

## Upper Bern Township Ordinance Number 96 - 2009

**An Ordinance of Upper Bern Township, Berks County, Pennsylvania, establishing certain rules, criteria, standards, specifications, fees, permits, inspections and other regulations pertaining to the use, occupancy, excavation, modification and/or improvement of public streets. This Ordinance shall be hereinafter referred to as the Upper Bern Township Street Occupancy Ordinance.**

Be it and it is hereby enacted and ordained by the Board of Supervisors of Upper Bern Township, Berks County, Pennsylvania, and it is hereby ordains and enacts the following provisions as the Upper Bern Township Street Occupancy Ordinance:

### **Section 1: Purpose and Objective**

The purpose and objective of this Ordinance shall be as follows:

- (A) To protect the public health, safety and welfare of the residents, land owners and employees of Upper Bern Township.
- (B) To establish certain rules, criteria, standards, specifications, fees, permits, inspections and other regulations pertaining to the use, occupancy, excavation, modification and/or improvement of public streets.
- (C) To implement the goals, objectives, policies and recommendations contained within transportation, utility and land use plans that has been adopted by Upper Bern Township.

### **Section 2: General Regulations**

- (A) No person shall occupy, excavate, improve, modify or make any tunnel or opening of any kind in, under or adjacent to the surface of any street within Upper Bern Township without first securing a permit for each separate undertaking.
- (B) No person shall install, erect or relocate any pole, structure or other obstruction within any street right-of-way of Upper Bern Township except under such conditions, restrictions and regulations as prescribed in permits granted by Upper Bern Township for such purpose.
- (C) In no event shall any person seeking a permit deviate from the provisions of this Ordinance or from the terms of any subsequently issued permit.
- (D) Nothing in this Ordinance shall be construed to require a permit in advance of emergency repairs necessary for the safety of the public or the restoration or continuance of a public utility or other public service. Application for a permit under such circumstances is still required, with fees and application due within five (5) business days after commencement of the work.
- (E) In all cases in which any emergency repairs are necessary, the Upper Bern Township Roadmaster, Engineer and/or Secretary shall be notified prior to excavation of any kind.
- (F) Modification to the provisions contained within this Ordinance may be permitted only if approved by the Upper Bern Township Board of Supervisors.

### Section 3: Definitions

(A) The following specific terms are hereby defined for this Ordinance:

**Access Point:** A clearly defined point of ingress and egress for vehicles at the street line.

**Adjacent Area:** The area surrounding the immediate area of the permitted work which can reasonable be assumed to have been affected by the permitted work

**Backfill:** Material used to replace or the act of replacing material removed during construction.

**Board of Supervisors:** The Upper Bern Township Board of Supervisors, Berks County, Pennsylvania, which shall also be referred to as the Governing Body of Upper Bern Township.

**Construction:** The placement of materials and equipment in a defined area to be assembled, built, applied and/or demolished in a temporary or permanent manner, as approved by the designated officials of Upper Bern Township.

**Egress:** A point of exit from a property.

**Emergency:** An unforeseen occurrence or combination of circumstances which calls for immediate action or remedy.

**Emergency Repair:** Repair to a utility facility undertaken to repair damage resulting from a vehicle accident or collision with the facility, a failed component or storm damage. The term does not include service connections or disconnections unrelated to vehicle accident, a failed component or storm damage.

**Engineer:** The Upper Bern Township Engineer, as appointed by the Board of Supervisors.

**Improvement:** Any type of structure, paved area and/or physical changes to the land, including but not limited to, grading, paving, stormwater management facilities, sidewalks, street signs, traffic control devices, monuments, utilities, water supply facilities and sewage disposal facilities.

**Ingress:** A point of entrance to a property.

**Inspector:** An authorized representative of Upper Bern Township who has been assigned to inspect permit operations.

**Landowner:** The legal or beneficial owner or owners of land, including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition). A lessee under a written lease who has written authorization of the legal owner shall be deemed to be a landowner for the purpose of this Ordinance.

**Obstruction:** Any wall, dam, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel, rectification, culvert, building, structure, fence, stockpile, refuse, fill or other matter, which may impede, retard or change the normal direction or path of air, water or any modes of transportation.

