

ORDINANCE #2004-2

PAVE CUT AND STREET EXCAVATIONS

AN ORDINANCE OF THE TOWNSHIP OF DALLAS 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 DALLAS WITHOUT FIRST SECURING A PERMIT AS HEREINAFTER PROVIDED.

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

1. This ordinance shall be known as the DALLAS 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 part, shall have the meanings ascribed to them in this section, except in those instances where the context clearly states otherwise:

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 part, the term "opening" shall have essentially the same meaning as excavation.

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

PERSON - any natural person, partnership, firm, association, corporation, or municipal authority.
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 Dallas 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 Dallas 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 Dallas 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 Dallas 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 Dallas, and indemnify the Township of Dallas 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 Dallas, the applicant shall pay a permit fee in the amount fixed according to resolution. The fee by passage of this ordinance is set at \$100.0 (one hundred dollars). When application shall be made to open or excavate any longitudinal opening or excavation in excess of 10' (ten feet), before any permit shall be issued so to open or excavate, the applicant shall pay in addition to such minimum fee, an additional \$50.00 (fifty dollars) fee, for each 100' (one hundred feet) or fraction thereof to be opened or excavated upon such street.

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 Liability Insurance, which also names the Township of Dallas as an additional party insured.

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 is to be completed.

8. **PERMIT APPROVAL**

A permit may be issued by the Board of Supervisors 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 the utilities that have recorded their facilities in compliance with said Act. A list of utilities providing services in the Township of Dallas and their office address may be obtained from the County Recorder of Deeds.

10. **REFILLING OF OPENING OR EXCAVATION; RESTORATION OF SURFACE;
RESPONSIBILITY FOR DEFECTS OCCURRING WITH 2 (TWO) YEARS**

Any person who shall open or excavate any street in the Township of Dallas 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, with at least **4" B.C.B.C. and 1 ½" ID-2**, 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 the Township of Dallas' specifications for restoration of surfaces of streets in the Township of Dallas. 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. Any openings in excess of 100' (one hundred feet) in the aggregate (all openings lengths added) in any street shall require the

permittee to fully overlay the streets entire width with an additional 1 ½" (one and one half inches) ID-2 Wearing Surface as directed in the locations directed by the Board of Supervisors. This work may require the permittee to mill existing pavement as directed by the Board of Supervisors. If within 2 (two) years after the restoration of the surface, as herein provided, defects appear, therein resulting from detective backfilling or other workmanship by the applicant, the applicant shall reimburse the Township of Dallas for the cost of all necessary repairs to the permanent paving.

11. WORK; CHANGE RESPONSIBILITY OF PERMIT HOLDER FOR CERTAIN WORK; RIGHT OF TOWNSHIP OF DALLAS TO DO CERTAIN S 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 part 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 Dallas, 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 curb line into the highway a distance greater than 1' (one 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 500' (five hundred feet) 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 Dallas, 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 8" (eight inches) in depth. Backfilling shall be placed to within 5 ½" (five and one half inches) of the surface.**
- F. A temporary paving of coldpatch premix, thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving and maintained for a period of 90 (ninety) days.
- G. On a concrete base street, such base shall be replaced with concrete and the minimum size of the opening or excavation shall be 16 (sixteen) square feet.
- H. During the making of any excavation in the street, every necessary and reasonable precaution shall be taken by the applicant and the parties making the same 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 Dallas 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 Dallas may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost thereof, plus 20% (twenty percent) 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 part 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 shall proceed to do the work necessary and required by such emergency, and charge the owner or person responsible for such pipe, line, construction, or apparatus on the basis of cost plus 20% (twenty percent).

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 5 (FIVE) YEARS THEREAFTER

The Board of Supervisors shall give timely notice to all persons owning property abutting on any street within the Township of Dallas about to be paved or improved, and to all public utility companies operating in the Township of Dallas, 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 30 (thirty) 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 5 (five) years after the completion thereof, except in case of emergency. If it is sought to excavate upon or open a sewer within 5 (five) 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 or 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 Dallas, until the plan is filed and the exact location of such main or line has been approved by the Board of Supervisors. The Board of Supervisors will not approve the locating of any such main or line at a depth of less than 30" (thirty inches) from the surface of the street unless they are convinced that locating the same at a depth of more than 30" (thirty inches) from the surface is impossible or impractical.

18. **BOND REQUIRED**

No company, corporation, or association shall dig up any street or alley without first giving to the Township of Dallas financial security in either the form of cash or an irrevocable letter of credit, as surety in the sum determined by the schedule of fees, as prepared annually by the Township Engineer, conditioned for the faithful performance of these provisions, and also for any and all damages, claims, demands, suits, costs, and counsel fees occasioned or arising from the digging up, opening, or closing of said streets and alleys. A bond may be substituted as financial security in certain circumstances if approved by the Board of Supervisors.

19. **PAYMENT FOR WORK DONE BY TOWNSHIP OF DALLAS**

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

20. **PENALTIES**

Any person, firm, or corporation who violates any provision of this Part shall, upon conviction thereof, be sentenced to pay **a fine of not more than \$600.00 (six hundred dollars) plus costs, and in default of payment of said fine and costs, imprisonment for a term not to exceed 30 (thirty) days.** Every day that a violation of this Part continues shall constitute a separate offense.

21. **APPLICABILITY**

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

22. **EFFECTIVE DATE**

This ordinance shall become effective upon passage.

23. **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.

24. 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.

25. 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 18th day of MAY, 2004, by the Board of Supervisors, Township of Dallas, Luzerne County, Pennsylvania, in lawful session duly assembled.

By: *Philip L. Walter*
Philip L. Walter, Board of Supervisors Chairman
Frank E. Wagner
Frank E. Wagner, Vice-Chairman
Glenn M. Howell
Glenn M. Howell, Secretary-Treasurer

Attest: *Nancy J. Ballantyne*

(SEAL)

I hereby certify that the foregoing Ordinance was advertised in the CITIZENS' VOICE on the day of MAY 16, 2004, a newspaper general circulation in the municipality.
Nancy J. Ballantyne
Assistant Secretary-Treasurer