

ALBURTIS CODIFIED ORDINANCES

Chapter 59

Right-of-Way Management

Chapter 59 — Right-of-Way Management

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Article I — Title and General Definitions

§ 59-101 Short Title.

This Chapter shall be known, and may be cited, as the “Borough of Alburtis Right-of-Way Management Ordinance”.

§ 59-102 Definitions—In General.

For purposes of this Chapter, the terms defined in the remaining Sections of this Article I shall have the meanings indicated therein, whether with or without initial capital letters, unless the context in which they are used clearly indicates a different meaning.

§ 59-103 Aerial Facilities.

The term “aerial facilities” shall mean poles, wires, cables, equipment, and other facilities located above the surface of the ground, including their underground supports and foundations. Such term does not include private driveways, newspaper vending machines, mailboxes, street banners, or canopies.

§ 59-104 Borough Work.

The term “Borough Work” shall mean all construction work performed by the Borough or any of its departments, either with its own personnel or under contract, including repair, alteration, replacement, or maintenance of facilities owned, operated, maintained, or controlled by the Borough or for which the Borough is responsible.

§ 59-105 Cable System.

The term “Cable System” shall have the same meaning as provided under § 69-104 (relating to Cable Television—Title and Definitions—Cable System).

§ 59-106 Emergency.

The term “emergency” shall mean a condition that —

(a) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or

(b) has caused or is likely to cause facilities in the right-of-way to be unusable and result in loss of the services provided.

§ 59-106.1 Grandfathered Mailbox.

The term “Grandfathered Mailbox” shall mean a mailbox existing in a right-of-way in this Borough on May 29, 2024, which remains in the same location as on May 29, 2024, and remains of the same design, construction, and configuration as on May 29, 2024 (although it may have been maintained or repaired since that date). However, a mailbox shall cease to be a Grandfathered Mailbox on and after the compliance date of a Notice to Obtain Mailbox Permit issued under § 59-402(a).

§ 59-106.2 Mailbox Permittee.

The term “Mailbox Permittee” shall mean the recipient of a current, unrevoked Mailbox Permit issued pursuant to Article IV of this Chapter or his/her/its successor in interest.

§ 59-107 Permittee.

The term “Permittee” shall mean the recipient of a Right-of-Way Use Permit issued pursuant to this Chapter or a person authorized to operate a Cable System under Chapter 69, persons holding existing franchises, special ordinances, or other authorizations prior to the enactment of this Chapter, and persons treated as Permittees under the second sentence of § 59-201(b) (but only to the extent of matters not within the exclusive jurisdiction of the Pennsylvania Public Util-

ities Commission) or the second sentence of § 59-207(a) (but only to the extent of matters not within the exclusive jurisdiction of the Pennsylvania Public Utilities Commission). However, the term does not include any persons whose rights have expired or been terminated. A person is not a Permittee solely by virtue of being a Mailbox Permittee.

§ 59-108 Person.

The term “person” shall include corporations, companies, associations, firms, partnerships, limited liability companies, and other entities; municipalities, authorities, and other governmental or quasi-governmental entities established by law; and individuals.

§ 59-109 Right-of Way.

The term “right-of-way” means the surface of and space above and below any real property in the Borough in which the Borough has a regulatory interest, or interest as trustee for the public, as such interests now or hereafter exist, including, but not limited to, all streets, highways, roads, alleys, sidewalks, tunnels, viaducts, and bridges under the control of the Borough, but excluding lands owned by the Borough other than streets or other strips of land intended or used for vehicular or pedestrian traffic. The “right-of-way” includes cartway areas, sidewalk areas, and all unpaved portions of the legal right-of-way. The phrase “in the right-of-way” means “in, on, over, along, above, and/or under the right-of-way”.

§ 59-110 State-Authorized Use.

(a) **In General.** The term “State-Authorized Use” shall mean the use of any portion of any Borough street, highway, alley, or right-of-way area for one or more of the Principal Purposes set forth in subsection (b) and ancillary purposes reasonably necessary or appropriate for the accomplishment of the Principal Purposes, including the placement, maintenance and removal of aerial, surface and subsurface public utility facilities thereon or therein, by a public utility corporation pursuant to the rights granted under 15 PA. CONS. STAT. § 1511(e). A State-Authorized Use must comply with the applicable regulations of this Chapter that are not within the exclusive jurisdiction of the Pennsylvania Public Utility Commission.

