

BOROUGH OF SOMERSET, SOMERSET COUNTY, PENNSYLVANIA
ORDINANCE NO. 1384

AN ORDINANCE OF THE BOROUGH OF SOMERSET, SOMERSET COUNTY, PENNSYLVANIA, REQUIRING THAT NO STREETS OR ROADS OF THE BOROUGH OF SOMERSET BE OPENED, EXCAVATED OR CUT BY ANY PERSON, FIRM, CORPORATION, OR UTILITY WITHOUT FIRST SECURING A PERMIT IN ACCORDANCE WITH THIS ORDINANCE AND REGULATIONS PROMULGATED PURSUANT THERETO; PROVIDING FOR THE RESTORATION OF BOROUGH ROADWAYS WHEN OPENED; PROVIDING FOR CONSTRUCTION OF AND MODIFICATION OF DRIVEWAYS ENTERING BOROUGH ROADS; PROVIDING PENALTIES FOR VIOLATION THEREOF.

WHEREAS, the Borough of Somerset ("Borough") expends a significant portion of its annual budget to construct, repair, rehabilitate, pave and maintain improved public streets within municipal boundaries (each a "Borough Road" and collectively "Borough Roads"); and

WHEREAS, because of the location of subsurface facilities such as municipal water, sewer and storm drainage lines, public utilities' underground conduits, cables and wires, and other installations reasonably required for the health, safety and enjoyment of Borough residents and properties, it is necessary for the surface and support for Borough Roads to be opened or cut by the Borough and other governmental agencies, public utilities or other entities to install, maintain, repair and replace utility lines or other types of work involving cutting into, excavating and otherwise affecting the surface and supporting facilities of Borough Roads (with like activities, collectively referred to in this Ordinance as "Road Disturbance Activity"); and

WHEREAS, Council of the Borough of Somerset declares it to be in the best interest of the Borough that Road Disturbance Activity must be designed, executed and completed under generally accepted engineering and construction principles and requirements observing Commonwealth of Pennsylvania standards, and done only under and subject to the terms of permits to be issued by the Borough Manager (a "Permit"), and finds that failure to do so jeopardizes and compromises structure, safety and integrity of Borough Roads, causing their surfaces to be uneven, cracked or otherwise dangerous and unsightly, and making travel over Borough Roads difficult, distracting or dangerous to citizens and other vehicles.

WHEREAS, Borough Council determines that that it necessary to enact rules and regulations protecting Borough Roads and assuring that anyone performing Road Disturbance Activity otherwise affecting Borough Roads must maintain and restore the Borough's Roads to protect their integrity and insure the safety of residents, motorists and pedestrians.

NOW, THEREFORE, IT IS ORDAINED BY THE BOROUGH OF SOMERSET, SOMERSET COUNTY, AS FOLLOWS:

SECTION 1. DEFINITIONS. Besides terms defined above, for this Ordinance, these words, when capitalized, shall mean:

- a) **Driveway:** Any private road or means of vehicular entry or exit to and from a parcel of real estate situate in the Borough that abuts or is directly accessed from a Borough Road.
- b) **Plan:** A sketch or drawing showing proposed Road Disturbance Activity, prepared in conformity to Borough requirements, including, at a minimum, the location of any proposed Road Disturbance Activity and describing the project or purpose of the Road Disturbance Activity, including at a minimum, the width of the traveled roadway, right-of-way lines, dimensions to nearest intersecting Borough Road or public road; and where required for this Ordinance, profile of grades, depths of materials, utility poles, cuts and fills, and obstacles and structures inhibiting observation.
- c) **Person:** Individual, partnership, corporation, Municipal Corporation, or authority, or any public or private utility or any other business entity.
- d) **Applicant:** A person applying to the Borough for permission to conduct Road Disturbance Activity, who accepts responsibility for compliance with this Ordinance.
- e) **PennDOT:** The Pennsylvania Department of Transportation or any successor.
- f) **Permit:** A permit issued by the Borough authorizing and regulating Road Disturbance Activity.
- g) **Permittee:** Any person, entity or organization holding a Permit.

SECTION 2. PERMIT REQUIRED FOR ROAD DISTURBANCE ACTIVITY.

