

**BOROUGH OF MIDDLETOWN
PUBLIC NOTICE**

Notice is hereby given that on October 4, 2022 at 7:00 P.M. the Council of the Borough of Middletown, Dauphin County, Pennsylvania will hold a public meeting at the Middletown Borough Hall, Council’s Chambers, 60 West Emaus Street, Middletown, PA 17057, at which meeting the Council will consider the enactment of a proposed ordinance amending the Code of Ordinances of the Borough.

**ORDINANCE NO. 2022-1392
MIDDLETOWN BOROUGH, DAUPHIN COUNTY, PENNSYLVANIA**

**AN ORDINANCE OF THE BOROUGH OF MIDDLETOWN, DAUPHIN
COUNTY, PENNSYLVANIA, AMENDING CHAPTER 235, STREETS AND
SIDEWALKS TO MAKE CERTAIN REVISIONS TO AND TO ESTABLISH
ADDITIONAL REQUIREMENTS RELATING TO STREET AND SIDEWALK USE**

WHEREAS, Section 1202(12) of the Borough Code, 8 Pa. C.S. § 1202(12), authorizes the Council of the Borough of Middletown to regulate public streets, sidewalks and curbs; and

WHEREAS, Borough Council previously enacted, and from time to time amended, Chapter 235 of the Code of the Borough of Middletown (“Middletown Code”); and

WHEREAS, the Borough understands that certain provisions of Chapter 235 of the Middletown Code may conflict with certain provisions of Chapter 238 of the Middletown Code; and

WHEREAS, the Borough has determined that additional and revised requirements with respect to street excavations are necessary to ensure the health, safety and welfare of the residents of the Borough as well as those traveling through the Borough; and

WHEREAS, the Borough wishes to amend Section 235 of the Middletown Code as to not conflict with Section 238 of the Middletown Code;

NOW THEREFORE, IT IS HEREBY ORDAINED AND ENACTED, by the authority of the Borough Council of the Borough of Middletown, Dauphin County, Pennsylvania, that the Middletown Code, Part II (General Legislation), Chapter 235 (Streets and Sidewalks) is hereby amended as follows:

I. AMENDMENTS. Part II (General Legislation), Chapter 235 (Streets and Sidewalks), of the Middletown Code is hereby amended as follows:

- A. Article I of the Middletown Code is hereby retitled “General.”
- B. Section 235-1 of the Code is hereby deleted in its entirety, including its title, and amended to read as follows:

§ 235-1. Coasting on sidewalks prohibited.

No person or persons shall coast or ride on any sled, scooter or similar conveyance upon any of the public sidewalks in the Borough. A person riding a pedalcycle upon a sidewalk or pedalcycle path used by pedestrians shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing a pedestrian.

- C. Section 235-2 of the Code is hereby deleted in its entirety, and amended to read as follows:

§ 235-2. Violations and penalties.

Any person or persons violating any of the provisions of this article shall, upon conviction, be sentenced to pay a fine not exceeding \$100 and costs of prosecution, and in default of payment of such fine and costs of prosecution, to imprisonment in the county jail for not more than 30 days.

- D. Article II of the Code is hereby retitled “Utility Connections.”

- E. Section 235-3 of the Code is hereby deleted in its entirety, including its title, and amended to read as follows:

§ 235-3. Placement within sidewalks; manner of making openings.

All utility connections within sidewalks shall be so placed as to conform to § 235-30.B.

- F. Article III of the Code is hereby retitled “Materials on Streets.”

- G. Section 235-5 of the Code is hereby deleted in its entirety, including its title, and amended to read as follows:

§ 235-5. Placement of materials on streets and sidewalks prohibited.

It shall be unlawful for any person, firm or corporation to throw, deposit, sweep or leave any dirt, paper, grass clippings, brush/woody materials, mulch, rubbish, sweepings, play equipment, metal or equipment of any kind or character upon the streets, sidewalks or highways of the Borough of Middletown.

