

BOROUGH OF NEW CUMBERLAND
CUMBERLAND COUNTY, PENNSYLVANIA

ORDINANCE NO. 561

ORDINANCE PROVIDING FOR MAINTENANCE AND REPAIR OF EXISTING SIDEWALKS; CONSTRUCTION AND REPAIR REQUIREMENTS; ESTABLISHMENT OF GRADES; NOTICE REQUIREMENTS; EMERGENCY REPAIRS TO SIDEWALKS; REPAIR, MAINTENANCE, DIMENSIONS, GRADING SPECIFICATIONS REQUIRING OWNERS TO COMPLETE WORK; COMPLETION OF WORK BY BOROUGH, PENALTY, COLLECTION OF COSTS AND ATTORNEY FEES IN PURSUIT OF DELINQUENT ACCOUNTS FOR REPAIRS AND MAINTENANCE UPON FAILURE OF OWNER TO MAKE REPAIRS AND CONSTRUCTION

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. §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 repair, maintenance and upkeep of existing sidewalks in order to provide safe, unimpeded and unobstructed pedestrian access within the municipality. The safe, unimpeded and unobstructed pedestrian access 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 to provide safe and unimpeded access throughout the business district to maintain a viable economic community attractive to general public use and pedestrian traffic.

**SECTION 3: ESTABLISHMENT OF SIDEWALK CONSTRUCTION,
REPAIR, AND MAINTENANCE REQUIREMENTS FOR EXISTING
SIDEWALKS**

(a) GENERAL SIDEWALK REPAIR AND MAINTENANCE REQUIREMENTS

(i) All existing sidewalks and sidewalks hereinafter constructed shall be maintained and repaired by the owner of any real estate abutting such sidewalks within the limits of the Borough of New Cumberland.

(ii) No owner of any real estate with existing sidewalks or with sidewalks hereinafter constructed shall remove such sidewalks, or cause or permit such existing sidewalks 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 sidewalk.

(iii) All construction, reconstruction, grading, paving, repairing, repaving of existing sidewalks at corner lots or adjacent to cross-walks shall be completed by the owner or owners of any real estate abutting such sidewalks so as to allow for curb cuts and ramps, where feasible, to make the transition from street to sidewalk 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 street level to sidewalk level.

(b) OWNER RESPONSIBILITY

(i) All construction, reconstruction, grading, paving, repairing, repaving of existing sidewalks or sidewalks 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 sidewalks and all sidewalks 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 sidewalks, 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) SIDEWALK CONSTRUCTION SPECIFICATIONS

(i) Width Existing sidewalks with a width in excess of (4) feet shall be replaced or repaired with a sidewalk at least as wide as the original section or sections replaced. All other replaced or repaired sidewalks shall be at least four (4) feet in width.

(ii) Location; Grass strip All sidewalks shall be located within the street right of way, when possible. A grass strip may be provided between the curb and sidewalk in a residential district, when possible.

(iii) Construction materials; Depth All sidewalks shall be replaced with and constructed of concrete at least four (4) inches thick underlain by a base course of four (4) inches of crushed stone. Unsuitable material shall be removed and replaced with approved material, and the foundation shall be thoroughly compacted and finished to a firm, even surface. Concrete shall be proportioned, mixed and placed and 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.

(iv) Slope; Drainage All sidewalks shall be sloped for drainage in the direction of the street at the rate of one-quarter (1/4) inch per foot. Satisfactory outlets for draining the stone aggregate base shall be provided.

(v) Joints All joints or locations where concrete meets an existing concrete curb, existing sidewalks, poles, fire hydrants and similar structures shall be constructed with expansion joint filler, at least one-half inch (1/2) in thickness, at the full depth of the concrete in the sidewalk. All expansion joints and scoring cracks, where required, shall be sealed with joint sealing material around the structure for the full depth of the concrete in the sidewalk.

(vi) Backfilling All repairs to existing sidewalks or sidewalks hereinafter constructed shall be completed with backfill to a level equal to the completed grade of the sidewalk to insure appropriate drainage. Major honeycombed areas shall be considered defective and shall be removed and replaced at no expense to the municipality.

(vii) Scoring Sidewalks shall be scored transversely every five (5) feet of length with a one-fourth (1/4) score.

(viii) Forms Forms shall be of wood or metal, straight, free from warp and of sufficient strength when staked to resist the pressure of the concrete without springing. If wood, they shall be nominal two (2) inch planks; if metal, they shall be of approved construction. Forms shall have a depth equal to the depth of the concrete and shall be thoroughly cleaned and oiled before the concrete is placed against them. Forms that are worn, bent or damaged shall not be used.

(d) OBSTRUCTIONS/DANGEROUS CONDITIONS

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 sidewalk so as to restrict the free and unimpeded movement of pedestrian traffic or to create a dangerous condition.

SECTION 4: NOTICE REQUIREMENTS

(a) Upon the failure or neglect of any owner or owners of real estate or lots to maintain, repave, repair or replace any sidewalk, or in the event such sidewalk 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 sidewalk. 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 maintain, repave, repair or replace any sidewalk within ninety (90) days after receiving notice of such violation or failure, the Borough of New Cumberland may cause the construction, grading, paving, repaving, 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 SIDEWALKS

(a) In addition to the remedies stated above, the Borough shall have the power to make emergency repairs to any sidewalk, where, in the opinion of the Borough Engineer and the Highway Superintendent, a sidewalk 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 agent(s) 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 sidewalks 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 sidewalks 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 sidewalks 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

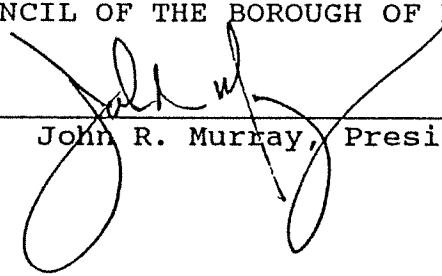
In the event that any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance or other Ordinances affected by this Ordinance, it being the intent 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.

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