

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 586

(Duly Adopted May 29, 2024)

AN ORDINANCE AMENDING CHAPTER 59 OF THE ALBURTIS CODIFIED ORDINANCES (RELATING TO RIGHT-OF-WAY MANAGEMENT) TO ESTABLISH REGULATIONS FOR THE INSTALLATION AND MAINTENANCE OF MAILBOXES WITHIN THE PUBLIC RIGHT-OF-WAY, INCLUDING REQUIREMENTS FOR OBTAINING PERMITS, STANDARDS FOR RECEPTACLES, MOUNTING POLES, AND CONTAINERS, MAINTENANCE OBLIGATIONS, AND DUTIES OF PROPERTY OWNERS TO PROVIDE MAILBOXES FOR TENANTS; PROVIDING RULES AND PROCEDURES APPLICABLE TO EXISTING INSTALLATIONS; AND ESTABLISHING PENALTIES FOR VIOLATIONS.

Be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Albur-
tis, Lehigh County, Pennsylvania, that the Chapter 59 of the Codified Ordinances (relat-
ing to Right-of-Way Management) is hereby amended as follows (with deletions
indicated by ~~strike-outs~~ and insertions indicated by double underlining):

Chapter 59 — Right-of-Way Management

Article I — Title and General Definitions

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§ 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 Utilities 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.

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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.

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§ 59-204 Nondiscrimination.

Determinations to grant, grant with conditions, or deny an application for a ~~permit~~ Right-of-Way Use Permit or a renewal ~~permit~~ 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.

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§ 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 ~~permit~~ 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.

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Article IV — Mailboxes

§ 59-401 ~~In General~~ Mailbox Permits.

~~Until further notice, the placement or maintenance of any mailbox in the right-of-way does not require a permit, but is entirely at the risk of the person so placing or maintaining the mailbox. The Borough may require the removal of any mailbox at any time on ten (10) calendar days notice if the mailbox in its condition at the time presents an unacceptable risk to the health, safety, or welfare of the Borough, or at any time after the one hundred eightieth (180th) calendar day following the adoption of an Ordinance prescribing rules and regulations for mailboxes in the right-of-way, unless the mailbox complies with the new rules and regulations. It is recommended that any person desiring to place a mailbox in the right-of-way first consult with the Borough Manager to consider whether there are any difficulties with the proposed location for the mailbox.~~

(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 continues 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 re-

quirements 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, un-revoked 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 pro-

vide 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

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§ 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, ~~change~~ change, 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.

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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 viola-

tion(s) of the same provision(s) as in previous offenses), the amount of the civil penalty shall be Three Hundred Fifty Dollars (\$300.00).

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§ 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 it 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.

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Albur-
tis, this 29th day of May, 2024, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURTIS

Ronald J. DeIaco, President

Attest:

Stephen Nemeth, Borough Manager

AND NOW, this 29th day of May, 2024, the above Ordinance is hereby APPROVED.

Kathleen Palmer, Mayor