Materials associated with construction or maintenance work, such as stone, block, brick may be placed in an orderly fashion in front of the property where the work is occurring. Materials may not obstruct the sidewalk or driving lane, nor be placed in areas marked as No Parking, nor obstruct an accessible parking space (ADA). All such materials shall be completely removed within one week of

placement, and the street be cleaned. The property owner is responsible for any damage to the street due to placement or removal of materials.

Leaves may be placed, uncovered, in an orderly fashion along the curb or edge of road ONLY during the week(s) of the scheduled leaf collection for that location; leaves shall not be placed on storm drains.

Containers for refuse (commonly called dumpsters), and moving containers (such as pod style) require an approved permit issued by the Borough prior to placement. No container shall obstruct the sidewalk nor be placed where parking is prohibited.

H. Article IV of the Code is hereby retitled “Street Construction and Dedication.”

I. Section 235-8 of the Code is hereby amended to add the following subsection:

C. No plan which includes streets to be dedicated as part of a subdivision shall be approved by the Council unless plan fully adheres to those requirements set forth in the Middletown Borough Subdivision and Land Development Ordinance.

J. Section 235-10 of the Code is hereby deleted in its entirety and amended to read as follows:

§ 235-10. Approval, signing and filing of plan.

Any plan, when so approved by the Council, shall be signed on behalf of the Borough Council by the Borough Council President and the Borough Secretary.

The owner of said plan, within 7 days of Borough approval and signature, shall also have same recorded within the Dauphin County Recorder of Deeds office. A complete, full size copy of the approved, recorded plan shall be provided to the Borough for filing and be available for public inspection.

K. Section 235-11 of the Code is hereby deleted in its entirety and amended to read as follows:

§ 235-11. Nonliability of Borough.

If any street or drainage facility in connection therewith shall be constructed or dedicated for public use or travel except in strict accordance with a plan approved by the Council or by the Court on appeal as provided by law, neither the Borough Council nor any other public authority shall have any responsibility of any kind in respect to such street or drainage facility, notwithstanding any use of the same by the public; provided, however, that nothing herein contained shall prevent the

construction or installation of utilities if required by engineering necessity for the accommodation of other territory.

- L. Section 235-12 of the Code is hereby deleted in its entirety and amended to read as follows:

§ 235-12. Liability for costs.

Every new street in any building development shall be constructed at the cost, expense and liability of the person promoting, sponsoring, constructing, developing or erecting such building development, and the Borough shall not hereafter be required to accept any street until it shall have been so constructed, inspected and determined to meet the approved plan, applicable ordinances and standards.

- M. Section 235-22 of the Code is hereby deleted in its entirety and amended to read as follows:

§ 235-22. Time limit for removal from sidewalks.

The owner of every property fronting upon or alongside any of the streets of the Borough of Middletown is hereby required to remove all snow, slush and ice from the sidewalk in front of or along such premises within 24 hours after such snow or slush has ceased to fall or ice to form thereon.

- N. Section 235-23(A) of the Code is hereby deleted in its entirety and amended to read as follows:

§ 235-23. Determination of sidewalk area.

For the purposes of §§ 235-22 and 235-25, the sidewalk required to be cleared shall mean:

- A. The full width where the abutting property is used exclusively for residential purposes and is improved with a one-family or a two family dwelling.

- O. Section 235-24 of the Code is hereby deleted in its entirety and amended to read as follows:

§ 235-24. Maintenance obligation.

The owner required to clear the sidewalk or path under § 235-22, under penalty as prescribed in §§ 235-25 and 235-27, shall have a continuing duty to maintain such sidewalk or path thereon in a safe condition, free from snow, slush or ice, under the same penalties prescribed in §§ 235-25 and 235-27.

- P. Section 235-25 of the Code is hereby deleted in its entirety and amended to read, as follows:

§ 235-25. Failure to comply; removal by Borough.

In any case where the owner shall fail, neglect or refuse to comply with any of the provisions of § 235-22 above within the time limit provided therein, the Borough may proceed immediately to clear all snow, slush and/or ice from the sidewalk of such delinquent and to collect the expenses thereof, with any additional amounts allowed by law, from such owner, which shall be in addition to the fine imposed by § 235-27 herein.