(b) **Principal Purposes.** For purposes of this Section, the term “Principal Purposes” shall mean the following (within the meaning of 15 PA. CONS. STAT. § 1511(a))—

(1) the transportation of passengers or property or both as a common carrier by means of elevated street railway, ferry, inclined plane railway, railroad, street railway or underground street railway, trackless-trolley omnibus or by any combination of such means;

(2) the transportation of artificial or natural gas, electricity, petroleum or petroleum products or water or any combination of such substances for the public;

(3) the production, generation, manufacture, transmission, storage, distribution or furnishing of natural or artificial gas, electricity, steam, air conditioning or refrigerating service or any combination thereof to or for the public;

- (4) the diverting, developing, pumping, impounding, distributing or furnishing of water from either surface or subsurface sources to or for the public;
- (5) the collection, treatment or disposal of sewage for the public;
- (6) the conveyance or transmission of messages or communications by telephone or telegraph for the public;
- (7) the diverting, pumping or impounding of water for the development or furnishing of hydroelectric power to or for the public;
- (8) the transportation of oxygen or nitrogen, or both, by pipeline or conduit for the public.

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.

Article III — Standards and Requirements

§ 59-301 In General.

No Right-of-Way Use Permit or Mailbox Permit shall be issued under this Chapter for a use other than a State-Authorized Use if the proposed usage of the right-of-way, in the opinion of the Borough Manager or Council responsible for considering the application,—

(a) would be injurious to the public health, safety, or welfare as reasonably articulated by the Borough Manager or Council; or

(b) does not provide a sufficient benefit to the residents and taxpayers of the Borough compared to the detriments to the public health, safety, and welfare caused by the use.

§ 59-302 Qualified Applicant.

In addition to all other requirements contained in this Chapter, each applicant for a Right-of-Way Use Permit under this Chapter shall demonstrate—

(a) that it has a history of compliance with applicable laws and regulations relating to the management, construction, and maintenance of facilities in streets and rights-of-way, wherever located, or, in the case of a person with no historical use of rights-of-way, that it has employed or engaged qualified persons with a history of compliance with applicable laws and regulations relating to the management, construction, and maintenance of facilities in streets and rights-of-way to assist it in its operations under the proposed permit; and

(b) that it possesses all licenses, permits, authorizations, and other permissions required by any applicable regulatory agency (including, but not limited to, the Federal Communications Commission, the Pennsylvania Public Utility Commission, other agencies of the United States or the Commonwealth of Pennsylvania, and the Borough) to allow it to use the right-of-way, to operate the facilities to be placed in the right-of-way, and to furnish the services to be provided utilizing such facilities.

§ 59-303 Aerial Facilities.

(a) Whenever practicable, facilities in the right-of-way shall be installed underground.

(b) No new aerial facilities shall be constructed or installed in the right-of-way to the extent that existing aerial facilities within the right-of-way can be utilized under reasonable terms and conditions to provide the Permittee's services.

(c) No aerial facilities shall extend more than forty-five (45) feet above ground level.

§ 59-304 Clear-Sight Triangle.

No facilities shall be placed at a height greater than two and one-half (2 $\frac{1}{2}$) feet and less than seven (7) feet above ground level within any clear-sight triangle. There shall be clear-sight triangles at every intersection of two or more streets and/or alleys. (In the case of the intersection of two streets which cross each other, for example, there are four such triangles, one for each of the four corners of the intersection.) The first leg of each triangle shall begin at the intersection of the two curblines which form that corner of the intersection (using the definition of "curbline" provided in § 41-105), and extend a distance of fifteen (15) feet along one curbline; the second leg of each triangle shall begin at the intersection of the two curblines and extend a distance of fifteen (15) along the other curbline; and the third leg of each triangle shall connect the ends of the other two legs.

§ 59-305 Conditions.

If a proposed usage of the right-of-way does not satisfy all of the requirements of this Chapter, but can be made acceptable to the public health, safety, and welfare and can satisfy the purposes of the requirements of this Chapter by the imposition of additional terms and conditions, then the Borough Manager or Council responsible for considering the application may offer to approve the application subject to the additional terms and conditions, rather than deny the application

Article IV — Mailboxes

§ 59-401 Mailbox Permits.

