

TOWNSHIP OF LOWER MERION

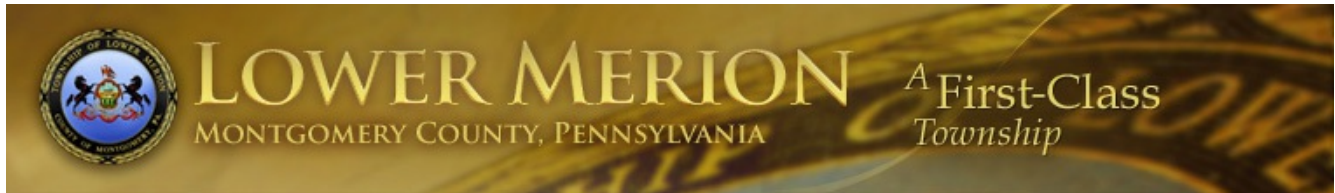
PUBLIC WORKS COMMITTEE

**Wednesday, April 10, 2024
8:15 PM (Approximately)**

Chairpersons: Sean Whalen
Vice Chairperson: Rick Churchill, Jeremiah Woodring

AGENDA

1. **AUTHORIZATION TO ADVERTISE ORDINANCE - CHAPTER 5,
ADMINISTRATIVE CODE AND CHAPTER 133, STREETS & SIDEWALKS -
AMENDMENTS RELATED TO CIP RESPONSIBILITY, PERMITS AND
VIOLATIONS**



AGENDA ITEM INFORMATION

ITEM: AUTHORIZATION TO ADVERTISE ORDINANCE - CHAPTER 5, ADMINISTRATIVE CODE AND CHAPTER 133, STREETS & SIDEWALKS - AMENDMENTS RELATED TO CIP RESPONSIBILITY, PERMITS AND VIOLATIONS

Consider for recommendation to the Board of Commissioners authorizing the Township Secretary to advertise notice of intent to adopt an Ordinance to amend the Code of the Township of Lower Merion, Chapter 5, Administrative Code, Article X, Finance and Budget, § 5-54, Capital Programs, to reassign responsibility for the Township's Capital Improvement Program, and Chapter 133, Streets And Sidewalks, Article I, Encroachments And Obstructions; Article II, Snow and Ice Removal; Article III, Right-of-way Occupancy, Excavation And Use; And Article IV, Defective Sidewalks And Curbs to amend regulations related to the issuance of certain permits and enforcement of violations.

PUBLIC COMMENT

ATTACHMENTS:

| Description | Type |
|---|----------------|
| <input type="checkbox"/> Issue Briefing - Chap 5 & Chap 133 Amendments | Issue Briefing |
| <input type="checkbox"/> Draft Ordinance - Chap 5 & Chap 133 Amendments | Ordinance |

TOWNSHIP OF LOWER MERION

Public Works Committee

Issue Briefing

Topic: Proposed Code Revisions to Chapter 5, Section 54 of the Administrative Code and Chapter 133, Streets and Sidewalks.

Prepared By: Paul McElhaney, Director for Public Works
Brandon Ford, Assistant Township Manager

Date: April 3, 2024

I. Action To Be Considered By The Board:

Authorize the Township Secretary to advertise notice of intent to adopt an Ordinance to amend the Code of the Township of Lower Merion, Chapter 5, Administrative Code, Article X, Finance and Budget, § 5-54, Capital Programs, to reassign responsibility for the Township's Capital Improvement Program, and Chapter 133, Streets And Sidewalks, Article I, Encroachments And Obstructions; Article II, Snow and Ice Removal; Article III, Right-of-way Occupancy, Excavation And Use; And Article IV, Defective Sidewalks And Curbs to amend regulations related to the issuance of certain permits and enforcement of violations.

II. Why This Issue Requires Board Consideration:

A Code amendment requires advertisement and approval of the Board of Commissioners.

III. Current Policy Or Practice (If Applicable):

The Capital Improvement Program is currently developed and administered by the Director of Public Works. The Department of Public Works is also currently responsible for monitoring and enforcing Township code and regulations for work by non-township entities within the public right-of-way.

IV. Other Relevant Background Information:

Although the Director of Public Works has historically and presently serves as the administrator of the Township's Capital Program, the Code currently vests that responsibility with the Director of Building and Planning. The proposed revision amends §5-54, Capital Program, of the Township Code to reflect the current practices by naming the Director of Public Works as the member of staff responsible for the Capital Program.