- Q. Section 235-26 of the Code is hereby deleted in its entirety, including its title, and amended to read as follows:

§ 235-26. Placing snow onto streets prohibited.

It is hereby declared to be unlawful for any person, firm or corporation to dump, shovel, push or otherwise place any snow, slush, ice or any combination thereof onto the cartways of the Borough of Middletown; provided, however, that this dumping, shoveling or pushing is begin after such time as the Cartway has been cleared of snow, slush, ice or any combination thereof The term “cartway” as used herein, means the area of streets for vehicular traffic other than that provided for the parking of vehicles.

- R. Section 235-30 of the Code is hereby deleted in its entirety, and amended to read as follows:

§ 235-30. Specifications and permits.

For the purposes of this article, when used in connection with sidewalks or curbs, “repair” is defined as any maintenance or work done on or to a sidewalk, or a portion thereof, that is less than the construction, removal, or replacement of the sidewalk, or a portion thereof. It shall be unlawful for any person, firm or corporation to make any opening or excavation in or under any sidewalk, or to construct, remove or replace any sidewalk or curb within the limits of the Borough of Middletown, unless and until a permit for that purpose is acquired in accordance with this article. Any such work, including minor sidewalk or curb repairs not requiring a permit, shall be completed in accordance with this article and according to the following specifications:

A. Specifications for new sidewalks.

- (1) All new sidewalks shall be a width of four feet (48”), unless the proposed sidewalk abuts an existing sidewalk, in which case the

new sidewalk shall conform to the width of the abutting sidewalk, but in no event be less than three feet (36") in width. Any variation in width must have approval of the Borough prior to construction. New sidewalks constructed within Rights-of-Ways of the Borough shall be of concrete construction as per specifications in Pennsylvania Department of Transportation (PennDOT) Publication 72M, *Standards for Roadway Construction*, as amended. The concrete shall conform to the requirements of PennDOT Form 408, *Specifications*, as amended and shall be Class A Portland (3,000 pounds per square inch) cement concrete with 6% air-entraining admixture. Proper means of soil compaction and removing surplus water shall be used to the satisfaction of the Borough designee. Sidewalks shall be installed with a line and grade in accordance with ADA standards.

- (2) Concrete for sidewalks shall be a minimum of four inches (4") thick, with six inches (6") in areas of driveway aprons. Sidewalks shall be scored with construction joints, in general, in four-foot sections, and in no case shall joint spacing be more than six feet in length. A three-quarter inch ($\frac{3}{4}$ ") expansion joint shall be provided at least once every twenty-feet, where the sidewalk meets a curb or other vertical edge, and at such other places as may be directed by the Borough designee. Expansion joints shall be filled with suitable self-leveling joint filler to provide a flush, smooth surface. Sidewalk surfaces shall have a light broom finish applied, perpendicular to the direction of walking.
- (3) The sidewalk and forms shall be set on six inches (6") of compacted 2A crushed aggregate. Subbase stone shall be compacted by plate tamper or other equivalent means.
- (4) New construction of sidewalk and curb as a single integral unit is prohibited; however, under certain conditions and upon approval of the Borough, a curb and sidewalk may be constructed as an integral unit.

B. Repair of existing sidewalks.

- (1) No sidewalk may be repaired or resurfaced with asphalt.
- (2) When lawfully constructed existing sidewalks, or portions thereof, are damaged or removed, the sidewalk shall be repaired, rebuilt or replaced with the same type material as was in place prior to the damage or removal. Restoration described in the preceding sentence shall replicate the exact design used prior to the sidewalk being damaged or removed unless the preexisting design violates

the specifications of § 235-30A, in which case the new sidewalk specifications of § 235-30A shall apply. The replaced surface must be maintained at the proper grade, without ridges or depressions, and in as good condition as it was prior to the damage or removal.