(a) **Mailbox Permit Required.** Effective May 30, 2024, no person shall install or maintain a mailbox (other than a Grandfathered Mailbox) within a Borough right-of-way or any other public right-of-way (including, but not limited to, cartway, sidewalk, unpaved walkway areas, and all other portions of the right-of-way) except in accordance with the terms and conditions of a Mailbox Permit issued for that purpose by the Borough Manager or his/her delegate.

(b) General Permit Requirements. A Mailbox Permit shall be issued only if the mailbox (1) is in conformance with the requirements of this Article and the other applicable provisions of this Chapter, (2) is designed and located in a safe manner which is acceptable to the Borough and the United States Postal Service, and (3) accommodates other existing and potential uses of the right-of-way to the satisfaction of the Borough. In addition, if the public right-of-way is not owned by the Borough nor one in which the Borough has a regulatory interest or an interest as trustee for the public, the mailbox must also be in conformance with the requirements of those with a regulatory interest in the right-of-way or a property interest superior to the regulatory interest. The Borough has discretion to impose such reasonable terms and conditions in the Mailbox Permit as it deems fit.

(c) Application. A person desiring to obtain a Mailbox Permit shall file an application with the Borough Manager in such form as may be prescribed from time to time by the Borough Manager.

(d) Initial Determination. After review of the application and consultation with the Borough Maintenance Supervisor and/or Borough Engineer if desired, the Borough Manager shall approve, approve with conditions, or deny the application within fifteen (15) 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.

(e) Appeal to Council. If the applicant is not satisfied with the decision of the Borough Manager under subsection (d), the applicant may appeal the decision to Council. No further appeal may be taken from any decision within the discretion of Council.

(f) 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 Mailbox Permit to the applicant setting forth the location, design, and construction of the mailbox and any other terms and conditions imposed.

(g) Mailbox Installed At Owner's Risk. The issuance of a Mailbox Permit does not constitute a determination, representation, or certification that the location, design, construction, installation, or maintenance of the mailbox is appropriate, safe, prudent, or legal (including, but not limited to, compliance with the Americans With Disabilities Act, other applicable law, and United States Postal Service requirements, and not infringing the superior rights of others). Each mailbox is installed entirely at the owner's risk. The owner of the mailbox may be held liable for injuries or damages that may have been incurred as a result of installation or maintenance that is not in accordance with this Chapter, other legal requirements, or the superior rights of others, or due to the owner's negligence.

(h) Revocation. A Mailbox Permit may be revoked at any time the Borough Manager determines that a new Mailbox Permit would not then be granted for the mailbox in its present state if a new application were to be filed. Notice of the revocation shall be sent to the mailing address of the mailbox in question, and the mailing address provided by the applicant for that Mailbox Permit (if different), stating the date the revocation will take effect. In general, the effective date of the revocation will be thirty (30) days after the mailing date of the notice. However, if the mailbox was installed in accordance with the terms of the Mailbox Permit, and con-

tinues to satisfy the terms and conditions of the Mailbox Permit and the Borough requirements as in effect at the time it was issued, the effective date of the revocation shall not be earlier than six (6) months after the adoption of the earliest Borough requirement which the mailbox does not satisfy, *except* in the case of (1) an emergency, (2) a mailbox which does not conform to other applicable law, or (3) a mailbox which infringes any superior rights of others.

§ 59-402 Grandfathered Mailboxes.

(a) **Notice to Obtain Mailbox Permit.** Whenever the Borough Manager determines that a Grandfathered Mailbox does not satisfy the requirements of this Article, such that an application for a Mailbox Permit for that mailbox in its existing location and with its existing design and construction would not then be granted, the Borough Manager may issue a Notice to Obtain Mailbox Permit. The Notice shall be sent to the mailing address of the mailbox in question and state a compliance date. In general, the compliance date will be the *later* of December 1, 2024 or thirty (30) days after the mailing date of the Notice. However, an earlier compliance date may be provided—

- (1) in the case of an Emergency;
- (2) for a mailbox which does not conform to applicable law other than Borough requirements; or
- (3) for a mailbox which infringes any superior rights of others.

