

BOROUGH OF NEW CUMBERLAND

CUMBERLAND COUNTY, PENNSYLVANIA

ORDINANCE NO. 560

ORDINANCE PROVIDING FOR THE CONSTRUCTION, MAINTENANCE AND REPAIR OF CURBS; CONSTRUCTION AND REPAIR REQUIREMENTS; ESTABLISHMENT OF SPECIFICATIONS; NOTICE REQUIREMENTS; EMERGENCY REPAIRS TO CURBS; SPECIFICATIONS REQUIRING OWNERS TO COMPLETE WORK; COMPLETION OF WORK BY BOROUGH, COLLECTION OF COSTS, PENALTY AND ATTORNEY FEES IN PURSUIT OF DELINQUENT ACCOUNTS FOR REPAIRS AND MAINTENANCE TO CURBS UPON FAILURE OF OWNER TO CONSTRUCT AND MAKE REPAIRS; REPEALING PRIOR ORDINANCES 193 AND 221

BE IT ENACTED AND ORDAINED by the Council of the Borough of New Cumberland, Cumberland County, Pennsylvania, and it is hereby enacted and ordained by the authority of same:

SECTION 1: AUTHORITY. This Ordinance is enacted pursuant to the Borough Code, Act of February 1, 1966, P.L. 1656 (1965), as amended, 53 P.S. §46202 (17) (STREET AND SEWER REGULATION; OBSTRUCTIONS), 53 P.S. §46801, et seq. (SIDEWALKS AND CURBS), 53 P.S. §48301, et seq. (GENERAL POWERS, ENFORCEMENT) and the Act of Act of May 16, 1923, P.L. 207, §7, as amended, 53 P.S. §7101, et seq., as amended (MUNICIPAL CLAIMS AND TAX LIENS).

SECTION 2: STATEMENT OF PURPOSE. The Borough of New Cumberland recognizes the necessity for the construction, repair, maintenance and upkeep of curbs in order to provide safe, unimpeded and unobstructed pedestrian access and motor vehicle use within the municipality. The safe, unimpeded and unobstructed pedestrian access and motor vehicle use throughout the Borough of New Cumberland is necessary to preserve the health, safety and general welfare of the citizens and businesses. The Borough of New Cumberland further recognizes the need for adequate and sufficient curbing to regulate storm water runoff, to provide reasonable parking accommodations and to provide safe, unimpeded and unobstructed pedestrian access to existing sidewalks, curbs and properties within the municipality.

SECTION 3: ESTABLISHMENT OF CURB CONSTRUCTION REQUIREMENTS; REQUIREMENTS FOR REPAIRS AND MAINTENANCE OF CURBS

(a) GENERAL CURB CONSTRUCTION, REPAIR AND MAINTENANCE REQUIREMENTS

(i) Any person(s), company or corporation owning real estate abutting any public street, right of way, avenue, alley or laned roadway within the Borough of New Cumberland, shall, upon being served with notice as required by this Ordinance, construct concrete curb and all such construction of curb shall conform to all provisions of this Ordinance.

(ii) No owner of any real estate with curbs or with curbs hereinafter constructed shall remove such curbs, or cause or permit such curbs to deteriorate or decay to a condition which creates a dangerous condition or prevents the safe and unimpeded passage of pedestrian use. A dangerous condition shall be defined as a reasonably foreseeable condition which creates a risk of accident or injury through tripping, falling or slipping as a result of the condition or state of a curb.

(iii) All construction, reconstruction, grading, paving, repairing, repaving of existing curbs at corner lots or adjacent to cross-walks shall be completed by the owner or owners of any real estate abutting such curbs so as to allow for curb cuts and ramps, where feasible, and to make the transition from street to curb easily negotiable for handicapped persons in wheelchairs and for other persons who may be disabled or have difficulty in making the required step up or down from curb level to street level.

(b) OWNER RESPONSIBILITY

(i) All construction, reconstruction, grading, paving, repairing, repaving of existing curbs or curbs hereinafter constructed in the Borough of New Cumberland shall be done either by the owner or owners of the lot or lots abutting thereon, or after receipt of proper notice in accordance with this Ordinance, by the Borough of New Cumberland at the reasonable cost and expense of the owner or owners, as provided by law and in accordance with this Ordinance.

(ii) Existing curbs and all curbs hereinafter constructed in the Borough of New Cumberland shall be maintained in continual repair and in safe condition by the owner or owners of the property abutting said curbs, or upon failure of the owner or owners, by the Borough of New Cumberland at the reasonable cost and expense of the owner or owners, as provided by law.