- (3) All utility boxes or appurtenances within sidewalks shall be so placed as to conform to the grade of the sidewalk and be flush with the sidewalk surface.
- (4) All openings in existing sidewalks for utility connections shall be made only in a manner approved by the Borough. Except for sidewalks consisting of bricks or other disjointed material, all such openings shall be created by a concrete saw cut. When replacing concrete or other similar material lacking a natural joint, new work shall be separated at all points along the outside sides or circumference thereof from the existing concrete sidewalk by ¾" expansion joints which shall be filled with self-leveling sealer.
- (5) All utility boxes, utility poles, and fire hydrants shall be enclosed in expansion joints. Utility curb box covers shall be free of concrete in order to permit easy access.
- (6) All details of construction not mentioned in this article shall be in accordance with construction specifications per PennDOT Publication 408, *Specifications*, as amended and PennDOT Publication 72M, *Standards for Roadway Construction*, as amended.
- (7) It shall be the duty of every person, firm or corporation causing damage and repair to, or the removal and replacement of, any sidewalk within the Borough to also restore any appurtenances removed or damaged in connection with the sidewalk using the same materials and design as the original appurtenance unless the original design violates the current specifications. Examples of such appurtenances include, but are not limited to, the curbing, adjacent sidewalks, crosswalks, lights or lampposts, benches, trees or other vegetation, tree wells, flower beds or holders, drain pipes, inlets, and signs.

C. Specifications for new curbs.

- (1) All new curbing along any streets of the Borough shall be of concrete construction. The concrete shall conform to the requirements of PennDOT Publication 408, *Specifications*, as amended and shall be Class A [3,000 pounds per square inch]

Portland cement concrete with 6% air-entraining admixture. Proper means of soil compaction and removing surplus water shall be used to the satisfaction of the Borough designee. All new curbing shall include contraction joints constructed by sawing a straight cut or tool joint, two inches deep, 3/16" wide center at a maximum of twenty (20') feet to a minimum of four (4') feet.

- (2) All cuts in the street for curb replacement, whether concrete or asphalt, must be made with a saw. The opening shall have a width of 12" to facilitate compaction. Jackhammer cuts are no longer permitted.
- (3) All new curbing of concrete shall meet the dimension requirements as shown in PennDOT Pub. 72M, RC-64M, as amended.
- (4) The height above the gutter line shall be six inches. Under certain conditions of the gutter line, variations shall be permitted only upon approval of the Borough designee. The top of the curbing shall be floated smooth with a wooden float. The front or face of the curb shall have a smooth broomed finish to the gutter line. All exposed surfaces shall be solid and free of voids or "honeycomb".
- (5) Where present curbs are of stone, they may be reset if stone is sound and dressed along the original dimension lines. No stone may be used for new curbing or reset if condemned by the Borough.
- (6) In the case of private driveways crossing any sidewalk, the curb shall be depressed across the driveway by providing a sloping section on either side of the depression with a slope of three inches per foot. The driveway apron will be built with a taper up from the depression on each side two feet as a maximum, and there shall be no sharp dip, three inches per foot being the maximum. The top of the depressed area of the curb shall be one and one-half (1 1/2") inches above the gutter line. No ramp or filler in the gutter will be permitted.
- (7) The contractor shall install a minimum of six (6") compacted inches of 2A for curb subbase. Pavement repair shall consist of ensuring a straight, true edge for the opening, all edges to be tack coated prior to placing asphalt. Hot mix asphalt, matching street specifications shall be placed and compacted to fill the opening flush with the existing surface. The minimum depth of the base course shall be 3" of 25mm HMA and 1.5" of 9.5mm wearing course for all curb pavement restoration. The gutter line shall be maintained to ensure positive flow of water. Upon completion of

the asphalt, the edges shall be fully sealed with a six (6") inch wide band of PG 64S-22.

- (8) At limits of new work, the existing curb will be cut in an approved manner with a concrete saw, the entire curb will be removed within the limits of the work, and expansion joints will be placed at the limits of work. The driveway apron will be built with a taper up from the depression on each side three feet as a maximum, and there shall be no sharp dip, two inches per foot being the maximum.
- (9) All details of construction not mentioned in this article shall be in accordance with PennDOT Publication 408, *Specifications*, as amended and PennDOT Publication 72M, *Standards for Roadway Construction*, as amended.