The Borough Manager may also direct the temporary or permanent removal or relocation of a Grandfathered Mailbox and issue a Notice to Obtain Mailbox Permit whenever reasonably necessary (in his/her opinion) for the construction, installation, maintenance, or repair of other facilities in the right-of-way, the operations of the Borough or other governmental entity in the right-of-way, or a change in the Borough's rights to the right-of-way or the area of the right-of-way.

(b) **Survey.** Upon the enactment of this Section, the Borough Manager shall cause a survey to be made of all mailboxes then installed in the Borough, including such pictures and sketch plans to clearly show the location, design, and construction of each mailbox. It shall be rebuttably presumed that the information recorded in the survey correctly represents the state of Borough mailboxes as of May 29, 2024. After completion of the survey, the Borough Manager shall consider for each mailbox whether a Notice to Obtain Mailbox Permit should be issued.

§ 59-403 Location.

(a) **In General.** Ideally, the mailbox for a dwelling unit should be located on the right-hand side of the street on which the unit fronts (or other abutting street) in the direction of travel of the postal carrier serving that unit, and close to the dwelling unit, taking into consideration the preferences for multiple receptacles on a single pole and for cluster box units. *Cf., Miller v. Nichols*, 363 Pa. Super. 508, 526 A.2d 794 (1987), which held that a mailbox is a public use which could be maintained within a public right-of-way without the consent of the owner of the underlying fee simple property interest.

(b) **Clear-Sight Triangles.** The mailbox shall satisfy the clear-sight triangle requirements of § 59-304. In placing a mailbox, the applicant and the Borough should consider sight distances for drivers leaving nearby driveways to minimize interference with their ability to see oncoming traffic.

(c) **Cartway.** No part of a mailbox shall encroach on or over any part of the cartway.

(d) **Sidewalk Clear Zone.** No part of a mailbox shall encroach on or over a sidewalk, unless (1) no reasonable nearby location and mailbox design can accommodate this requirement; (2) a mailbox was in place at that location on May 29, 2024; and (3) the current mailbox does not encroach on or over the sidewalk to any greater extent than the mailbox in place on May 29, 2024. Notwithstanding anything to the contrary in this subsection (c), mailboxes placed in areas with sidewalks must leave at least thirty-six inches (36”) of passable sidewalk behind the back of the mailbox receptacle, post, or support, whichever is located furthest from the street, or in front of a cluster box unit.

(e) **Surface.** Each mailbox installed in the public right-of-way must either be installed in a grassy, asphalt, or penetrable ground area in accordance with the requirements of § 49-405, installed on a concrete, brick, or other impenetrable surface (not including asphalt) in accordance with the requirements of § 49-406, installed in an approved container placed on a concrete, brick, or other impenetrable flat surface (not including asphalt) in accordance with the requirements of § 49-407, or installed under the cluster box unit requirements of § 49-408.

§ 59-404 General Mailbox Characteristics.

Each mailbox installed or maintained in the Borough must satisfy the following requirements:

(a) **Receptacle.** The mail receptacle portion of each mailbox must be one approved by the United States Postal Service. The receptacle must be attached firmly to the support portion of the mailbox to prevent it from becoming a ready projectile if impacted by a vehicle.

(b) **Height.** The inside surface of the bottom of each mail receptacle (other than cluster box units) shall be no less than forty-one (41) inches and no more than forty-five (45) inches from the top of the street surface.

(c) **Setback.** The front of each mail receptacle portion of a mailbox shall be set back from the curb or edge of the street cartway by six (6) inches. Under no circumstances shall any portion of the mailbox extend into or over the street cartway.

(d) **Multiple Receptacles on a Post.** Where feasible, the Borough encourages, and may require, persons installing mailboxes to have multiple receptacles attached to a single post or two posts. However, no more than four receptacles may be attached to a single post, and a two-post configuration may only be used with a group of three or four receptacles.

§ 59-405 Grass/Ground/Asphalt Installations.

Mailboxes installed in a grassy, asphalt, or penetrable ground area shall satisfy the following requirements:

- (a) The mounting pole/post shall be a minimum four (4) inch by four (4) inch pressure treated wood post or two (2) inch diameter pipe.
- (b) The pole/post shall be placed in a hole twelve (12) inches in diameter.
- (c) At least thirty-six (36) inches of pole/post shall be below the ground level and surrounded by crushed stone, or at least twenty-four (24) inches of pole/post shall be below the ground level and surrounded by concrete.
- (d) The use of bricks, concrete blocks, or other items to support the pole/post is prohibited. All poles/posts must be installed below ground level as set forth in subsection (c).

