

CAERNARVON TOWNSHIP  
BERKS COUNTY, PENNSYLVANIA

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ORDINANCE NO. 2018 - 296

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**AN ORDINANCE OF CAERNARVON TOWNSHIP, BERKS COUNTY,  
PENNSYLVANIA, TO ESTABLISH REGULATIONS GOVERNING THE  
ENCROACHMENT ONTO THE RIGHTS-OF-WAY, EASEMENTS, OPEN SPACES  
AND COMMON AREAS OF THE TOWNSHIP AND PRESCRIBING PENALTIES  
FOR VIOLATIONS THERETO**

PURSUANT TO THE AUTHORITY CONTAINED IN THE SECOND CLASS TOWNSHIP CODE, 53 P.S. § 66601, THE BOARD OF SUPERVISORS OF CAERNARVON TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, DOES HEREBY ENACT AND ORDAIN REGULATIONS GOVERNING THE ENCROACHMENT ONTO THE RIGHTS-OF-WAY, EASEMENTS, OPEN SPACES AND COMMON AREAS OF THE TOWNSHIP, AS FOLLOWS:

AND NOW, THEREFORE, this 28<sup>th</sup> day of August, 2018, be it enacted and ordained by the Board of Supervisors of Caernarvon Township, Berks County, as follows:

**Section 1. Purpose**

The purpose of this Ordinance shall be to regulate encroachments onto or within those rights-of-way, easements, open spaces and common areas in which Caernarvon Township has an interest to ensure that said areas remain free and clear from obstructions.

**Section 2. Definitions**

- A. "Person" shall include any natural person or persons, partnership, association, corporation, company or any organization.
- B. "Common Area" shall include any real property owned by a party other than the Township, in which the Township has an interest or is required to maintain or access.
- C. "Easement" means a grant of one (1) or more property rights by a real property owner to the Township for either the exclusive or non-exclusive use by the Township or the general public.
- D. "Right-Of-Way" means the surface and space in, on and above any real property to which the Township has been conveyed a legal interest including, but not limited to, any public street, boulevard, avenue, road, highway, freeway, alley, court, or any other place.

E. "Open Space" means real property that has been set aside for public use or purpose.

### **Section 3. General Prohibition**

No Person shall encroach upon a Right-of-Way, Easement, Open Space or Common Area by placing, constructing or building structures, fences, equipment, or by dumping debris, yard waste or junk onto, in or within, a Right-of-Way, Easement, Open Space or Common Area.

### **Section 4. Exceptions**

The following entities and/or encroachments are exempted from the General Prohibition in Section 3 above:

#### *A. Township and Municipal Authorities and Public Utilities*

The general prohibition set forth in Section 3, above, shall not apply to Caernarvon Township, any municipality authority or public utility.

#### *B. Temporary Construction*

The general prohibition set forth in Section 3, above, shall not apply to any encroachment caused or created as part of a construction-related activity, provided that the Person performing the construction notifies the Township at least ten (10) days before encroaching upon a Right-of-Way, Easement, Open Space or Common Area. In the event a Person plans to perform construction or a construction-related activity on or in a Right-of-Way, Easement, Open Space or Common Area in which the Township has an interest, upon the request of the Township the Person shall execute a temporary construction easement in form and substance acceptable to the Township and the Township Solicitor.

#### *C. Mailboxes*

A Person shall be authorized to install a mailbox for purposes of receiving mail from the United States Postal Service within a Right-of-Way along a public road. Mailboxes shall be installed in a manner consistent with United States Postal Service Mailbox guidelines (*e.g.*, avoid unyielding and potentially dangerous supports).

#### *D. Planting of Trees and Shrubbery in or Near Sidewalk Areas.*

A Person shall be authorized to plant trees and shrubbery in or near sidewalk areas, subject to compliance with the regulations set forth in Ordinance No. 288.