D. Permits

- (1) It shall be unlawful for any person, firm or corporation to construct or replace any sidewalk or curb within the limits of the Borough of Middletown unless and until a permit is secured from the Borough for each separate undertaking, such permit and the application therefor to be in the form prescribed by the Borough and to contain a statement that the applicant agrees to the terms of this article. The Borough shall promptly prohibit any work being done or continued without a proper permit or contrary to the terms hereof.
- (2) All references in this article to the Borough of Middletown shall extend to and constitute authorization to the Borough designee.
- (3) The application for the permit shall specify a date when said construction or replacement shall occur and the place where said construction or replacement shall be made, together with such further information as the Borough may require; and any additional surface to be disturbed and any additional time required may be endorsed on the permit by the Borough, provided that emergency breaks or leaks may be repaired and a permit therefor secured within 72 hours.
- (4) Permit charges shall be \$25 for the first 50 square feet or portion thereof of sidewalk constructed or replaced plus \$10 for each additional 50 square feet constructed or replaced, or portion thereof. Permit charges shall be \$25 for the first 50 linear feet or portion thereof of curb constructed or replaced plus \$10 for each additional 50 linear feet constructed or replaced, or portion thereof.

These fees shall be for a four-week period beginning with the date of the commencement of the work. For any work exceeding this four-week period, there shall be added a sum of \$40 per week until work on the undertaking has been satisfactorily completed.

- (5) It shall be the duty of any person or persons, firms or corporations to whom a permit is issued or by whom any sidewalk or curb is constructed or replaced, to provide and maintain proper and adequate guards, barriers and lights to prevent accidents, and they shall assume all risks and be liable for all damages by reason of the openings and excavations and by reason of any failure to properly fill the hole or trench and maintain the disturbed surface in a safe condition.

- S. Section 235-31 of the Code is hereby deleted in its entirety, and amended to read as follows:

§ 235-31. Downspout drainage.

In cases where downspout water from any building is so discharged that it would be drained onto the sidewalk, new or replaced/repared sidewalks shall be constructed that a three (3") inch pipe must be placed under the sidewalk and through the curb, allowing the water to drain into the gutter. The invert of the pipe through the curb shall be one (1") inch above the gutter line. A scored joint shall be placed in the sidewalk directly above the pipe to control cracking.

- T. Section 235-32 of the Code is hereby deleted in its entirety, and amended to read as follows:

§ 235-32. Line and grade.

All sidewalks and curbing shall be constructed, reconstructed and repaired and the grading therefor done upon the line and grade to match existing conditions. Upon notice as provided in §§ 235-28 and 235-29 of this article, as the case may be, such work of construction, reconstruction or repair shall be done by the owner or owners of such property. It is the responsibility of the contractor to notify the Borough for an inspection after completion of the forms and before concrete is poured.

- U. Section 235-34 of the Code is hereby deleted in its entirety, and amended to read as follows:

§ 235-34. Handicapped ramps.

Every corner shall have a handicap ramp. This applies to all new building construction. Ramps shall conform with PennDOT Publication 72M, *Standards for Roadway Construction*, as amended – specifically RC-67M.

- V. Section 235-34.1 of the Code is hereby deleted in its entirety, and amended to read as follows:

§ 235-34.1 Inspections.

The Borough may, at any time during the course of work of construction, reconstruction or repair of any sidewalks or curbing, visit the site of such work to ascertain whether or not such work is being done according to the requirements of the ordinances of the Borough, and shall visit any such site for such purpose whenever requested by the property owner. Within five days after the completion of the work of construction, reconstruction or repair of any sidewalk or curbing, it shall be the duty of the owner of the property where such work was done to notify the Borough of the fact so that the same may be inspected to determine whether the grade thereof has been observed and followed.

- W. Section 235-34.2 of the Code is hereby deleted in its entirety, and amended to read as follows:

§ 235-34.2. Performance of work by owner.