The proposed amendment also recommends several revisions to Chapter 133, Streets and Sidewalks, to reflect current Township practices by designating the Department of Public Works as the primary regulating and enforcement entity for encroachments and obstructions, as well as work and permitting within the public right-of-way. The revision also includes the addition of new sections which strengthens the ability of Public Works officials to enforce and write citations for violations of Chapter 133. This power was implied through the existing language of the Code, but the added language clarifies and strengthens the responsibility of Public Works to enforce this section of the Code.

Recent substandard restorations by utility companies and numerous instances of contractors working without a permit within roadways in the Township has been a significant challenge to Township staff. The proposed amendments, if adopted, would empower Public Works officials to issue additional fees equal to the cost of a permit for contractors working without a permit as well as deny future permits to contractors that fail to properly restore a roadway under a previous permit. Language is also included in the proposed amendment that would enable the Township to assess the cost of restoration plus a 10% administrative fee should the Township have to complete the restoration.

V. Impact On Township Finances:

As a code amendment, there is no anticipated direct impact on Township finances.

VI. Staff Recommendation:

Staff recommends authorizing the Township Secretary to advertise a public hearing and notice of intent to adopt the ordinance.

AN ORDINANCE

NO. _____

AN ORDINANCE To Amend The Code Of The Township Of Lower Merion, Chapter 5, Administrative Code, Article X, Finance and Budget, § 5-54, Capital Programs, To Reassign Responsibility for the Township's Capital Improvement Program, And Chapter 133, Streets And Sidewalks, Article I, Encroachments And Obstructions; Article II, Snow and Ice Removal; Article III, Right-of-way Occupancy, Excavation And Use; And Article IV, Defective Sidewalks And Curbs To Amend Regulations Related to the Issuance of Certain Permits And Enforcement of Violations.

The Board of Commissioners of the Township of Lower Merion hereby ordains:

Section 1. Chapter 5, Administrative Code, Article X, Finance and Budget, § 5-54, Capital Programs, is hereby amended as follows:

The Manager shall cause to be prepared and included, as a separate section in the annual budget submitted to the Board, a program of capital expenditures, including the Capital Improvement Program of the Director of ~~Building and Planning~~ Public Works, of a nonrecurring and long-range nature.

Section 2. Chapter 133, Streets and Sidewalks, Article I, Encroachments and Obstructions, is hereby amended, in relevant part, as follows:

- A. Section 133-2, Advertising devices above sidewalks, is hereby amended as follows:

§133-2 Advertising devices above sidewalks.

It is hereby further declared unlawful for any person, partnership or corporation to hang canvas signs or banners or similar advertising devices above any part of the public highways or sidewalks within the Township of Lower Merion; except, when a permit is issued by the Department of ~~Building and Planning~~ Public Works, banners displaying a logo, slogan or design associated with an educational or civic organization may be erected above a sidewalk in such uniform size and subject to such regulations as the ~~Department of Building and Planning~~ Township shall promulgate.

- B. Section 133-2.2, Appeals, is hereby amended as follows:

§ 133-2.2 Appeals.

An appeal from any decision of the Director of ~~Building and Planning~~Public Works pursuant to this article may be taken to the ~~Building and Planning~~Public Works Committee of the Board of Commissioners. Such appeal shall be made in writing within 10 days of such decision and shall be verified by affidavit and filed with the Township Secretary. The appellant or his representative shall have the right to appear if such right is requested in the written appeal. A prompt decision of such appeal shall be made by the ~~Building and Planning~~Public Works Committee. Every action of the Committee on such appeal shall be by resolution, a copy of which shall be certified and furnished to the Director of ~~Building and Planning~~Public Works and the appellant.

- C. A new § 133-3.1, Enforcement, is hereby created as follows:

§ 133-3.1 Enforcement.

Any Lower Merion Township Public Works official and any police officer are hereby empowered to enforce all provisions of this article and to write citations for any violations.

Section 3. Chapter 133, Streets and Sidewalks, Article II, Snow and Ice Removal, is hereby amended to create a new § 133-~~5.1~~6, Enforcement, as follows:

§ 133-5.1 Enforcement.

Any Lower Merion Township Public Works official and any police officer are hereby empowered to enforce all provisions of this article and to write citations for any violations.