§ 59-406 Concrete/Brick Installations.

Mailboxes installed on a concrete, brick, or other impenetrable surface (not including asphalt) shall satisfy the following requirements:

- (a) The mounting pole/post shall be a minimum 4 inch by 4 inch pressure treated wood post or equivalent factory ornamental post.
- (b) The pole/post shall be mounted to the concrete, brick, or other impenetrable surface with a commercially-available steel plate utilizing four (4) lags with shields or four (4) tapcon-type concrete screws.

§ 59-407 Container Installations.

Mailboxes installed in a container on a concrete, brick, or other impenetrable flat surface (not including asphalt) shall satisfy the following requirements:

- (a) The container may not exceed eighteen (18) inches in diameter, nor sixteen (16) inches in height. However, containers which are recycled milk cans/churns may be as much as thirty-six (36) inches in height.
- (b) The container must be either ceramic, fir, or pressure treated wood. Plastic or metal is not acceptable. However, recycled milk cans/ churns may be utilized for the container.
- (c) The container must be filled to the top with sufficient material to prevent accumulation of water in the container, and must be of such weight, design, and placement to maintain a stable location on the concrete, brick, or other impenetrable surface in ordinary conditions.
- (d) The post/pole to which the receptacle is attached shall be firmly and securely placed within the container so as to remain vertical at all times.

(e) A mailbox to serve a given property may only be installed in a container if a container mailbox has been in continuous use for that property since May 29, 2024 or earlier, although not necessarily the same container and in the same location

§ 59-408 Cluster Box Units.

Notwithstanding anything to the contrary in this Article, the owner(s) of any property used for four (4) or more residential dwelling units (not including any dwelling unit in which the occupant(s) has agreed to obtain mail services from a post office box at the post office) shall provide for the residents of the property a “clustered” type mailbox, including a free-standing pedestal-mounted cluster box unit or other cluster mailboxes mounted in a wall, kiosk, or shelter, which satisfy the construction, installation, and location requirements of the United States Postal Service, and which are deemed safe by the Borough. Cluster mailboxes shall also be installed within new developments to the extent required under § 22-707. Other cluster mailboxes may be installed and maintained in manners and at locations deemed satisfactory by Mailbox Permit issued by the Borough which satisfy the construction, installation, and location requirements of the United States Postal Service.

§ 59-409 Borough Discretion.

The Borough retains full discretion over the specific location and characteristics of mailboxes in the right-of-way to properly accommodate and coordinate actual and potential users and uses of the right-of-way. If it is not practical or acceptable to the Borough to accommodate the specific desires of an applicant for a Mailbox Permit, the applicant can elect to collect their mail at the local post office.

§ 59-410 Maintenance.

All mailboxes installed in the right-of-way or elsewhere must be maintained at all times in a clean, safe, and undamaged condition, capable of being used for its intended purpose. Damaged or deteriorated facilities must be repaired or replaced within ten (10) calendar days after the damage or deterioration. The owner(s) and adult occupant(s) of each given property shall be jointly and severally responsible for the maintenance and repair of each mailbox installed to provide mail service to that given property.

§ 59-411 Presumption.

It shall be presumed that the Mailbox Permittee and all the owner(s) and all adult occupants of the property for which a given mailbox is designated to receive mail have installed, own, and are maintaining that particular mailbox at its location. This presumption can be rebutted as to any particular person by persuasive evidence to the contrary.

§ 59-412 Removal.

A mailbox installation (including the receptacle, post, and any other support structures) that does not have or does not conform to a current, unrevoked Mailbox Permit (unless exempt from a Mailbox Permit and otherwise in conformance with the requirements of this Chapter) will be considered an unauthorized encroachment on the right-of-way, and shall be removed by the owner upon notification from the Borough Manager or his/her delegate. At the discretion of the Borough Manager or delegate based on the apparent hazard to the public or interference with street maintenance activities, the owner will be granted between twenty-four (24) hours and ten (10) days to remove an unacceptable mailbox installation following such notification. If not so removed within the specified time period, the Borough may remove the mailbox installation and charge the owner for the cost of removal. The Borough may also remove the mailbox installation in the event of an emergency, if deemed reasonably necessary.