Any property owner, upon his own initiative and without notice from any Borough authority, may construct, reconstruct or repair a sidewalk or curb in front of or alongside his property, provided that such owner shall first make application to the Borough and shall conform to the requirements of this article and shall not violate any ordinance of the Borough as to the line and grade and as to materials used and that he shall notify the Borough within five days after the completion of the work.

- X. Section 235-34.4 of the Code is hereby deleted in its entirety, and amended to read as follows:

§ 235-34.4. Additional rules and regulations.

The Borough may establish rules and regulations for implementing the requirements established under this article.

- Y. Section 235-35 of the Code is hereby deleted in its entirety, and amended to read as follows:

§ 235-35. Permit required.

An encroachment is an unauthorized intrusion onto Right-of-Ways through the creation or extension of a physical structure (including trees, plants, play equipment) above or below the surface of land. Any future encroachment on or above sidewalks or any portion of the right-of-way of any public street is illegal unless the person, firm or corporation making or responsible for the same shall have first obtained a permit therefor from the Borough. Penalties hereunder shall supplement and not preclude other remedies for preventing or removing the same.

- Z. Section 235-26 of the Code is hereby deleted in its entirety, and amended to read as follows:

§ 235-36. Application for permit; fee.

The application for permission to encroach shall be made, in writing, on a Zoning Permit application form provided by the Borough and shall be signed by the applicant. Filing of an application shall constitute an agreement to abide by all rules and regulations promulgated by the Borough. The application shall set forth the location and ownership of the property and a description of the proposed encroachment, along with plans and specifications. In addition, the applicant shall furnish such other or further information as the Borough may require. The application shall be accompanied by the appropriate filing fee as amended periodically, and by any inspection fee or deposit as prescribed by such regulation.

- AA. Section 235-37 of the Code is hereby deleted in its entirety, and amended to read as follows:

§ 235-37. Issuance of permit; criteria and standards.

The Borough may grant a permit if, to the extent that and for so long as the encroachment is and remains consistent with the public interest, use, convenience and necessity. The Borough shall consider the factors permitting a specific encroachment, including pedestrian safety, accidentally crossing the curb, parking space markings and location of poles, light standards, sign posts or trees, and vehicular movement. Said permit will be personal to the applicant and, upon sale of the abutting premises (in the absence of a ne permit) or within 60 days after the giving or posting of notice that the encroachment has ceased to be consistent with the public interest, said encroachment shall immediately be removed by and at the expense of the applicant or owner of abutting premises. Acceptance of the permit shall constitute an agreement by the applicant to save the Borough, its officers, police and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed by reason of such encroachment or work thereon or lack of maintenance thereof.

- BB. A new Section 235-38 is added, including its title, to read as follows:

§ 235-38. Street and Sidewalk clearances.

No person shall create or allow any obstruction to public streets, right-of-ways or public sidewalks; including vehicles (except those legally parked), play or recreation apparatus, debris, and vegetation growth. Vegetation shall be maintained by the property owner so the entire roadway and sidewalk width shall be clear and have seven feet (7') of vertical clearance for sidewalks, and fourteen feet (14') of vertical clearance as measured at the pavement/curb line or edge of roadway for streets.

CC. The pre-existing Section 235-38 is amended in section number only, and shall henceforth be Section 235-39. Violations and penalties.

II. SEVERABILITY. If any section, subsection, 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 or Chapter 235 of the Middletown Code as a whole, or any other section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word or remaining portion of this Ordinance or Chapter 235 of the Middletown Code. Borough Council hereby declares that it would have adopted this Ordinance and each section, subsection, phrase and word thereof, irrespective of the fact that any one or more of those sections, sub-sections, provisions, regulations, limitations, restrictions, sentences, clauses, phrases or words may be declared illegal, unconstitutional or invalid.

III. REPEALER. All ordinances or parts of ordinances that are inconsistent herewith shall be and the same expressly are repealed.

**BOROUGH COUNCIL OF THE
BOROUGH OF MIDDLETOWN**