#### *E. Permission from Township conditioned upon Encroachment Agreement*

In the event of an encroachment (or request to encroach) that does not fall within one of the exceptions to the general prohibition against encroachments set forth in this Section, the

Township Board of Supervisors may consent to an encroachment onto, in or within a Right-of-Way, Easement, Open Space or Common Area if:

- 1.) the landowner demonstrates to the Township that the encroachment will not adversely impact the intended purpose of the Right-of-Way, Easement, Open Space or Common Area;
- 2.) the Board of Supervisors determines, in its sole discretion, that the encroachment will not impair the Township's ability to access the Right-of-Way, Easement, Open Space or Common Area, taking into consideration factors including the potential frequency and exigency associated with the need of the Township to use the Right-of-Way, Easement, Open Space or Common Area and the cost to the Township of removing or abating the encroachment in the event the landowner refuses or fails to do so;
- 3.) the landowner executes and records an "Easement/ROW Encroachment Agreement" in form and substance acceptable to the Township and the Township Solicitor. The agreement shall at a minimum:
  - (a) indemnify and hold harmless the Township from any and all liability whatsoever that may arise out of or be related to the existence of the encroachment and, further, to indemnify the Township against any damage the encroachment may cause to Township property or equipment.
  - (b) require the landowner to maintain the easement in and around the encroachment area while the encroachment exists;
  - (c) require the landowner to remove or abate the encroachment, at the cost of the landowner, upon reasonable notice from the Township; and
  - (d) such other provisions as the Township Solicitor deems necessary to protect the Township's legal interests.
- 4.) The Board of Supervisors may waive one or more of the conditions set forth in Subsection E(3) of this Section if the Board determines that said waiver will not adversely impact the interests of the Township and the general public.
- 5.) Landowners shall reimburse the Township for all costs and fees incurred to process a request for an exception by way of an encroachment agreement pursuant to Subsection E(3) of this Section including, but not limited, to the Township Solicitor's cost to prepare the Encroachment Agreement, and the cost to record the Encroachment Agreement in the Office of the Recorder of Deeds of Berks County.
- 6.) No encroachment shall occur pursuant to this Subsection E(3) until the required Encroachment Agreement has been executed and recorded, and all fees reimbursed to the Township by the landowner.

**Section 5. Authority to remove or abate unlawful encroachments.**

In addition to the penalties imposed in this Ordinance for the violation of any provision herein, a landowner who violates this Ordinance shall, upon notice of the violation, remove the unlawful encroachment within the time provided so specified on the notice of violation. In the

event the Person fails or refuses to do so within the time period specified on the notice of violation, the Township may remove the encroachment, with said fees and costs in labor and material to be assessed against the landowner. The fees and costs shall constitute a municipal claim and lien on the property, and the Township reserves its right to collect said municipal claim and lien in accordance with the Municipal Claims and Tax Lien Law, 53 P.S. §7101, et seq.

### **Section 6. Penalties**

A. The Township shall impose a civil penalty against any Person determined to have violated any provision of this Ordinance. In the event the penalty is not voluntarily paid to the Township, the Township shall be entitled to initiate a civil enforcement proceeding before a Magisterial District Court in accordance with 53 P.S. §66601(c.1)(1). In the event the person is found liable before a Magisterial District Justice, the violator shall be liable for a penalty imposed in an amount not to exceed \$600.00 per violation, together with additional daily penalties for continuing violations, plus court costs and reasonable attorney fees incurred by the Township in the enforcement proceedings.

B. Each day that a violation of this Ordinance continues shall constitute a separate offense.

C. Notwithstanding the foregoing, this Ordinance may be enforced by the Township through an action in equity brought in the Berks County Court of Common Pleas.

### **Section 7. Repealer**


All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

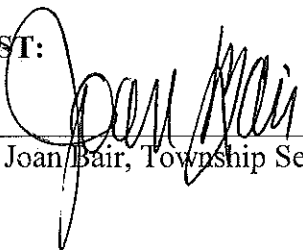
**Section 8. Severability**

If any section, provision or part of this Ordinance shall be held unconstitutional or illegal, such unconstitutionality or illegality shall not affect the validity of the remaining sections, provisions or parts of this Ordinance. The Board of Supervisors hereby declares that it would have enacted and ordained the remaining sections, provisions or parts of this Ordinance if it had known that such sections, provisions or parts thereof would be declared unconstitutional.

ENACTED this 28<sup>th</sup> day of August, 2018. This Ordinance shall take effect immediately.

**BOARD OF SUPERVISORS  
CAERNARVON TOWNSHIP  
BERKS COUNTY, PENNSYLVANIA**

By:   
Allen Styer, III, Chairman

ATTEST:  
By:   
Joan Bair, Township Secretary