- a) No Road Disturbance Activity shall occur for any purpose except under such conditions, restrictions, and regulations relating to the installation and conditions, restrictions, and regulations relating to the opening and disturbing of Borough Roads as described in a Permit, which shall be issued by the Borough and signed by the Borough Manager or the Borough Manager's authorized designee.
- b) Permits shall be in a form adopted by the Borough, only issued to Applicants using an application form to be promulgated by the Borough Manager which shall not be considered without:
 - 1) Payment of the fee authorized the Borough's Resolution Adopting a Schedule of Fees for Road Disturbance Activity, as the same may be amended from time to time;
 - 2) Two (2) copies of a sketch showing the proposed Road Disturbance Activity reasonable detail, including descriptions of the location of the intended facility, width of

the traveled Roadway, right-of-way lines and the distance to the nearest intersecting public streets, roads or highways; and

3) The Restoration and Maintenance Security required under Section 3 herein.

c) A Permit will be issued to the Permittee following the Borough's review of the Permit Application and description of the Road Disturbance Activity. The Permit may include reasonable time limitations for the Work to be completed and provisions relating to traffic control and other matters associated with and affecting the safety and convenience of Borough residents and the travelling public. The Borough shall include an appropriate time for completion of the Road Disturbance Activity and shall state the date the Permit expires.

d) Unless otherwise directed by the Borough, Commencement of Road Disturbance Activity authorized by the Permit shall begin within ten (10) days of the date of the Permit. Failure to commence work shall cause automatic termination of the Permit unless the Borough, acting through the Borough Manager, or the designee, approves an extension in writing, which shall not exceed 30 days.

e) The applicant shall allow the Borough's inspections of Road Disturbance Activity as it progresses and shall notify the Borough in writing of any unforeseen conditions encountered during the work, and commencement and conclusion dates.

f) During and immediately upon completion of the Road Disturbance Activity, the Borough Manager, or her designee, shall have access to and be permitted to stop the work in order to inspect the Road Disturbance Activity and, when necessary, require compliance with the terms and conditions of the Permit, this Ordinance and any regulations adopted by the Borough. Where any defect, omission, deficiency or failure to perform Road Disturbance Activity occurs and applicant fails to correct the defect within [thirty (30)] days after written notice from the Borough, the Borough may act under Section 3(d) of this Ordinance.

g) The Borough may revoke any Permit issued for the Permittee's violation of any provision of this Ordinance or a Permit or causing or creating any condition constituting a nuisance or endangering life or property.

SECTION 3. RESTORATION AND MAINTENANCE SECURITY

All Permittees will provide "Restoration and Maintenance Security" under these standards and rules:

a) Security shall be determined by the Borough in consultation with the Borough Engineer and Solicitor in an amount reasonably necessary to assure restoration and/or maintenance of any Borough Road affected by the Road Disturbance Activity.

b) All security shall be held by the Borough for twenty-four (24) months following the date of completion of the work and the Borough's final inspection of the Road Disturbance Activity and restoration if there is a claim for repair or restoration of the work on the Permit area.

c) All security shall be paid to the Borough in cash, irrevocable letter of credit or other instrument acceptable to the Borough issued by a bank maintaining an office in the Commonwealth of Pennsylvania, or a surety bond issued by a corporation duly registered as a surety company in good standing with the Pennsylvania Insurance Department. All security instruments shall be in form and substance reasonably acceptable to the Borough.

d) Cash security shall be held by the Borough in a non-interest-bearing escrow bank account and shall be returned to the Permittee after the expiration of all of Permittee's restoration and maintenance obligations in Section 3b, without interest.

e) The Borough shall have the power to forfeit or otherwise seize and apply the Restoration and Maintenance Security upon the Borough's reasonable determination that a Permittee has defaulted on construction, restoration and repair requirements established in the Permit. The Borough shall have authority to refund a portion or otherwise reduce any security before the period specified in Section 3 (b) above as the Borough, in its sole discretion, deems appropriate.

f) The Borough shall have the authority to waive or modify any requirement to post Security where adequate provisions have otherwise been made for restoration and maintenance of the Work area.

g) By resolution referring to this Ordinance and section, Borough Council may identify Road Disturbance Activities that constitute "Large Projects." A Surety Bond may, at the Borough's sole discretion as to the need for the Surety Bond and amount thereof, be required for any Large Project.

h) All Road Disturbance Activities on roads designated by Borough Council as "Primary Highways" will be subject to the Permittee's [2 year guarantees?] All other Road Disturbances shall be subject to the Permittee's one year warranty and guarantee.

