BOROUGH OF NEW CUMBERLAND
COUNTY OF CUMBERLAND
COMMONWEALTH OF PENNSYLVANIA
ORDINANCE NO. 726

AN ORDINANCE REGULATING THE DIGGING OF TRENCHES, OPENINGS AND EXCAVATIONS IN THE STREETS OF THE BOROUGH OF NEW CUMBERLAND, CUMBERLAND COUNTY, PENNSYLVANIA, REQUIRE REFILLING THE SAME AND RESURFACING THE STREETS AS REQUIRED, ESTABLISHING PERMIT AND FEE PROCEDURES, PRESCRIBING PENALTIES FOR VIOLATION THEREOF, REPEALING ALL INCONSISTENT ORDINANCES AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, after discussion Borough Council determined it is necessary to adopt this Ordinance to provide provisions for the opening and excavation of streets within the Borough to provide for the safety, welfare and security of Borough residents and those traveling on Borough streets,

NOW, THEREFORE, it is hereby **ORDAINED** and **ENACTED** by the Borough Council of the Borough of New Cumberland, County of Cumberland and Commonwealth of Pennsylvania, as follows:

Section 1. Definitions and Word Usage

A. Definitions. As used in this Ordinance, the following terms shall have the meanings indicated:

BOROUGH REPRESENTATIVE
A firm or individual designated by the Borough Manager to manage and inspect street openings or excavations as set forth in this Ordinance; generally, the Borough Engineer or Public Works Foreman.

PERSON
Includes any natural person, partnership, firm, association or corporation.

STREET OR ROADWAY
Any ordained public street, avenue, road, square, alley, highway or other public place located in the Borough of New Cumberland and established for the use of vehicles.

B. Word Usage. In this Ordinance, the singular shall include the plural, and the masculine shall include the feminine and the neuter.

Section 2. Permit Required

It shall be unlawful for any person to open or to make any excavation of any kind in any of the streets in the Borough of New Cumberland without first securing a permit therefore as hereinafter provided.

Section 3. Application for Permit

Any person who shall desire to make any opening or excavation in any of the streets in the Borough of New Cumberland shall make application to the Borough Manager or his/her designee, in writing, for a permit. Such application shall be made upon forms to be furnished by the Borough and shall set forth the name of the applicant, an anticipated construction start date, the exact location of the proposed opening or excavation and the approximate size and depth thereof and shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Borough and the laws of the Commonwealth in relation thereto and that the applicant shall well and truly save, defend and hold harmless the Borough from and indemnify it against any and all actions, suits, demands, payments, costs and charges arising from or by reason of the proposed opening or excavation and all damages to persons or property resulting in any manner therefrom or occurring in the prosecution of the work connected therewith or from any other matter, cause or thing relating thereto.

Section 4. Fees

A. Before any permit shall be issued to open or excavate any street in the Borough, the applicant shall pay to the Borough Secretary an application fee and inspection fee in an amount as fixed from time to time by Resolution of the Council of the Borough of New Cumberland.

B. In addition, each applicant submitting an application for a permit to open or excavate any street in excess of 10 longitudinal feet in the Borough shall pay into escrow or bond with the Borough of New Cumberland an amount as fixed by Resolution of the Council of the Borough of New Cumberland. Said escrow amount shall be used to cover the cost of any inspections by the Borough Engineer and/or to complete any improvements by the applicant that do not comply with the provisions of this Ordinance. The applicant shall, concurrent with payment of the escrow amount or bond, enter into an agreement in a form acceptable to the Borough Solicitor defining how fees shall be charged to the escrow account.

Section 5. Issuance of Permit

Permits shall be issued only to persons furnishing pubic utility services or the owner or owners of the real property adjoining the location where such opening or excavation is to be completed, after all the permit requirements have bene filed and application fees have been paid. In cases where permits are issued, the person or persons filing said application become the permittee, and are responsible for compliance with all provisions set forth in this Ordinance.

Section 6. Refilling and Restoration Required

A. Any person opening or excavating any street in the Borough shall be responsible for refilling the opening or excavation immediately upon completion of the work for which said opening or excavation was made. This immediate refilling of the opening or excavation, hereinafter referred to as the "refilling," and temporary restoration of the opening and excavation shall be done only after inspection by the Borough Representative. Upon the written approval of the Borough Representative, the opening and excavation shall be refilled by backfilling with No. 2A modified stone, compacted in layers not to exceed eight inches in depth, and the surface of the street shall be temporarily restored with cold patching. Upon completion of the cold patching, the person opening or excavating the street shall immediately secure the written approval of the Borough Representative, for the manner and method of installing the cold patch.