§ 59-413 Responsibility of Landlords to Provide Mailboxes.

The owner(s) of each property in which a portion of the property is leased to another or others for residential purposes is responsible to provide a mailbox for each residential tenant, except for any tenant who has agreed to obtain mail services from a post office box at the post office.

§ 59-414 Street Maintenance Operations.

Each mailbox is installed entirely at the owner's risk. If the mailbox incurs damage during street maintenance, construction, snow/ice removal, or other operations, other than through gross negligence on the part of the Borough, its employees, or agents, the owner of the mailbox is not entitled to replacement or compensation.

§ 59-415 Other Provisions.

Mailboxes, Mailbox Permits, applicants for Mailbox Permits, Mailbox Permittees, and Grandfathered Mailboxes are subject to the other applicable provisions of this Chapter 59 in addition to this Article IV, as well as all other applicable ordinances.

Article V — Obligations of Permittees

§ 59-501 Insurance.

Each Permittee shall at all times maintain, and require its contractors and subcontractors to maintain, insurance with a reputable insurance company authorized to do business in the Com-

monwealth of Pennsylvania and which has an A.M. Best rating (or equivalent) no less than “A” indemnifying the Borough from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance, or removal of Permittee’s system or facilities in the right-of-way. The amounts of such coverage shall be as determined from time to time by regulation issued by the Borough Manager. The Borough shall be designated as an additional insured under each of the insurance policies required by this Section. No such insurance shall be cancelled or changed in any material respect unless the Borough is given at least thirty (30) calendar days’ advance notice in writing.

§ 59-502 Indemnification.

Each Permittee shall, at its sole cost and expense, indemnify, defend, and hold harmless the Borough, its elected and appointed officials, employees, and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by, or connected with any act or omission of the Permittee, its officers, agents, employees, or contractors arising out of its use of the right-of-way, including, but not limited to, the construction, installation, operation, maintenance, or removal of Permittee’s system or facilities in the right-of-way. The obligation to indemnify, defend, and hold harmless under this Section shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys’ fees, reasonable expert fees, court costs, and all other costs of indemnification.

§ 59-503 Construction Standards and Security.

(a) All construction, installation, maintenance, repair, replacement, removal, and operation of facilities in the right-of-way shall conform to the requirements of the following publications, as in effect from time to time: Pennsylvania Department of Transportation Publication 408, the National Electrical Code, the National Electrical Safety Code, the Pennsylvania Uniform Construction Code as modified by Chapter 30, and Borough sidewalk and curbing regulations under Chapter 56.

(b) In the construction, installation, maintenance, repair, or replacement of any facilities in the right-of-way, there shall be no interference with the public use of any right-of-way more than is necessary to enable the efficient performance of the work. When necessary, in order not to interfere unduly with the public convenience, the Borough Manager may fix the hours during which such work may be performed. The judgment of the Borough Manager shall be binding in this regard.

(c) Each person performing construction, installation, maintenance, repair, replacement, or removal operations in the right-of-way shall furnish to the Borough, at the person’s expense, a letter of credit or other form of financial security satisfactory to the Borough Solicitor in an amount sufficient to complete the work or restore the right-of-way to its condition before the commencement of the work, as determined by the Borough Engineer. The security shall be a continuing obligation until the completion of the work as confirmed in writing by the Borough.

§ 59-504 Maintenance.

Each Permittee shall insure that adequate measures are used at all times to protect the public health, safety, and welfare as affected by the existence, placement, and maintenance of its facilities in the right-of-way. All of a Permittee's facilities in the right-of-way shall be maintained in a good, safe order and condition and in accordance with generally accepted engineering practices and safety requirements. Any facilities in the right-of-way no longer used by the Permittee shall be promptly removed at the Permittee's expense, and the condition of the right-of-way shall be restored.

§ 59-505 Right to Inspect.

The Borough shall have the right to inspect all of the facilities of the Permittee in the right-of-way, including aerial facilities and underground facilities, and all construction, installation, and maintenance activities of the Permittee in the right-of-way, to ensure health and safety with respect to such facilities, other facilities, activities, the right-of-way, and any other public or private property and to determine compliance with the terms of this Chapter and the Right-of-Way Use Permit. Permittees are required to cooperate with all such inspections and to provide information requested by the Borough as part of the inspection.