SECTION 4. CUTTING OR OPENING ACROSS ROADWAY

a) Road Disturbance Activity consisting of opening, cutting or trenching shall not be permitted across the improved area of a Road unless authorized by a Permit issued under the provisions of this Ordinance. No work shall be performed in excess than that specified in the Permit.

b) Opening, cutting or trenching across the improved area of a Road may be authorized by the Permit where drilling, boring, and driving or tunneling are not feasible because:

(1) The subsurface is solid rock.

(2) There are other facilities located longitudinally under the improved area and their location precludes methods other than trenching;

(3) Development in a very congested traffic area near the Roadway Disturbance Activity makes the construction of a tunneling or boring shaft difficult or impracticable; or

(4) The Borough Manager determines in their sole discretion that there is good cause.

c) No openings to place pipe lines or other structure under the improved surface of a Borough Road by drilling, boring, driving or tunneling shall be made closer than three (3) feet from the edge of the road pavement, and trenches for conduits, water, steam, oil, gas pipes, sewers and other obstructions placed parallel with the road or highway shall be dug so the near edge of the trench is at least three (3) feet outside of the edge of the road pavement with a minimum depth of three (3) feet below the surface of the road or highway, unless otherwise authorized in writing by the Borough. A greater distance shall be used wherever practicable.

d) Any trench or opening shall not be opened a distance of over 50 feet at any one time. The Permittee is not permitted to leave over 50 feet of trench open at the end of a workday. All trench left open at the end of the workday shall be secured and protected with steel plates covering the opening. The edges of all steel plates placed over trenches shall be lined with temporary pavement to prevent movement.

e) Any tile drain, or other structure or facility damaged or disturbed by a Permittee conducting Road Disturbance Activity shall be replaced by the Permittee in a manner satisfactory to the Borough.

SECTION 5. TEMPORARY RESTORATION

Road Disturbance Activity in progress under any Permit shall include temporary restoration on a schedule directed by the Borough which may be stated in a Permit:

a) Cold or hot (Super Pave, ID-2, or other as approved) mix shall be installed after Road Disturbance Activities in a roadway and berm. Compacted thickness shall be minimum two inches.

b) The Permittee shall immediately conduct temporary paving in a manner satisfactory to the Borough.

c) Thirty (30) days after substantial completion of Road Disturbance Activity, permanent restoration must be completed as set forth in this Ordinance.

SECTION 6. PERMANENT RESTORATION

- a) Any person conducting Road Disturbance Activity, including, without limitation, cutting, opening, trenching or otherwise modifying any Road shall comply with the Permanent Restoration requirements of this Ordinance.
- b) Where an improved surface is disturbed by Road Disturbance Activity, the excavation or opening shall be made by a clean cut with a diamond wheel or similar instrument. Openings shall be saw-cut back twelve (12) inches from the limit of the opening or trench.
- c) Any person opening or disturbing any Road with any Road Disturbance Activity shall backfill any resulting excavation with Type 2A aggregate as specified in PennDOT Publication 408, Section 703 (2) (c) - Table C or any replacement publication. Backfill shall be limestone. Compaction of the aggregate shall be in lifts of no more than four (4) inches. Backfill shall be placed and graded to within six and one-half (6 ½) inches of the existing road grade.
- d) Five (5) inches of Super Pave asphalt mixture Base Course shall be placed over the backfill under PennDOT Publication 408, Section 305 or any replacement publication, and shall conform to the most recent calculation methodology published by PennDOT. Unless otherwise directed, the design shall be HMA Base Course, PG 64-22, 0.3 to <3.0 million ESALS, 25 mm mix, SRL-G.
- e) One and one-half 1 ½ inches of Super Pave asphalt mixture Wearing Course shall be placed over the Base Course (see b above) under the Pennsylvania Department of Transportation Publication 408, Section 421 or any replacement publication and shall conform to the most recent calculation methodology available from PennDOT. Unless otherwise directed, the design shall be HMA Wearing Course, PG 64-22, 0.3 to <3.0 million ESALS, 9.5 mm mix, SRL-G.
- f) The joints at all Road openings shall be cleaned and sealed under PennDOT Publication 408, Section 469 or any replacement publication. Joint sealer shall be PG 64-22 or approved equal.
- g) Where a road cut or opening occurs in a single lane of travel of a Borough Road, the permanent restoration of the road cut or opening shall include the milling and overlay (Wearing Course) from curb to the middle of the Roadway.
- h) Where a road cut or opening occurs in the Roadway or within both lanes of travel, the permanent restoration of the road cut or opening shall require the milling and overlay (Wearing Course) from curb to curb or full roadway width.
- i) The Borough may adopt regulations containing technical drawings or sketches and additional guidance on the restoration and construction requirements of Borough Roads that are not inconsistent with this Ordinance.
- j) Concrete curbs, gutters, sidewalks or other facilities must be replaced with 4000 PSI Concrete matching the type, color and texture of adjacent surfaces.