(c) CURB CONSTRUCTION SPECIFICATIONS

(i) Curb Concrete Concrete shall conform to PA Department of Transportation Class A concrete for cement concrete curb, and shall attain an ultimate strength of 3300 lbs per square inch in 28 days. Test cylinders and samples must be supplied by the contractor upon request of the Borough Engineer.

(ii) Size Curb shall be constructed eighteen (18") inches in depth, seven (7") inches wide at top, with a one (1") inch batter on an eight (8") inch face, eight (8") inches at bottom, with an eight (8") inch reveal.

(iii) Forms All forms shall be metal, straight, free from warp and of sufficient strength when staked to resist the pressure of the concrete without springing. Both inside and outside forms shall extend to the full depth of the curb, and shall be securely fastened together.

(iv) Treatment of Forms All forms and templates shall be cleaned thoroughly and treated with an approved material as required to prevent the concrete from adhering thereto.

(v) Joints Expansion joints shall be cut in curbs according to the detail and at intervals not more than twenty (20') feet. Expansion joints, consisting of a minimum of one-half (1/2") inch fiber matrix and bitumen material. Material shall be cut to conform to area adjacent to curb or to conform to cross sectional area of curb.

(vi) Placing of Concrete The sub-grade shall be formed four (4") inches below the required depth of the curb. Four (4") inches of 2B stone shall be placed and tamped prior to pouring the concrete. The concrete shall be placed in the forms and vibrated only sufficiently to bring mortar to the surface, after which the top surface of the curb shall be finished smooth and even by means of a wooden float immediately after being placed. When concrete curb has set sufficiently, the forms shall be removed, the concrete shall be rubbed out to an even textured finish.

(vii) Depressed Curb and ADA Ramps The height of the curb may be lowered six (6) inches at all places where driveways enter the street and at such other places as directed by the Borough Manager or Borough Engineer.

(viii) Grades and Offset Stakes Grade stakes and offset stakes will be given by the Borough Engineer upon request of the Borough Manager. The Borough Engineer shall be given five (5) days notice prior to the date the owner wishes to start the construction so that there shall be ample time to place the construction stakes. The position of the curb will be determined by these stakes.

(d) OBSTRUCTIONS/NUISANCES

(i) No fixed or permanent structure adjacent to any residential, commercial or industrial use shall impede or restrict the flow of storm water adjacent to any curb within the Borough of New Cumberland.

(ii) No fixed or permanent structure, including but not limited to porches, steps, building entrances, bay or bowed windows, adjacent to a residential, commercial or industrial use, shall extend over any curb so as to restrict the free and unimpeded movement of pedestrian traffic or to create a dangerous condition.

(iii) Any fixed or permanent structure which obstructs the flow of stormwater along any curb or extends over a curb may constitute a nuisance which is unlawful and abatable as such following establishment of such nuisance before a district justice or court of common pleas.

SECTION 4: NOTICE REQUIREMENTS

(a) Upon the failure or neglect of any owner or owners of real estate or lots to construct, maintain, repair or replace any curb in violation of this Ordinance, or in the event such curb is in a dangerous condition, the Borough Secretary or its agents shall provide notice to such owner of the defective and deficient conditions of such curb. All such notices shall be served upon the owner of the premises to which the notice refers, if such owner is a resident of the Borough. If the owner is not a resident of the Borough, then such notice may be served upon the agent or tenant of the owner, or upon the occupant of such premises. If the owner has no agent or tenant or there is no occupier of such premises, then service shall be by printed or written notice conspicuously posted upon the premises.

(b) Upon the failure or neglect of the owner or owners of the property to construct, maintain, repair or replace any curb within ninety (90) days after receiving notice of such violation or failure, the Borough of New Cumberland may cause the construction, grading, replacement, maintenance and repairing to be done at the cost thereof and ten percent (10%) additional, together with all charges and expenses, from such owner or owners in accordance with the acts of Assembly, and in accordance with the law relating to the filing and collection of municipal claims, or by action for assumpsit.

SECTION 5: EMERGENCY REPAIRS TO CURBS

(a) In addition to the remedies stated above, the Borough shall have the power to make emergency repairs to any curb, where, in the opinion of the Borough Engineer and the Highway Superintendent, a curb is in a dangerous condition and can be repaired by an expenditure of not more than five hundred dollars (\$500.00). In the event such emergency repair is required, the Borough shall cause to be personally delivered upon the owners or owner's agents a notice of such dangerous conditions. If the owner cannot be served within the county, notice may be served upon the agent of the owner or the party in possession, or if there is no agent or party in possession, the notice may be served by posting the same upon such premises. Upon the failure or neglect of the owner or owner to make such emergency repairs within a forty-eight (48) hour period after service of such notice, the Borough may make such repairs, and upon completion of the work, the cost thereof shall be a charge against the owner or owners of the property and shall be a lien, until paid, upon the abutting property, provided a claim is therefor filed in accordance with the law providing for the filing and collection of municipal claims. Any such charge may also be collected by an action in assumpsit.