§ 59-506 Alteration or Modification of Facilities.

The Permittee shall notify the Borough upon the alteration or modification of any facilities in the right-of-way, and at any time there are any changes in the information provided to the Borough in the permit application process. The Permittee shall update any maps provided under § 59-507 if facilities have been added to or removed from the right-of-way.

§ 59-507 As-Built Maps.

Upon request from the Borough, a Permittee shall provide as-built maps and engineering specifications depicting and certifying the location (in all three dimensions) of all its existing facilities within the right-of-way, including those positioned aerially and underground. Such maps and specifications shall be submitted in such format (including electronic formats) and shall include such information, as required by the Borough from time to time. If the maps are not provided in the required format, the Permittee shall reimburse the Borough for the costs of converting the supplied maps into the required format. The Permittee shall designate the portions of such information which it believes is confidential and exempt from public disclosure under section 708 of the Right to Know Law, 65 PA. STAT. ANN. § 67.708, the Public Utility Confidential Security Information Disclosure Protection Act, 35 PA. STAT. ANN. § 2141.1 *et seq.*, the Public Utility Commission regulations at 52 Pa. Code ch. 102, and/or any other applicable laws or regulations.

§ 59-508 Damages to be Repaired.

(a) If a structure or facility installed or maintained by a Permittee becomes damaged, the Permittee shall promptly have it removed, repaired, or otherwise made safe.

(b) The Permittee is responsible to promptly (within ten (10) calendar days) repair or restore all public or private property damaged by the activities of the Permittee or its contractors or other agents, or by the structures or facilities installed or maintained by or on behalf of the Permittee, including any cartway, curb, sidewalk, or other facilities in the right-of-way, and any property outside of the right-of-way.

§ 59-509 Cutting or Defacing Trees.

No person shall cut, break, or otherwise deface any tree in the right-of-way without first having obtained permission in writing from the Borough Manager.

§ 59-510 Relocation or Removal of Facilities.

Within sixty (60) calendar days following written notice from the Borough, or such longer period as the Borough determines is appropriate, or such shorter period as the Borough determines necessary in the case of an Emergency, a Permittee or Mailbox Permittee shall temporarily or permanently remove, relocate, charge, or alter the position of any facilities within the right-of-way whenever reasonably necessary (in the opinion of the Borough Manager or Council) for the construction, installation, maintenance, or repair of other facilities in the right-of-way, the operations of the Borough or other governmental entity in the right-of-way, a change in the Borough's rights to the right-of-way or the area of the right-of-way, or an Emergency as determined by the Borough.

§ 59-511 Removal of Aerial Facilities.

No person shall cut down or remove any aerial facilities unless all associated underground supports, foundations, and related facilities are also removed and the surface is properly restored.

§ 59-512 Other Permits.

Except in the case of an Emergency, no Permittee or any other person shall perform any work in the right-of-way without first obtaining all other required Borough permits for the work, including, but not limited to, permits for any street excavations and openings and for curbing or sidewalk construction, replacement, or repair.

§ 59-513 Leased Facilities.

Subject to the provisions of this Chapter and with the prior written approval of the Borough, a Permittee shall have the right to furnish any facilities for which it has the applicable authorization to own, construct, use, operate, and/or maintain in the right-of-way to another person for the latter's use in constructing or operating its own facilities in the right-of-way, *provided* that the Permittee shall first deliver to the Borough notice that there is a fully executed lease, rental, or other agreement with the other person pursuant to which the facilities are to be furnished, and the other person shall comply with all the requirements of this Chapter (including requirements for Right-of-Way Use Permits) and other applicable Borough ordinances and requirements.

§ 59-514 Records.

The Borough shall have the right, upon thirty (30) calendar days written notice and during normal business hours, to inspect all documents, records, maps, and other pertinent information maintained by a Permittee that relate directly to the terms and conditions of this Chapter.

§ 59-515 Regulations.

A Permittee is obligated to comply with all written policies and procedures adopted, from time to time, by the Borough Manager consistent with this Chapter as deemed necessary for the implementation of this Chapter.