B. The cold patching shall remain in place for a minimum of 90 days and maximum of 120 days unless the aforementioned time limits are shortened or lengthened, respectively, by the Borough Engineer, or Borough Manager, in writing. At a time not less than the minimum of 90 days and not more than the maximum of 120 days, or as changed by the Borough Engineer, or Borough Manager, in writing, the person opening or excavating the street shall restore the street and the surface of the street to the same condition as it was before the opening or excavation. The bituminous pavement materials used for restoration shall consist of a four-inch (compacted thickness) layer of SUPERPAVE 25mm and a two-inch (compacted thickness) layer of SUPERPAVE 9.5mm wearing course unless otherwise approved by the Borough Engineer, or such other person designated. All joints shall be treated with PennDOT approved bituminous sealer. This restoration of the street between shall be hereinafter referred to as the "final restoration." The month, day and year of restoration must be reported to the Borough in writing.

C. Acceptance of completion in writing by the Borough Representative, of the final restoration of the street, shall initiate a three (3) year maintenance period. If during said three-year maintenance period, commencing upon the date of the final restoration, there shall appear any defects in the refilling of the opening or excavation or in the restoration of the surface of the same, the Borough Representative, shall make a determination, in writing, as to the cause of the defect. The person opening or excavating the street shall immediately make all necessary repairs to correct the defects aforementioned, and such correcting of the defects shall be done in accordance with the directions of the Borough Representative.

D. The person opening or excavating the street shall have thirty (30) days from the date of the written notice from the Borough to correct any defects as aforementioned. If any such defects are not corrected within 30 days from the date of the written notice of same, the Borough shall proceed to have the defects corrected, and the cost of same shall be paid by the person opening or excavating the street.

E. Any person required to refill or restore any street opening under this section shall restore, repave or overlay said street section in accordance with the requirements of Pennsylvania Department of Transportation Publication 408 Specifications, as amended, for final restoration of the street.

F. In all cases, traffic control conforming to PennDOT requirements must be provided.

Section 7. Regulations Governing Refilling and Restoration

A. No opening or excavation in any street shall extend from the curb line into the street a distance greater than one foot beyond the center line of the street before being refilled and restored in accordance herewith.

B. No more than 500 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 water mains or sewers or their connections with buildings or with any other subsurface lines or construction until permission of the proper authorities in connection with such subsurface lines or construction shall have been obtained.

D. No tunneling shall be allowed without the express approval of the Borough Representative. The backfilling of any tunnel excavation shall be made only in the presence of the Borough Representative and must receive the written approval of the Borough Representative.

E. All openings and excavations shall be temporarily refilled immediately upon completion of the work for which the opening or excavation is made. During the making of any opening or excavation in any street, every necessary and reasonable precaution shall be taken by the applicant and the parties making same to keep the street in a safe and passable condition both day and night by barricades, barriers and other devices.

F. All permits granted hereunder are subject to the express condition that the person to whom same is issued shall indemnify, save and keep harmless the Borough and its representatives from any loss in damages or otherwise whatsoever which may or shall be occasioned at any time by said excavation or by any leak, explosion or other injury from any pipe, apparatus, conduit or any other matter placed in the said excavation.

G. Should any trenching project commenced pursuant to this Ordinance consist of 10 or more linear feet of trench, all persons, firm and corporations digging or opening such trenches in any of the streets of the Borough for any purposes whatsoever shall be responsible for repaving or overlaying the pavement of any Borough street 10 feet prior to the opening and 10 feet beyond the opposite edge of the opening, with the width of said overlay to be from the curb line or edge of pavement to the center line of the disturbed traffic lane in accordance with specifications of the Borough Engineer. The repaving or overlaying work done by the permittee shall be performed under the direction of the Public Works Foreman, unless the Borough shall designate another individual. Said repaving or overlaying shall be performed at the sole cost and expense of the permittee.

H. Whenever four or more street openings of any Borough street have occurred within any one hundred linear foot section (measured either longitudinally or transversely) of the pavement of a Borough street, then at the time of the occurrence of the fourth opening, the permittee shall overlay the traffic lane or lanes in which the openings were made over the entire length of roadway between the openings in accordance with the repaving and overlay requirements of this Ordinance. The Borough may, at its sole discretion, waive requirements of this paragraph for individual property owners and their contractors performing repair work within the Street.

I. In any event any street opening or excavation project commenced in any Borough street consists of more than 100 linear feet (measured either longitudinally or transversely) in the pavement, then the Borough shall require the permittee to overlay the traffic lanes in which the openings were made for the entire length of the roadway segment in accordance with the repaving and overlaying requirements of this Ordinance.

J. In the event an overlay is required, work shall include, but not be limited to, full width milling or gutter milling along curbs (as approved by the Borough), milling for paving notches, the placement of tack coat, sealing all joints and replacing pavement markings. Lids on all utilities shall be raised to the finish grade.

