

Article II — Permits

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Article II — Permits

§ 59-201 Authorization Required.

(a) **In General.** Except as otherwise provided in this Chapter, no person shall own, construct, operate, utilize, and/or maintain any poles, wires, cables, pipes, equipment, or any other facilities in any right-of-way other than a Grandfathered Mailbox without being authorized to do so by a Right-of-Way Use Permit or a Mailbox Permit issued pursuant to this Chapter.

(b) **Exceptions.** No permit under subsection (a) shall be required for Borough Work approved by the Borough Maintenance Supervisor, for any work authorized pursuant to a Franchise Agreement under Chapter 69 (relating to Cable Television), for work authorized under § 53-301 *et seq.* (relating to Streets—Street Excavations), or for work authorized under § 56-101 *et seq.* (relating to Curbs and Sidewalks). A person undertaking a State-Authorized Use pursuant to authorization from the Pennsylvania Public Utilities Commission is excused from obtaining a permit under subsection (a) unless directed to do so by Council, but shall be considered a Permittee and shall comply with the applicable requirements of this Chapter which are not within the exclusive jurisdiction of the Pennsylvania Public Utilities Commission.

§ 59-202 Application and Decision.

(a) **Application.** A person desiring to obtain a Right-of-Way Use Permit shall file an application with the Borough Manager in such form as may be prescribed from time to time by the Borough Manager, and shall include a statement of the purposes for which the permit is requested and such information and documents as may be required by the Borough Manager to determine whether such a permit is appropriate.

(b) **Initial Determination.** After review of the application and consultation with the Borough Maintenance Supervisor and/or Borough Engineer, the Borough Manager shall approve,

approve with conditions, or deny the application within sixty (60) calendar days after receipt of a complete application. If the application is denied or approved only subject to conditions not already included in the application itself, the Borough Manager shall state the reasons for the denial or conditions in writing and send the writing to the applicant at the address provided in the application.

(c) **Appeal.** If the applicant is not satisfied with the decision of the Borough Manager under subsection (b), the applicant may appeal the decision to Council. Council shall conduct a hearing on the matter in accordance with the procedures of the Local Agency Law (*see* 2 PA. CONS. STAT. §105) commencing within sixty (60) calendar days thereafter and render its decision within twenty-one (21) calendar days after the conclusion of the last hearing. However, the decision of Council may only be appealed to court if it constitutes an adjudication of personal or property rights, privileges, immunities, duties, liabilities, or obligations of any of the parties to the proceeding; no further appeal may be taken from any decision within the discretion of Council.

(d) **Issuance.** If the application is approved by the Borough Manager or Council, and the applicant accepts all conditions imposed, the Borough Manager shall issue a Right-of-Way Use Permit to the applicant setting forth the rights granted and the terms and conditions imposed. A Right-of-Way Use Permit shall be for a term of five (5) years.

§ 59-203 **Renewal.**

(a) **Application.** A person desiring to renew a Right-of-Way Use Permit prior to the expiration of the permit shall file an application with the Borough Manager in such form as may be prescribed from time to time by the Borough Manager. The Borough Manager may request thereafter such information and documents as may be required by the Borough Manager to determine whether the renewal is appropriate.

(b) **Initial Determination.** After review of the application and consultation with the Borough Maintenance Supervisor and/or Borough Engineer, the Borough Manager shall approve, approve with conditions, or deny the application within thirty (30) calendar days after receipt of a complete application, or, if additional information and documents are requested by the Borough Manager after the submission of the application, within thirty (30) calendar days after receipt of all such information and documents. If the application is denied or approved only subject to conditions not included in the existing Permit, the Borough Manager shall state the reasons for the denial or conditions in writing and send the writing to the applicant at the address provided in the application.

(c) **Appeal.** If the applicant is not satisfied with the decision of the Borough Manager under subsection (b), the applicant may appeal the decision to Council. Council shall conduct a hearing on the matter in accordance with the procedures of the Local Agency Law (*see* 2 PA. CONS. STAT. §105) commencing within thirty (30) calendar days thereafter and render its decision within twenty-one (21) calendar days after the conclusion of the last hearing. However, the decision of Council may only be appealed to court if it constitutes an adjudication of personal or property rights, privileges, immunities, duties, liabilities, or obligations of any of the parties to the proceeding; no further appeal may be taken from any decision within the discretion of Council.

(d) **Issuance.** If the application is approved by the Borough Manager or Council, and the applicant accepts all conditions imposed, the Borough Manager shall issue a renewed Right-of-Way permit to the applicant setting forth the rights granted and the terms and conditions imposed. A renewed Right-of-Way Use Permit shall be for a term of five (5) years.

§ 59-204 Nondiscrimination.