SECTION 6: COLLECTION OF ATTORNEY FEES:

(a) Amount of Fees: Where attorney fees are sought to be collected or are incurred in the collection of a delinquent account(s), said fees are hereby approved at an hourly rate of \$85.00 per hour, with said fees to be calculated upon said hourly rate at time increments of no less than one-tenth (1/10) of an hour, based upon the time expended by the Borough Solicitor or any other attorney designated from time to time by Council to collect upon any delinquent account and/or represent the Borough in actions involving claims arising out of the Municipal Claim and Tax Lien Act, as amended.

(b) Collection of attorney fees: Where attorney fees are sought to be collected or are incurred in the collection of a delinquent account(s), at least thirty (30) days prior to assessing or imposing attorneys fees in connection with delinquent account(s), the Borough of New Cumberland, shall, by United States certified mail, return receipt requested, postage prepaid, mail to the property owner(s) the notice of intent to impose attorney fees. The notice to the owner(s) shall include a statement of the municipality's intent to impose or assess attorney fees within thirty (30) days of mailing the notice when notice is received by the owner(s), or within no earlier than ten (10) days of the mailing of the notice when such notice is refused or unclaimed as set forth above. Any notice required by this section shall be mailed to the owner(s) last known post office address by virtue of the knowledge and information possessed by the Borough of New Cumberland and the county office responsible for assessments and revision of taxes. The Borough of New Cumberland shall determine the owner's last post office address known to the appropriate agent of the Borough and county assessment office. The assessment of attorney fees shall thereafter be charged, assessed, imposed and recovered in accordance with the manner of collection of the underlying municipal claim or lien.

SECTION 7: ENFORCEMENT: VOLUNTARY COMPLIANCE: PENALTY

(a) Review by Borough: All properties with existing curbs shall be reviewed on an annual basis by a committee appointed by the governing body or by staff of the Borough. The Borough Engineer shall review any curbs determined to need maintenance and repair, or in a dangerous condition, and may provide the governing body and property owner(s) with an estimate for repairs with the Notice requirements identified in Section 4.

(b) Voluntary compliance: Nothing in this Ordinance shall be construed to prevent any owner or owners of property within the Borough from voluntarily constructing curbs or repaving or repairing the same adjacent to their property in accordance with the terms, specifications and requirements of this Ordinance.

(c) Penalty for violation: In addition to the remedies to insure compliance as set forth above, including the imposition of attorney fees and liens, the Borough of New Cumberland may seek enforcement of this Ordinance before an Issuing Authority. Any person who shall violate any of the provisions of this Ordinance shall, upon conviction thereof, be sentenced to pay a fine of not less than one hundred fifty (\$150.00) dollars, nor more than one

thousand (\$1,000.00) dollars, together with the costs of prosecution, to be collected as other fines and costs are now recovered by law, together with the replacement cost of all work not meeting specifications.

SECTION 8: EFFECTIVE DATE

This Ordinance shall become effective in accordance with law.

SECTION 9: SEVERABILITY

In the event that 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 or other Ordinances affected by this Ordinance, it being the intent of the Borough of New Cumberland that such remainder shall be and shall remain in full force and effect.

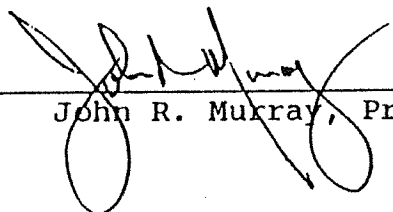
SECTION 10: RELATIONSHIP TO OTHER ORDINANCES

All other Ordinances, parts of Ordinances or parts of Resolutions inconsistent herewith shall be and the same expressly are repealed. Ordinances 193 and 221 are hereby repealed.

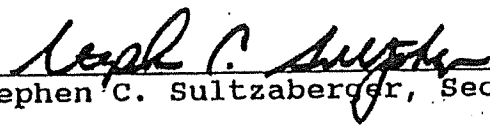
ENACTED AND ORDAINED this 4th day of September, 1996.

COUNCIL OF THE BOROUGH OF NEW CUMBERLAND

By

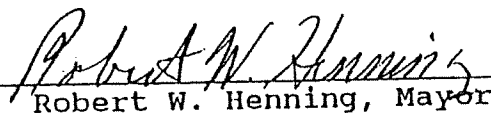

John R. Murray, President

ATTEST:


Stephen C. Sultzaberger, Secretary

APPROVED this 4th day of September, 1996.

By


Robert W. Henning, Mayor