**Occupancy:** The permanent or temporary possession of any street, structure, building, land area or water body.

**Ordinance:** The Upper Bern Township Street Occupancy Permit.

**Permit:** A highway occupancy permit issued by Upper Bern Township.

**Person:** An individual, corporation, firm, partnership, organization, incorporator's association, trust, or other similar entity.

**Plans:** Drawings which show the location, character and dimensions of the proposed occupancy and related highway features, including layouts, profiles, cross sections and other details.

**Right-Of-Way:** The width or area of land, which is dedicated or reserved to accommodate streets, utilities, stormwater management facilities, traffic control facilities, curbs, sidewalks, bicycle lanes, street lights, and other public improvements.

**Road:** Refer to the definition of "street".

**Roadmaster:** The Upper Bern Township Roadmaster, as appointed by the Board of Supervisors.

**Street:** A public or private right-of-way, excluding driveways, intended as a means of vehicular and pedestrian travel, furnishing access to abutting properties. The word "street" includes thoroughfare, avenue, boulevard, court, drive, expressway, highway and similar terms.

**Structure:** Any manmade object having an ascertainable stationary location on land or in water, whether or not affixed to the land. The term structure shall include, but not limited to, buildings, signs, fences, walls, towers, swimming pools, porches, garages, flagpoles, windmills, water towers, silos, solar energy collectors, and similar structures.

**Township:** Upper Bern Township, Berks County, Pennsylvania.

**Use:** The specific purpose for which land, a structure, or a building is designed, arranged or intended, or for which it may be occupied or maintained, or any activity, occupation, business or operation, which may be carried on thereon or therein.

**Utility:** A service, facility, apparatus or use, which provides electric, telephone, cable, sewer, water, natural gas, and similar utility services, to customers within a defined service area, grid, neighborhood region, or municipality.

**Vehicle:** Any motor vehicle utilized for any lawful use, which is properly licensed and inspected in accordance with all local, state and federal laws.

- (B) Any word or term that has not been defined as part of this Ordinance may be included and further defined within the Upper Bern Township Subdivision and Land Development Ordinance. All other words not defined shall be used with a meaning of standard usage.

#### **Section 4: Permit and Insurance Requirements**

- (A) The application for a permit shall be on a form prescribed or approved by Upper Bern Township, which shall include certificate of insurance, a \$1,000 application fee for the highway occupancy permit, plus an escrow or an improvements agreement to financially guarantee the completion of the restoration work. The terms and amount of the escrow or improvements agreement shall be subject to the review and approval of Upper Bern Township.
- (B) The applicant shall submit three (3) copies of a sketch plan showing such dimensions as the location of the intended facility, width of the traveled roadway, right-of-way lines and a dimension to the nearest intersecting street and the nature of the surface in which the opening is to be made.
- (C) The Upper Bern Township Roadmaster or Engineer shall issue the permit prior to the commencement of the required work. The permit shall only be issued to: a municipal corporation; a public utility company; the landowner who has applied for the permit; or the contractor authorized by the landowner to perform the work specified by the permit application.
- (D) The following specific conditions shall apply to a highway occupancy permit:
  - (1) Transferability. Every permit shall apply only to the person to whom it is issued and shall not be transferable. Permits issued to utilities shall show the identity of the utility.
  - (2) Commencement of Work. All proposed work activities specified by the permit shall commence within ninety (90) days from the date of issuance of the permit. If work is not commenced within that time, the permit shall automatically terminate unless extended, in writing, by the Upper Bern Township Roadmaster or Engineer.
  - (3) Possession of Permit. A copy of the permit must be kept in possession of the person actually performing the work.
  - (4) Continuance of Permit. A permit shall continue in effect during the time required for the work specified by the permit, including the settling of backfill and restoration of permanent pavement. Unless otherwise specified by Upper Bern Township, the permit shall continue in effect until the escrow or improvements agreement has been released.
  - (5) Revocation of a Permit: The highway occupancy permit may be revoked by the Upper Bern Township Roadmaster or Engineer if any of the following occurs as a result of the work undertaken pursuant to the permit or the actions of the applicant, the applicant's agents or employees: a violation of any condition of the permit or of any provisions of this Ordinance; a violation of any provision of any other applicable ordinance or law relating to the work; the existence of any condition or the doing of any act creating a nuisance; and/or endangering the health, safety and welfare of the community. When any permit has been revoked and the work authorized by the permit has not been completed, Upper Bern Township shall perform such work as may be necessary to restore the street or part thereof to its preexisting condition. All expenses incurred by Upper Bern Township shall be paid by the applicant in accordance with the provisions of this Ordinance and/or by other applicable laws of the Commonwealth of Pennsylvania.