Determinations to grant, grant with conditions, or deny an application for a Right-of-Way Use Permit or a renewal Right-of-Way Use Permit under this Chapter shall be made on a nondiscriminatory and competitively neutral basis. However, the Borough reserves the right to change its standards and requirements from time to time.

§ 59-205 Use Authorized.

No Right-of-Way Use Permit or Mailbox Permit shall —

(a) confer any exclusive right or privilege to occupy or use the right-of-way for any purpose;

(b) explicitly or impliedly preclude or affect the Borough's right to authorize use of the right-of-way by other persons to own, construct, operate, maintain, and/or provide the same or different facilities or services or for any other purposes as the Borough deems appropriate;

(c) affect the Borough's right to construct, operate, or maintain any type of facilities itself or offer any type of services in the right-of-way;

(d) authorize or excuse any person from securing such further easements, leases, permits, or other approvals as may be required by applicable law or regulation or property rights to occupy and use the right-of-way;

(e) convey any right, title, or interest in any right-of-way greater or other than an agreement only to use and occupy the right-of-way for the limited purposes and terms provided in the Right-of-Way Use Permit or Mailbox Permit;

(f) expressly or impliedly authorize any person to provide any services to, or install any facilities on, any property outside of the right-of-way without the owner's consent, or to use publicly or privately owned poles, ducts, conduits, or other facilities, without a separate agreement with the owners thereof for such use; or

(g) be construed as any warranty of title.

§ 59-206 Review Fees.

(a) **Application Fee.** The applicant for a Right-of-Way Use Permit shall pay an application fee of Five Hundred Dollars (\$500.00) for up to five (5) facilities included in a single application (other than supporting poles), plus an additional One Hundred Dollars (\$100.00) for each

additional facility beyond five (5) included in that application (other than supporting poles), plus One Thousand Dollars (\$1,000.00) for each new pole included in the application to support facilities. No application fee shall be charged for the renewal of a Right-of-Way Use Permit.

(b) Additional Review Fee. In addition to the application fee under subsection (a), the Borough may require an applicant for a Right-of-Way Use Permit to pay an additional review fee to cover the Borough's costs in excess of the amount paid under subsection (a) to review and process a given application (including costs in connection with a hearing, such as the costs for advertising, notices, and creating a stenographic record), so long as the total amount collected is a reasonable approximation of costs, the costs themselves are objectively reasonable, and the costs charged are no higher than those charged to similarly-situated competitors in similar situations.

(c) No Action Until Fees Are Paid. Notwithstanding anything to the contrary in this Chapter, no action shall be taken on any application or appeal until all fees under subsections (a) and (b) which are demanded have been paid in full.

(d) Access Fee. Each Permittee issued a Right-of-Way Use Permit shall pay an annual fee to the Borough of Two Hundred Seventy Dollars (\$270.00) for each facility covered by the Permit, for the right to have access to the Borough's right-of-way and attach to any Borough-owned structures in the right-of-way. The initial fee for each facility shall be due upon its installation in the right-of-way, and the fee for each succeeding calendar year shall be due by January 1 of that year. If the fee is not paid within sixty (60) calendar days after notice from the Borough that it is unpaid and past due, the associated Right-of-Way Use Permit shall be revoked automatically.

(e) Authority. *Cf.* Declaratory Ruling and Third Report and Order, In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Improvement, ¶ 79 (FCC WT Docket No. 17-79, WC Docket No. 17-84, released 9/27/2018).

§ 59-207 Transition Provisions.

(a) Existing Uses. Any person owning, operating, and/or maintaining facilities in the right-of-way as of the adoption of this Chapter may continue to conduct those activities for one hundred eighty (180) calendar days after the adoption of this Chapter without obtaining a Right-of-Way Use Permit under this Chapter. Notwithstanding the foregoing, each such person who is required to obtain a Right-of-Way Use Permit under this Chapter (or is excused from such requirement under the second sentence of § 59-201(b)) shall be considered a Permittee and shall comply with all the applicable terms and conditions of this Chapter upon the adoption of this Chapter, and any such person who is required to obtain a Right-of-Way Use Permit under this Chapter shall apply for such a Permit within ninety (90) calendar days after the adoption of this Chapter.

(b) Pending Applications. Applications for an authorization to occupy or use the right-of-way that are pending of the effective date of this Chapter shall be subject to this Chapter.

§ 59-208 Police Powers.

The Borough, by granting any Right-of-Way Use Permit or Mailbox Permit, permitting or tolerating any use of the right-of-way, or any other action or inaction under this Chapter or otherwise, does not waive, reduce, lessen, or impair the lawful police powers vested in the Borough under applicable federal, state, and local laws and regulations.