Section 8. Emergency Repairs

In the case of any leak, explosion or other accident in any subsurface pipe, line, construction or apparatus, it shall not be unlawful 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 48 hours thereafter and that there is compliance with all other provisions of this Ordinance. 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 Borough, after such notices as it shall deem necessary under the circumstances of the particular case, in writing, shall proceed to do the work necessary and required by such emergency and shall be reimbursed for the cost of such work, plus 20%, by the owner or person responsible for the pipe, line, construction or apparatus.

Section 9. Notice of Excavation to property owners and utility companies required

The Borough shall give notice in writing to all persons owning property abutting on any street within the Borough about to be improved and to all utility companies operating in the Borough. All such persons and utility companies shall make all water, gas or sewer connections as well as any repairs thereto and shall make any installation of curbing or repairs thereto or any other repairs which would necessitate excavation of the street. All connections and repairs, respectively, shall be made within ninety (90) days from the date of the written notice, unless such time is extended in writing, for cause shown, by the Borough Engineer or the Borough Manager.

Section 10. Limitation of Excavation of New Pavement

New paving shall not be opened or excavated for a period of five years after the completion thereof, except in case of emergency. If it is sought to excavate or open a street within five years after the completion of the new paving for any other reason than an emergency as above stated, the written application shall be submitted to the Borough for consideration and shall be subject to an additional Permit/degradation fee as set forth in Section 10A below.

A. Permit/degradation fee. Prior to the issuance of a permit allowing excavation to be done to a street within five (5) years after the last paving or resurfacing, a degradation fee shall be added to the permit fee. The applicant shall pay to the Borough a degradation fee for each excavation in addition to the permit fees required in Section 4 in accordance with the following schedule:

    Pavement age more than five years: $0.00
    Pavement age less than five years: $150.00
    Pavement age less than three years: $300.00
    Pavements age less than one year: $500.00

B. If the permittee opens pavement having a bituminous concrete surface and the wearing course is less than five (5) years old, the permittee shall, in addition to the aforementioned restoration requirements, comply with the following additional conditions:
    i. When two or more longitudinal or transverse openings have been made within 100 linear feet of pavement, the permittee shall overlay the traffic lanes in which the openings were made, for the entire length of street between the openings, in a manner authorized by the Borough.

    ii. When four or more emergency openings have been made by the same permittee within 100 linear feet of pavement, the permittee shall overlay traffic lanes in which the openings were made, for the entire length of the roadway between the openings, in a manner authorized by the Borough.

Section 11. Restrictions Regarding Trees, Shrubbery and Landscaping

The permission herein granted does not confer upon the permittee or its contractors the right to cut, remove or destroy trees, shrubbery or landscaping within the legal right-of-way except under specifications, regulations and conditions at the Borough may prescribe.

Section 12. Approval of New Utility Mains and Extensions Required

No new water, electric, gas main or other underground facilities shall hereafter be laid or constructed, and no existing water, electric gas main or other underground facilities shall be extended in any of the streets of the Borough until the exact location and plan for improvements have been first approved by the Borough Council.

Section 13. Payment of Charges; Nonpayment

A. Payment for all work done by the Borough under the provisions hereof shall be made by the person made liable under the provisions herein within 30 days after a bill is sent to such person by the Borough.

B. Upon failure to pay such charges within such time, the same shall be collectible by the Borough in the manner provided by law for the collection of municipal claims.

Section 14. Violations and Penalties

Any person violating any of the provisions of this Ordinance shall, upon conviction in a summary proceeding before a District Magistrate, be sentenced to pay a fine of not more than $1,000.00 and costs of prosecution and, in default of payment of such fine and costs, to incarceration in the County prison for not more than 30 days.

Section 15. Repealer

Any Ordinance or part of an Ordinance conflicting with the provisions of this Ordinance shall be and the same is hereby repealed to the extent of such conflict; specifically repealing Ordinances:

#457, enacted June 6, 1979

Section 16. Severability

If any section, sub-section, provision, regulation, limitation, restriction, sentence, clause phrase or word in this Ordinance is declared by any reason to be illegal, unconstitutional, or invalid by any court of competent jurisdiction, such decision shall not affect or impair the validity of this Ordinance as a whole, or any other section, sub-section, provision, regulation, limitation, restriction, sentence, clause, phrase, word or remaining portion of this Ordinance. Borough Council hereby declares that it would have adopted this Ordinance and each section, sub-section, phrase and word thereof, irrespective of the fact that any one or more of the sections, sub-sections, provisions, regulations, limitations, restrictions, sentences, clauses, phrases or words may be declared illegal, unconstitutional or invalid.

Section 17. Effective Date

This Ordinance shall take effect immediately upon its adoption.

ORDAINED AND ENACTED into an Ordinance this 11th day of June, 2025.

Borough Council of the Borough of New Cumberland

BY: _____
David H. Stone, President

ATTEST: _____
Nathaniel J. Dysard, Secretary

APPROVED by the Mayor this day of June, 2025.

BY: _____
Joan Erney, Mayor