- (E) No permit shall be issued unless the applicant provides proof that a Pennsylvania One Call has been completed and that all utilities have been protected.
- (F) No permit will be issued unless the applicant submits with his application a certificate of insurance issued by an insurance company authorized to do business within the Commonwealth of Pennsylvania and in a form acceptable to the Upper Bern Township Solicitor.
- (G) The Upper Bern Township Roadmaster or Engineer shall be authorized to issue the highway occupancy permit for the excavating, digging or opening of a street or right-of-way.

#### **Section 5: Construction and Restoration Requirements**

- (A) All construction and restoration work shall be completed in accordance with the standard details and specifications adopted by Upper Bern Township. The Upper Bern Township Roadmaster or Engineer may prescribe alternative methods for unique site conditions or for circumstances not covered by the standard details and specifications.
- (B) Every applicant will place around the project such barriers, barricades, warning lights, warning flags and danger signs as shall be sufficient for the safety of the public. Barricading shall be in compliance with all regulations promulgated by Upper Bern Township and the Pennsylvania Department of Transportation. No person shall willfully move, remove, injure, destroy or extinguish any barrier, warning light, sign or notice erected, placed or posted in accordance with the provisions of this Ordinance.
- (C) All work shall be completed in such manner as to cause a minimum of interference with travel on the street (right-of-way) affected by the permit application. No street shall be closed to traffic unless the closing is approved by Upper Bern Township and/or the Pennsylvania Department of Transportation. The applicant shall provide notice to the Upper Bern Township Roadmaster or Engineer of all proposed street closings at least ten (10) business days prior to the closure. The applicant shall be responsible for providing notification to all landowners affected by the street closure and establishing a designated detour route, which shall be subject to the approval of Upper Bern Township and/or the Pennsylvania Department of Transportation.
- (D) Pipe drains, pipe culverts and any other structures or facilities encountered shall be protected by the applicant. If any structure or facility is damaged by the applicant, the damage will be repaired by the applicant to the satisfaction of the owner of the facility.
- (E) When work performed by the applicant interferes with the established drainage system of any street, provisions will be made by the applicant to provide proper drainage to the satisfaction of Upper Bern Township and the Pennsylvania Department of Environmental Protection.
- (F) The applicant shall be responsible for all permits and related site improvements associated for erosion and sedimentation control. When any earth, gravel or other excavated material is caused to roll, flow, wash or otherwise lay upon the street, the applicant shall remove the debris from the street at the end of each working day. If the debris is not removed by the applicant, Upper Bern Township may remove the debris and all such cost incurred by Upper Bern Township shall be reimbursed by the applicant.

