owning property abutting on any street within the Township of Lehman about to be paved or improved, and to all public utility companies operating in the Township of Lehman, and all such persons and utility companies shall make all water, gas or sewer connections, as well as any repairs thereto which would necessitate excavation of the said street within thirty (30) days from the giving of such notice, unless such time is extended in writing for cause shown by the Board of Supervisors. New paving shall not be opened or excavated for a period of five (5) years after the completion thereof, except in case of emergency. If it is sought to excavate upon or open a sewer within five (5) years after the completion of the paving, the applicant shall make written application to the Board of Supervisors, and a permit for such opening shall be issued only after express approval of the Board of Supervisors.

## **16. PERMITTEE RESPONSIBILITIES FOR FUTURE RELOCATION WORK**

If at any time in the future the roadway is widened, reconstructed or the alignment or grades are changed, the permittee further agrees to change or relocate all or any part of the structures covered by this permit which interfere with the improvement of the roadway at its own cost and expense.

## **17. CONDITIONS FOR LAYING AND EXTENDING UTILITY LINES**

No new water, sewer, steam or gas main or electric, telephone or other utility line shall hereafter be laid or constructed, and no such existing main or line shall be extended, in any of the streets of the Township of Lehman until the plan shall have been first filed with the Board of Supervisors and such plan, and the exact location of such main or line, approved by them. The Board of Supervisors shall not approve the locating of any such main or line at a depth of less than thirty inches (30") from the surface of the street unless they shall be convinced that locating the same at a depth of more than (30") from the surface is impossible or impractical.

## **18. PAYMENT FOR WORK DONE BY TOWNSHIP OF LEHMAN**

Payment for all work done by the Township of Lehman under the provisions hereof shall be made by the person made liable under the provisions hereof within thirty (30) days after a bill is sent to such person by the Township of Lehman. Upon failure to pay such charges within such time, the same shall be collectible by the Township of Lehman by an action or in the manner provided by law for the collection of municipal claims.

## **19. PENALTIES**

Any person, as defined above, who shall violate any provision of this Ordinance shall be guilty of a summary offense and, upon a conviction or finding of guilt, shall be sentenced to pay a fine of not more than six hundred dollars (\$600.00) plus costs, and in default of payment said fine and costs, to imprisonment for a term not to exceed thirty (30) days. Every day that a violation of this Ordinance continues shall constitute a separate offense.

## **20. APPLICABILITY**

The provisions of this Ordinance shall not apply to laying sidewalks or curbs.

## **21. EFFECTIVE DATE**

This Ordinance shall become effective upon passage.

## **22. SEVERABILITY**

In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of this Township that such remainder shall be and shall remain in full force and effect.

## **23. DECLARATION OF PURPOSE**

It is declared that enactment of this Ordinance is necessary for the protection, benefit and preservation of the health, safety and welfare of inhabitants of this Township.

**24. REPEALER**

All ordinances or parts of ordinances and all resolutions or parts of resolutions that are inconsistent with this Ordinance shall be and the same expressly are repealed.

**DULY ENACTED AND ORDAINED**, this <sup>21<sup>ST</sup></sup> day of <sup>July</sup>, 2014 by the Board of Supervisors, Township of Lehman, Luzerne County, Pennsylvania, in lawful session duly assembled.

By: \_\_\_\_\_

Chairman of the Board of Supervisors

ATTEST:

\_\_\_\_\_  
Secretary

(SEAL)



CERTIFICATE

I, the undersigned, Secretary of the Township of LEHMAN, Luzerne County, Pennsylvania, (the "Township") certify: that the foregoing is a true and correct copy of an Ordinance of the Board of Supervisors of the Township which duly was adopted by affirmative vote of a majority of all members of the Board of Supervisors of the Township at a meeting of said Board of Supervisors of the Township duly convened and held according to law on 07/21/2014, at which meeting a quorum was present; said Ordinance duly has been published as required by law; and said Ordinance remains in effect, unaltered and unamended, as of the date of this Certificate.

I further certify that the Board of Supervisors of the Township met the advance notice requirements of the Sunshine Act, Act No. 1986-84 of the General Assembly of the Commonwealth of Pennsylvania, approved July 3, 1986, as amended, by advertising the time and place of said meeting and by posting prominently a notice of said meeting at the principal office of the Township or at the public building in which such meeting was held,, all in accordance with such Act IN WITNESS WHEREOF, I set my hand and affix the official seal of the Township, this 21<sup>st</sup> of July, 2014.

(SEAL)

SECRETARY

*Maria D. Agelbe*