Section 4. Chapter 133, Streets and Sidewalks, Article III, Right-of-way Occupancy, Excavation and Use, is hereby amended, in relevant part, as follows:

- A. Section 133-10, Permit fees, is hereby amended, in relevant part, as follows:

§ 133-10 Permit Fees.

At the time of the filing of the application, the applicant shall pay a permit fee, the components of which are set forth on the Township Schedule of Fees, as adopted and amended from time to time by the Board of Commissioners.[1] Any person who commences any work before obtaining the necessary permits required by this Chapter shall be subject to an additional fee equal to the required permit fees. The permit fee components include the following:

* * * * *

- B. Subsection E, Restoration generally, of § 133-14, Performance of work, is hereby amended as follows:

§ 133-14 Performance of work.

* * * * *

E. Restoration, generally.

- (1) Restoration is to be performed by the permittee in compliance with the specifications set forth in this article and subject to the approval and inspection of the Township Public Works Department.
- (2) Excess materials shall be removed from the job site. Weather conditions permitting, final restoration shall be ~~started-completed~~ within 30 days after completion of the initial work. No new permit will be issued to an applicant if final restoration under a previously issued permit has not been completed as provided herein. The Township Public Works Department shall be notified by the applicant prior to the commencement of final restoration work.
- (3) Within 30 days after completion of all work and restoration, the permittee shall provide the Township with as-built drawings of the permit area. The as-built drawings shall show the location and type of all utilities, structures, and other facilities installed in the permit area as well as the location of all restored surface areas.
- (4) Where work is performed by the permittee on behalf of an adjacent property owner, and Restoration fails to conform to the requirements of this Chapter resulting in the Township having to complete the Restoration, the cost thereof, together with an administrative fee of 10%, shall be assessed against the adjacent property owner. The Township may file a municipal claim therefore upon failure of the adjacent property owner to make prompt payment.

C. Subsubsection 1 of Subsection B of § 133-17, Prohibited obstructions in permit area, is hereby amended as follows:

§ 133-17 Prohibited obstructions in permit area.

* * * * *

B. The Township may grant a waiver to permit fences within the right-of-way, subject to the following conditions.

- (1) All requests for a waiver shall be presented to the Director of ~~Building and Planning~~Public Works. If the Director of ~~Building and Planning~~Public Works determines that the fence might present a sight obstruction to vehicular and/or

pedestrian traffic, the request must then be reviewed by a member of the Traffic Safety Unit to determine if the sight distance with the fence complies with current PennDOT standards and/or if it presents any other safety concerns.

D. Section 133-18, Violations and penalties, is hereby amended as follows:

Any person who shall do or cause any work to be done or any action to be taken without the permit required by this article or who shall fail to comply with any of the provisions of the permit or of this article shall be liable, on conviction thereof, to a fine or penalty of not less than \$25 nor more than \$600 for each offense.

Whenever such person shall have been notified by the ~~Township Engineer~~ Director of Public Works, his or her designated representative, or by the service of a summons in a prosecution or in any other way that he is committing a violation of this article, each day in which he shall continue such violation after notification shall constitute a separate offense, punishable by a like fine or penalty. Such fines or penalties shall be collected before any District Justice as like fines or penalties are now by law collected.

E. A new § 133-18.1, Enforcement, is hereby created as follows:

§ 133-18.1 Enforcement.

Any Lower Merion Township Public Works official and any police officer are hereby empowered to enforce all provisions of this article and to write citations for any violations.

Section 5. Chapter 133, Streets and Sidewalks, Article IV, Defective Sidewalks and Curbs, is hereby amended to create a new § 133-23.1, Enforcement, as follows:

§ 133-23.1 Enforcement.

Any Lower Merion Township Public Works official and any police officer are hereby empowered to enforce all provisions of this article and to write citations for any violations.

Section 6. Nothing in this Ordinance or in Chapter 155 of the Code of the Township of Lower Merion, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Chapter 155 prior to the adoption of this amendment.

Section 7. Nothing in this Ordinance or in the Code of the Township of Lower Merion, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Code of the Township of Lower Merion prior to the adoption of this amendment.

Section 8. The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining

sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

Section 9. This Ordinance shall take affect and be in force from and after its approval as required by law.

Approved by the Board of Commissioners of the Township of Lower Merion this
day of _____, 20____.

BOARD OF COMMISSIONERS OF THE
TOWNSHIP OF LOWER MERION

Todd M. Sinai, President

ATTEST:

Jody L. Kelley, Secretary