
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 Alburdis 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.

§ 59-107 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.

§ 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 without being authorized to do so by a Right-of-Way Use 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 permit or a renewal 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 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;

(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 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 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 In General.

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.

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 Commonwealth 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 Uni-

form 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 shall temporarily or permanently remove, relocate, 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.

§ 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).

(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 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 or person or any other 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