- (G) Access to private driveways and emergency management facilities shall be provided except during working hours when construction operations prohibit provisions for such access. The applicant shall establish a contingency plan in order to provide alternative access to private driveways and emergency management facilities at all times.
- (H) Unless otherwise permitted by Upper Bern Township, excavated materials shall be hauled away. The Upper Bern Township Roadmaster or Engineer may require the applicant to provide toe boards or bins in order to expedite the flow of traffic or to abate a dirt or dust nuisance. If the excavated area is muddy or causes inconvenience to pedestrians, temporary wooden plank walks shall be installed by the applicant. If the street is not wide enough to hold the excavated material without using part of an adjacent sidewalk, the applicant shall keep open a clean and unobstructed passageway on at least one-half (1/2) of the affected sidewalk.
- (I) Unless otherwise permitted by Upper Bern Township, all work authorized by the permit shall be performed during day light hours, Monday through Friday. The Upper Bern Township Roadmaster or Engineer may authorize emergency repairs and/or for work conducted outside of the permitted days or hours of operation specified by the permit.
- (J) If blasting is required to be done in the course of any excavation, all such activities shall be completed in accordance with the provisions established by Upper Bern Township and the Commonwealth of Pennsylvania. Notification to all adjacent landowners shall be the responsibility of the applicant.
- (K) All pavement cuts, openings, modifications and excavations shall be properly made, backfilled and relayed by the applicant to the original condition in accordance with the standards and specifications adopted by Upper Bern Township and/or as directed by the Upper Bern Township Roadmaster or Engineer. The applicant shall be responsible for any settlement or other defect occurs in a restored area within a period of two (2) years from the date of completion of the permit restoration work. Any expense incurred by Upper Bern Township in correcting such settlement or other defect shall be paid by the applicant.
- (L) At any time, the Upper Bern Township Roadmaster, Engineer and/or other municipal official may inspect the work authorized by a permit. Upper Bern Township may authorize to provide a full-time inspector if necessary to ensure compliance with the provisions of this Ordinance. All inspection fees shall be paid by the applicant.
- (M) In no case shall any street opening or excavation that has been made by an applicant be considered in the charge or care of Upper Bern Township or any of its agents, officers, employees, inspectors or consultants, except to exercise of the police powers or emergency management responses, when it is necessary to protect life and property.
- (N) The applicant shall notify Upper Bern Township, in writing, upon completion of all work accomplished under the provisions of the permit. All restoration work shall proceed in a timely fashion. All restoration work for which a permit is issued shall be fully completed within 60 days after the completion date slated in the application.

## **Section 6: Administration, Enforcement, Penalties and Appeals**

- (A) All administrative and enforcement provisions established by this Ordinance shall be regulated and enforced by Upper Bern Township. In addition to the Upper Bern Township Roadmaster and Engineer, the Board of Supervisors may authorize certain employees, inspectors and/or consultants to enforce the provisions of this Ordinance.
- (B) All costs and expenses associated with the design, construction, permitting, inspection and other activities associated with the highway occupancy permit shall be borne by the applicant.
- (C) The applicant shall indemnify and hold Upper Bern Township harmless of any loss or damage that may be directly or indirectly a result of any site improvements associated with the permit.
- (D) Any person who has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable in a civil enforcement proceeding commenced by Upper Bern Township, pay a judgment of not more than \$1,000 plus all court costs, including reasonable attorney fees incurred by a municipality as a result thereof. In addition, the person found liable shall be responsible to pay for all damages to any streets relating to the permit. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, Upper Bern Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation and subject to the appropriate penalties, as authorized and prescribed by the laws Commonwealth of Pennsylvania.
- (E) Appeals from any interpretation, decision or enforcement action issued by Upper Bern Township or any of its authorized agents relating to the provisions of this Ordinance shall be made in writing to Upper Bern Township within thirty (30) days from the date of the interpretation, decision or enforcement action. All appeals shall be conducted in accordance with the provisions of this Ordinance and the laws of the Commonwealth of Pennsylvania.

## **Section 7: Severability and Repealer**

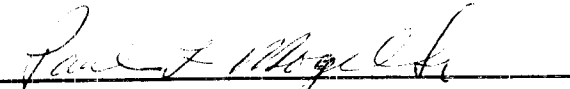
- (A) All other Ordinances adopted by Upper Bern Township are hereby ratified and confirmed.
- (B) Any provision of any Ordinance inconsistent with the provisions of this Ordinance is hereby repealed to the extent of the inconsistency.

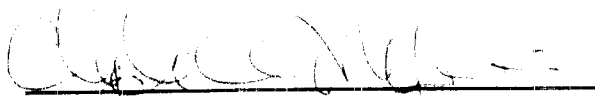
**Section 8: Municipal Enactment**


Duly enacted and ordained by the Upper Bern Township Board of Supervisors, Berks County, Pennsylvania at a public meeting held on March 11, 2009.

Upper Bern Township Board of Supervisors  
Berks County, Pennsylvania

ATTEST:

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Supervisor

  
\_\_\_\_\_  
Upper Bern Township Secretary

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Supervisor