

**PART C**  
**Right-of-Way Ordinance**

**Section 251. Application of Ordinance.** This Ordinance shall govern the construction within the Municipality's Rights-of-Way, unless otherwise described in another Ordinance of Municipality or a Franchise, License, or Use Agreement.

**Section 252. Findings and Purpose.**

a. In order to provide for the health, safety and well-being of its citizens, as well as to ensure the structural integrity of its streets, the Municipality strives to keep its Rights-of-Way in a state of good repair and free from unnecessary encumbrances.

b. The Municipality holds the Rights-of-Way within its geographical boundaries as an asset in trust for its citizens. The Municipality and other public entities have invested millions of dollars in public funds to build and maintain the Rights-of-Way.

c. The Municipality possesses the authority to manage and control its Rights-of-Way and to enact reasonable regulations in furtherance thereof.

d. The proliferation of entities that have been licensed by the states and the potential for additional entities having the need to occupy Rights-of-Way, necessitates the modernization of the Municipality's regulations used to control the placement, construction and maintenance of Facilities owned by existing and potential Rights-of-Way users.

e. This Ordinance imposes reasonable regulations on the placement and maintenance of Facilities currently within its Rights-of-Way or to be placed therein at some future time.

f. The requirements embodied herein have been made as broad as possible to serve as standards of quality and to maintain the necessary uniformity in the utilization of the Rights-of-Way.

g. The Permit Fees of this Ordinance are adopted pursuant to the Municipality's police power and other Applicable Ordinances. The purpose of Permit Fees is to enable the Municipality to recover its costs of administration and enforcement and not for the purpose of raising revenue.

**Section 253. Easements Not Impaired.** Nothing in this Ordinance is intended to impair the legal obligation of any contract, Franchise, License, Use Agreement, or other legal authorization or easement previously granted by the Municipality or other lawful authority.

**Section 254. Not in Lieu of Franchise.** Compliance with the Permitting Requirements of this Ordinance shall not excuse any Person from complying with all other requirements of law, including holding a valid Franchise, License, or Use Agreement from the Municipality.

**Section 255. Area of Jurisdiction.** This Ordinance shall apply to all Rights-of-Way within the corporate limits of the Municipality as such corporate limits exist or may exist in the future.

**Section 256. Definitions.** The following definitions apply in this Ordinance. References hereafter to "Sections" are, unless otherwise specified, references to Sections in this Ordinance. Defined terms remain defined terms whether or not capitalized.

**Applicant.** Any Person requesting permission to Obstruct or Construct in a Rights-of-Way.

**Applicable Law.** This Ordinance, all generally applicable ordinances, and State statutes, and rules and regulations, any amendments thereto and any of the applicable federal and/or State laws that are new or existing.

**Application.** The process by which an Applicant submits a request for permission to Obstruct or Construct in the Rights-of-Way.

**Construct.** To excavate, repair, rehabilitate, maintain, and install sanitary sewers, water mains, fire hydrants, valves, meters, manholes, service lines and connections, gas mains, telephone and electrical conduit and their miscellaneous service lines and connections, video and telecommunications Facilities cables, wires, lines, wave guides, antennas, and other equipment or Facilities, pedestals, and service cabinets, poles, guy wires, storm drains, manholes, inlets, catch basins, irrigation systems, driveways, sidewalks, pavement extensions, curbs, walks, steps, building canopies, balconies, overhead walkways, and temporary detour pedestrian walkways on, above, or under any part of the Rights-of-Way provided however, that Construct shall not mean installation, repair, rehabilitation or maintenance of Facilities that do not involve excavation of any portion of the Rights-of-Way.

**Construction Bond.** A bond, cash, letter of credit or other applicable security posted to ensure proper and complete Construction and/or Restoration of a Permitted Facility pursuant to a Permit as may be required as determined by the Municipal Manager or his/her designee.

**Construction Standards for Miscellaneous Construction, Utility Excavation, and Rights-of-Way and Pavement Restoration (Construction Standards)** The Municipality's compilation of provisions and requirements that provide the technical specifications and details for the Construction of Facilities in the Municipality's Rights-of-Way and as otherwise included in the Municipality's ordinances.

**Emergency.** A condition that poses a clear and immediate danger to life or health, or of a significant loss of property or Utility service.

**Excavation.** Any work in the surface or subsurface of the Rights-of-Way including but not limited to opening the Rights-of-Way, installing, servicing, repairing or modifying any Facilities in or under the surface or subsurface, and restoring the surface and subsurface of the Rights-of-Way.

**Extended Application.** An Application made to Construct or Obstruct more of the Rights-of-Way than allowed in, or to extend, a Permit that had already been issued.

**Facilities.** Any tangible thing located in any Rights-of-Way; but shall not include boulevard plantings or gardens planted or maintained in the Rights-of-Way between a Person's property and the street edge of pavement.