SECTION 7. MULTIPLE ROAD CUTS

a) When a Roadway surface affected by Road Disturbance Activity has not been resurfaced within the immediately preceding (5) five years prior to Road Disturbance Activity and a permittee causes Five (5) or more cuts, openings or modifications in the Roadway within 150 feet of one another, depending on the location of the excavation within the roadway, the Permittee shall be required to mill and overlay the entire section of roadway between all openings either from curb to curb or curb to centerline of the roadway.

b) When a Roadway surface affected by Road Disturbance Activity has been resurfaced within (5) five years before Road Disturbance Activity and a Permittee make three (3) or more cuts, openings or disturbances within 150 feet of each other, depending on the location of the excavation within the roadway, the Borough may require the Permittee to mill and overlay the entire section of roadway between all openings either from curb to curb, or curb to centerline.

SECTION 8. EQUIPMENT DAMAGING ROADWAY

a) To protect the pavement and shoulders of existing road surface, all equipment used in Road Disturbance Activity shall have rubber wheels or runners and shall have rubber, wood or similar protective pads between the outriggers and the surface unless otherwise authorized by the permit.

b) if other than rubber-equipped machinery is authorized, the pavement and shoulders shall be protected by matting, wood or other suitable protective material having a minimum thickness of four (4) inches, unless the Permit requires the Permittee to repave the full width of the roadway.

c) If any equipment utilized in Road Disturbance Activity damages the pavement or shoulders of a Borough Road, the Permittee shall restore the pavement or shoulders to former condition, at the Permittee's expense.

SECTION 9. TRAFFIC PROTECTION AND MAINTENANCE

a) Maintenance and protection of traffic during Road Disturbance Activity shall be carried out in accordance with Pennsylvania Department of Transportation technical requirements, as set forth in Publication No. 213 or any replacement publication.

b) A traffic control plan shall be submitted to and approved by the Borough and Borough Engineer before detouring any traffic.

c) Warning signs shall be placed in such a manner as to be visible to the traveling public and provide ample time for reaction by motorists. Substantial barricades with adequate illumination shall be provided and maintained for any open trench or hole in a Borough Road during Road Disturbance Activity. Blinking lights and/or barricades shall be used for overnight protection of area.

d) A Permittee shall employ and designate employees to direct traffic. Flagmen shall be provided as specified in the permit and under Penn DOT Publication No. 213 or any replacement publications.

SECTION 10. APPROVAL BY BOROUGH

Approval by the Borough of all or part of any permitted Road Disturbance Activity shall not constitute acknowledgment that the Road Disturbance Activity was performed under the terms of the Permit, nor shall such approval act as a release of the Permittee or waiver by the Borough of its right to seek performance or restitution from the Permittee until the Borough's final inspection of the Road Disturbance Activity.

SECTION 11. BOROUGH STANDARDS

All work must conform to Borough standards. The Road Disturbance Activity shall be done at such time and in such manner necessary to provide for the safety of the public and shall conform to all requirements and standards of the Borough and the Permit. If at any time it shall be found by the Borough that the Road Disturbance Activity is not being done or has not been performed properly, the Permittee, upon being notified by the Borough, shall immediately take the steps, at Permittee's own expense, to place the Road Disturbance Activity in a condition to conform to such requirements or standards. If any dispute arises between the Permittee and the Borough's inspector/agent, the Borough's agent or inspector shall have the authority to suspend Road Disturbance Activity until the question at issue can be referred to and be decided by the Borough Manager.

