

**SMITHFIELD TOWNSHIP
MONROE COUNTY,
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE NO. _____

AN ORDINANCE REGULATING AND PROVIDING FOR PENALTIES FOR CREATING UNSAFE AND DANGEROUS CONDITIONS ON ANY ROADWAYS LOCATED WITHIN THE TOWNSHIP AND PENALTIES FOR VIOLATION OF THIS ORDINANCE

WHEREAS, Smithfield Township is a political subdivision situated within the County of Monroe, Commonwealth of Pennsylvania and is a Township of the Second Class and is located at 1155 Red Fox Rd, East Stroudsburg, PA 18301; and,

WHEREAS and pursuant to the PA Second Class Township Code, the Township has the authority to adopt ordinances for inter alia the health and welfare of the township and its citizens-53 P.S. Section 66506; and,

WHEREAS and pursuant to the PA Second Class Township Code, the Township has the authority to adopt ordinances to secure the safety of persons and property within the Township-53 P.S. Section 66527; and,

WHEREAS and pursuant to the PA Second Class Township Code, the Township has the authority to adopt ordinances to prohibit nuisances-53 P.S. Section 66529; and,

WHEREAS and while there are public roadways located within the Township, certain roadways within the Township are considered “private” roadways although said roadways are not fenced off to the motoring public, said roadways are utilized by the public at large, said roadways (in the event of an emergency or other immediate need) are accessed by first responders (such as fire, ambulance and police) and said roadways are utilized by the school district to establish bus pick-ups and drop-off locations; and,

WHEREAS and although the Township may not be responsible to maintain, repair or replace said private roadways, the Township still has a responsibility and duty to protect its citizens from unsafe and dangerous conditions on all of the roadways within the Township, whether public or private; and,

WHEREAS, the Township believes that it is in the best interests of the Township and its citizens to adopt this ordinance to protect the safety and welfare of its citizens (and the motoring public at large) from unsafe and dangerous conditions on all of the roadways within the Township, whether public or private.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, by the Smithfield Township Board of Supervisors as follows:

SECTION 1: Definitions

Dangerous Condition-Any unsafe condition on, under, across, through or over any roadway where it is reasonably foreseeable that said condition may lead to or cause injury (including death) to person or property or both.

Person-Any individual, proprietorship, partnership, corporation, limited liability company, limited partnership, association (including homeowners' and property owners' associations), enterprise, venture or other entity.

Roadways-the term includes a street, road, lane, court, cul-de-sac, alley, public way and public square, whether opened or unopened and intended for public or private use, and includes the cartway, sidewalk, gutter and right-of-way area, whether or not the roadway or any part of the roadway is privately owned by a person other than the Township.

Unsafe Condition-curves, bumps, humps, potholes, uneven road surfaces, broken roadways, road cracks, alligator cracks, sinkholes, exposed concrete or rebar, *signage*, *road markings* or any other circumstance that create a dangerous condition.

SECTION 2: Unsafe and Dangerous Roadways Prohibited

It shall be unlawful for any person to allow a roadway under its control and located anywhere in the Township to be in an unsafe or a dangerous condition.

SECTION 3: PENNDOT Rules and Regulations

It is not the intent of this ordinance to pre-empt or supersede any PA Department of Transportation (PENNDOT) Rules or Regulations that regulate roadway safety. However, any violation of PENNDOT rules or regulations shall be deemed a violation of this ordinance.

SECTION 4: Enforcement

Enforcement for violations of this Ordinance shall proceed before a Magisterial District Judge in the same manner as provided for summary offenses under the PA Rules of Criminal Procedure and with the issuance of a citation by the _____; and, penalties for violation of this ordinance shall not exceed one thousand dollars (\$1,000.00) per violation; and, each day that a violation continues shall be considered a separate violation. In addition to said penalty, the Township also reserves the right to commence injunction proceedings in the Court of Common Pleas to abate any unsafe or dangerous condition.

SECTION 5: Remediation in Lieu of Enforcement

While it is the intent of the Township to encourage voluntary compliance with this ordinance and in lieu of enforcement as recited in Section 4 hereof, *the Township shall provide the accused an ability to remediate the roadway issues by filing with the Township Engineer a remediation plan to correct any dangerous or unsafe road conditions. This plan shall be submitted in writing to the Township Engineer (with a copy to the Township Manager) no later than twenty (20) calendar days after receipt of the citation. Assuming the Township Engineer approves of the remediation plan, the accused will have an additional seventy (70) calendar days-and any reasonable and necessary extensions of this time frame-after said approval to remediate and correct the roadway issue to the satisfaction of the Township whereby said remediation shall be inspected and approved by the Township Engineer. If the accused intends to proceed in this fashion, then he/she/it shall submit a written statement to this effect to the Township Manager; and, under said circumstance and with the permission of the Magisterial District Judge, the summary trial on said citation shall be continued until the remediation has occurred to the Township's satisfaction. Upon remediation to the Township's satisfaction, the citation will be withdrawn by the Township with costs on the accused . If the remediation is not completed to the satisfaction of the Township, the summary trial shall be rescheduled and the disposition of the citation shall proceed as per Section 4 hereof.*

SECTION 6: Municipal Liability

The Township Board of Supervisors and/or its servants, agents, officers, elected or appointed officials, boards, committees, employees or representatives shall not, under any circumstances, be liable or responsible for damages (whether property, injury or death) caused to or suffered by any person by reason of the provisions of this ordinance or by reason of the conduct of any person's compliance (or non-compliance) with the terms, conditions and provisions hereof. Moreover, compliance with this ordinance shall not constitute a representation, guarantee or consent of any kind by the Township (and/or any of its servants, agents, officers, elected or appointed officials, boards, committees, employees or representatives) of the practicality, safety or fitness for use of any particular roadway.

SECTION 7: Severability

If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any remaining provisions, sentence, clauses, sections, or parts of this Ordinance. It is hereby declared the intent of the Board of Supervisors that such remainder shall be and shall remain in full force and effect.

SECTION 8: Repealer

All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby

repealed insofar, but only insofar, as the same are inconsistent herewith.

SECTION 9: Recitals

The recitals at the beginning of this Ordinance are herein incorporated by reference and made a part hereof.

SECTION 10: Effective Date

This ordinance shall take effect five (5) days after its adoption as per 53 P.S. Section 66601(a.1).

ADOPTED this _____ day of _____, 2024 at a duly advertised public meeting held by the Board of Supervisors of the Township of Smithfield, Monroe County, Pennsylvania.

**SMITHFIELD TOWNSHIP
BOARD OF SUPERVISORS**

Jacob A. Pride, Chair

Robert Lovenheim, Vice Chair

Michael Albert, Supervisor