**Franchise, License, and Use Agreement.** The grant of authority from Municipality to use Rights-of-Way for any purpose therein described.

**In.** When used in conjunction with Rights-of-Way, means over, above, in, within, on or under a Rights-of-Way.

**Landscape or Landscaping.** Trees, shrubs and other plantings of materials that are or may grow to a height of eighteen (18) inches or more, and irrigation systems (in unpaved areas), in the Rights-of-Way.

**Municipality.** The State College Borough.

**Municipality Cost.** The direct and indirect costs borne by the Municipality for the administration of this Ordinance.

**Notice of Violation.** A written warning issued by the Municipality Engineer for a violation or possible violation of this Ordinance.

**Obstruct.** To place any tangible object in a Rights-of-Way so as to hinder free and open passage over, under, or through that or any part of the Rights-of-Way.

**Permit or Rights-of-Way Permit.** The Permit which must be obtained before a Person may Construct in, or Obstruct in a Rights-of-Way as required by this Ordinance.

**Permit Fee.** Money charged by the Municipality to cover the costs as provided in this Ordinance.

**Permittee.** Any Person to whom a Permit to Construct or Obstruct a Rights-of-Way has been granted by the Municipality.

**Restoration.** The process by which a Constructed or Obstructed Rights-of-Way is restored as specified in this Ordinance.

**Rights-of-Way.** The surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public way, public alley, public sidewalk, public boulevard, public parkway, public drive or any public utility easement or public rights-of-way now or hereafter held by the Municipality which shall, within its proper use and meaning, entitle Provider to the use thereof for the purpose of installing, maintaining or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to Facilities.

**Service or Utility Service.** Services provided by Utilities.

**Sidewalk.** The paved pedestrian walkway between the edge of the road and the street Rights-of-Way line.

**Trenchless Technology.** The use of directional boring, horizontal drilling and micro-tunneling and other techniques in the Construction of underground portions of Facilities which result in the least amount of disruption and damage to Rights-of-Way as possible.

**Underground Facilities.** All lines, cables, conduits, posts, tanks and any other Facilities owned or operated by Persons other than the Municipality which are located wholly or partially underneath Rights-of-Way.

**Utilities.** Any water, sewer, gas, drainage, or culvert pipe and any electric power, telecommunication, signal, communication, or cable television conduit, fiber, wire, cable, or operator thereof.

**Section 257. Administration.** The Borough Manager or his/her designee shall be the principal Municipality official responsible for the administration of the Rights-of-Way, Rights-of-Way Permits, and this Ordinance. The Municipality may adopt and may amend from time to time, Construction Standards and other rules reasonably required to carry out the purposes of this Ordinance. Any requirement not specifically covered by this Ordinance or the Construction Standards shall be determined by the Municipal Manager or his/her designee.

**Section 258. Permit Requirement.** Except as otherwise provided in this Ordinance, no Person may Construct or Obstruct any Rights-of-Way without first having obtained from the Municipality a Rights-of-Way Permit and, as may be required by Applicable Ordinances, such Franchise, License, Use Agreement, or other required municipal permits or approvals.

**Section 259. Rights-of-Way Permit.** A Rights-of-Way Permit is a Permit which allows the holder to Construct, Obstruct, or Landscape in that part of the Rights-of-Way described in such Permit.

**a.** A Permit is valid only for the dates and the area(s) of Rights-of-Way specified in the Permit. No Person may Construct in or Obstruct the Rights-of-Way beyond the date or dates specified in the Permit unless such Person:

(1) Requests an extension to an existing Rights-of-Way Permit before the expiration of the initial Permit; and

(2) A new Permit or Permit extension is granted.

Permit extensions may be obtained upon good cause shown for additional tow (2) one (1) month periods.

However, if no work is initiated within one (1) month of obtaining a Permit, the Permit is rendered invalid.

**b.** When the work must commence immediately because of an Emergency the Permittee shall comply with the provisions in this Ordinance.

**c.** No Permits shall be required for the following activities:

(1) Installation of and repair of Facilities by or for the Municipality; and

(2) Installation of Landscaping materials which are or may grow to a height of not more than eighteen (18) inches, in accordance with other applicable ordinances.

**d.** Applicants may be allowed, if determined by the Borough Manager or his/her designee, to obtain in advance, an annual, quarterly, or semi-annual permit for Minor Projects outside roadway limits and some Small Projects that involve minimal Excavation. Permit fees shall be calculated as an estimate of similar work conducted over the past twelve (12) months.

**Section 260. Permit Applications.** Application for a Permit is made to Borough Manager or his/her designee at least two (2) weeks prior to the start of construction, unless deemed an emergency.

**a.** All Permit Applications shall be obtained from the Public Works office and include the requirements of this Ordinance, specifically including, but not limited to the following:

(1) Each Applicant's name, Pennsylvania's One-Call registration certificate number, address, and e-mail address, if applicable, and telephone and facsimile numbers.