Article VI — Violations and Penalties

§ 59-601 Violations and Penalties.

(a) **Civil Penalty.** Any person who shall violate any provision of this Chapter shall be subject to a civil penalty of Six Hundred Dollars (\$600.00), unless the violation relates to a mailbox, in which case the civil penalty shall be as follows:

(1) **First Offense.** For the first violation relating to a mailbox, the person shall receive a written warning, and shall be given fifteen (15) calendar days to remedy the violation without a further offense under subsection (d).

(2) **Second Offense.** For a second violation relating to a mailbox (which need not be a violation(s) of the same provision(s) as in the first offense), and for each additional separate violation under subsection (d) enforced through the same notice under subsection (b) or civil enforcement proceeding under subsection (c), the amount of the civil penalty shall be Fifty Dollars (\$50.00).

(3) **Third Offense.** For a violation relating to a mailbox after the second offense under paragraph (2) (which need not be a violation(s) of the same provision(s) as in previous offenses), and for each additional separate violation under subsection (d) enforced through the same notice under subsection (b) or civil enforcement proceeding under subsection (c), the amount of the civil penalty shall be One Hundred Fifty Dollars (\$150.00).

(4) **Subsequent Offenses.** For a violation relating to a mailbox after the offense(s) under paragraph (3) (which need not be a violation(s) of the same provision(s) as in previous offenses), the amount of the civil penalty shall be Three Hundred Fifty Dollars (\$300.00).

(b) **Initial Determination of Violation.** Council hereby delegates the initial determination of violations under this Chapter to the Borough Manager. The Borough Manager shall serve notice of the violation(s) upon the person determined to have violated this Chapter in person or by first class U.S. mail addressed to that person at his/her last known address. The notice shall include a description of the violation(s), the provision(s) of the Codified Ordinances violated (*i.e.* section, subsection, paragraph, etc.), the penalty imposed for each violation, and the time for payment prior to the commencement of a civil enforcement proceeding. Service shall be complete on the date of in-person service or the date of mailing.

(c) **Civil Enforcement Proceeding.** When the penalty imposed for a violation(s) of this Chapter is not voluntarily paid to the Borough within fifteen (15) calendar days after service of the violation notice under subsection (b), the Borough Manager shall initiate a civil enforcement proceeding in the name of the Borough before a magisterial district judge (or, where applicable under Borough Code § 3321(b)(4), 8 PA. CONS. STAT. § 3321(b)(4), the Lehigh County Court of Common Pleas). The civil enforcement proceeding shall be initiated by complaint or by such other means as may be provided by the Pennsylvania Rules of Civil Procedure. Any person found to have violated this Chapter in the civil enforcement proceeding shall be assessed court costs and reasonable attorney fees incurred by the Borough in the proceedings, in addition to the penalty provided.

(d) **Separate Offenses.** Each day or portion of a day that a given violation exists or continues shall constitute a separate offense, and each violation of a separate section, subsection, paragraph, or other division of this Chapter shall constitute a separate offense.

(e) **Equitable Remedies.** In addition to or in lieu of enforcement of this Chapter through a civil action, the Borough may enforce this Chapter through an action in equity brought in the Court of Common Pleas of Lehigh County. The Borough Solicitor shall have authority to commence the action in equity on behalf of the Borough without explicit authorization of Council in any situation where the Solicitor or the President of Council deems it advisable to act before the next regular Council meeting.

§ 59-602 No Waiver.

The failure of the Borough to insist on timely performance or compliance by any Permittee, Mailbox Permittee, or other person with the requirements of this Chapter shall not constitute a waiver of the Borough's right to later insist on timely performance or compliance by that Permittee, Mailbox Permittee, or person or any other Permittee, Mailbox Permittee, or person. The failure of the Borough to enforce any provision of this Chapter on any occasion shall not operate

as a waiver or estoppel of its right to enforce any provision of this Chapter on any other occasion, nor shall the failure to regulate or enforce any regulation of the use of the right-of-way prior to the adoption of this Chapter act as a waiver or estoppel against enforcement of this Chapter or any other ordinance or provision of applicable law.

Appendix

§ 59-A Source Ordinances.

Ordinance 534	08-10-2016
Ordinance 555	03-13-2019
Ordinance 586	05-29-2024