SECTION 12. TEMPORARY DRIVEWAYS

Whenever Road Disturbance Activity requires the movement of a vehicle during the construction period, it shall be the responsibility of the Permittee to install and maintain a stone-based driveway on the premises to prevent the tracking of mud and other debris onto the public Roadway. If mud or other debris is transmitted onto the Roadway, it shall be the responsibility of the permittee to remove said mud and debris immediately from the Roadway.

SECTION 13. DRIVEWAYS

- a) No person shall construct, improve, modify or alter a driveway intersecting with a Borough Road, without first obtaining a Road Occupancy Permit and complying with this Ordinance and regulations issued. Adding gravel to an existing gravel driveway does not require a permit.
- b) Any driveway constructed, improved, modified or altered shall be maintained in compliance with this Ordinance and regulations issued.

c) Application for Road Occupancy Permit for driveway work shall be by owner or person with legal interest in property and authority to so apply, to Borough accompanied by plans and fees as set forth by the Schedule of Fees for Road Occupancy Permits.

d) At point of entry of driveway into Road right-of-way and paved or improved portion thereof, the surface and grade of Road shall not be altered; no material of any kind, temporary or permanent, shall be placed within the improved portion of the Road or gutter where the paved or improved area meets the berm; and the work shall not interfere with maintenance, snowplowing and drainage.

e) Within twenty (20) days after submission of an application for a Road Occupancy Permit for a driveway, the BOROUGH shall approve or disapprove with reasons and send by mail notice of action to applicant. Upon approval, the Permittee shall give to the Borough. The Borough shall inspect work to ensure compliance with the Permit.

f) Construction of a driveway of gravel, paver brick, decorative concrete or other decorative stone within five (5) feet of a Borough Road's paved cart way shall be prohibited. A five-foot distance between a Borough Road and a Driveway shall be paved with the same material as the Borough. Where sidewalks are present, the sidewalk material must be the same as the existing sidewalk.

[SECTION 15. PENALTIES & REMEDIES

a) Any person who shall violate any provision of this Ordinance shall be liable, upon summary conviction for a first offense and upon summary conviction for each subsequent offense, to a fine not exceeding \$1,000.00 for each violation, with costs of prosecution in each case. Upon judgment against any person by summary conviction or proceedings by summons, on default of payment of fine or penalty imposed and costs, defendant may be sentenced and committed to the County Prison for a period not exceeding thirty (30) days.

b) besides the above penalty, any person violating any provision of this Ordinance may be enjoined by civil proceedings.]

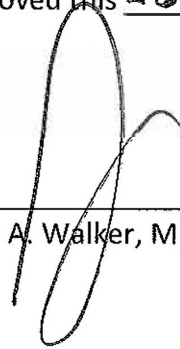
SECTION 16. SEVERABILITY

a) If any sentence, clause, section or part of this Ordinance is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is declared as the intent of the Borough that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included herein.

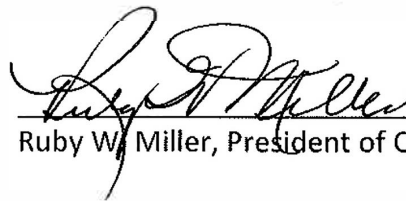
b) Any Ordinance or part of Ordinance inconsistent herewith is hereby repealed insofar as it is inconsistent.

ORDAINED AND ENACTED this 26th day of APRIL 2021, by Council of the Borough of Somerset and effective immediately upon the passing and execution of all signatures.

Approved this 26th day of APRIL, 2021



Scott A. Walker, Mayor



Ruby W. Miller, President of Council

Appendix A
Examples of Road Openings or Cuts

Typical Restoration 1 foot outside ditch line

Mill overlay entire section from curb to curb

Curb Line to Centerline Restoration

Over 5 Years Old

5 or more excavations within 150' feet restoration curb to centerline and between all openings.

Less than 5 years old

3 or more excavations within 150' feet restoration curb to centerline and between all openings.
Or curb to curb