(2) The name, address, and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times.

(3) The name, address and contact information for contractor, if different from Applicant.

(4) Insurance

(a) Verifying that an insurance policy has been insured to the Applicant by an insurance company licensed to do business in the State of Pennsylvania or a form of self-insurance acceptable to the Municipality.

(b) Verifying that the Applicant is insured as required by this Ordinance or a Franchise, License, or Use Agreement.

(5) The Municipality may require a copy of the actual insurance policies.

(6) If the person is a corporation, a copy of the certificate of incorporation as recorded and certified by the Secretary of State.

(7) A copy of the Applicant's Use Agreement, Franchise, License, or other legal authorization or order granting a certificate of authority from the State of Pennsylvania Public Service Commission or other applicable state or federal agency.

(8) Plans, Specifications and Details for proposed installation, backfill and restoration. Plans shall be at a scale of 1' —20' and include all existing features and utilities that may be impacted by the proposed project.

(9) Surety in the form of a construction bond or certified cashier's check in the amount of the estimated cost of restoration construction to be held by the Municipality until completion of the work.

**b.** In the event Applicant furnished similar information to the Municipality as may be required for a Franchise, License, or Use Agreement, such information may not be duplicated but may be supplemented based on review by the Borough Manager or his/her designee.

**c.** The Applicant shall keep all of the information listed above current at all times by providing to the Municipality information as to changes within fifteen (15) days following the date on which the Applicant has knowledge of any change.

**Section 261. Issuance of Permit; Conditions.**

a. If the Borough Manager or his/her designee determines that the Applicant has provided a complete Application and has satisfied the requirements of this Ordinance, the Borough Manager or his/her designee shall issue a Permit or issue notification and reason for denial within ten (10) working days of the filing of the application.

b. The Borough Manager or his/her designee may impose reasonable conditions upon the issuance of the Permit and the performance of the Applicant there under in order to protect the public health, safety and welfare, to insure the structural integrity of the Rights-of-Way, to protect the property and safety of other users of the Rights-of-Way, and to minimize the disruption and inconvenience to the traveling public, including notification to property owners.

c. The signature of the Applicant on the Permit Application shall represent an understanding of all of the terms and conditions contained in it and that by issuance of the Permit, agrees and acknowledges all liability for construction, restoration or maintenance of its Facilities within the Rights- of-Way and will save, defend and hold the Municipality harmless.

**Section 262. Permit Fees.**

a. Permit Fees shall be established by resolution of Borough Council upon recommendation of the Borough Manager or his/her designee. Said fees shall be in an amount sufficient to recover the following costs:

(1) The Municipality Costs, including administration, inspection, and enforcement.

(2) The cost for Obstructing the Rights-of-Way may include at least the following: lost parking meter revenue, costs associated with traffic management, and lost tax revenues.

b. No Permit shall be issued without payment of such fees unless the Borough Manager or his/her designee authorizes payment to be made thirty (30) days following billing. All changes in fees shall be approved by Borough Council.

c. All permit fees are non-refundable.

**Section 263. Joint Applications.** Applicants are encouraged to make joint Application for Permits to Construct or Obstruct the Rights-of-Way at the same place and time. Applicants who apply for Permits for the same or similar Obstruction or Construction for the same Rights-of-Way location may share in the payment of the Permit Fee. Applicants must agree among themselves as to the designation of a facility owner and to the portion each will pay and indicate the same on their applications.

**Section 264. Request for Waiver.** The Municipality or its designee may grant a waiver to the requirements of this Ordinance if a Permittee demonstrates with written evidence that:

a. The exception will not create any threat to the public health, safety or welfare.

b. The Permittee demonstrates that the increased economic burden and the potential adverse impact on the Permittee's Construction schedule resulting from the strict enforcement of the requirement actually or effectively prohibits the ability of the Permittee to provide its services in the Municipality.

c. Should any Person be aggrieved by the decision of the Municipality or its designee, such Person may appeal as provided for in Section 17 herein.

**Section 265. Denial of Permit.**

a. Except in the case of an Emergency, no Rights-of-Way Permit will be granted:

(1) To any Person who has failed to comply with the requirements of this Ordinance.

(2) To any Person who is delinquent in paying a debt owed to the Municipality.

(3) If, in the discretion of the Borough Manager or his/her designee, the issuance of a Permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The Borough Manager or his/her designee, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the Rights-of-Way, and by considerations relating to the public health, safety and welfare.

b. The Borough Manager or his/her designee may deny a Permit in order to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the Rights-of-Way, or when necessary to protect the Rights-of-Way and its users. The Borough Manager or his/her designee may consider one or more of the following factors:

(1) The extent to which Rights-of-Way space where the Permit is sought is available.

(2) The competing demands for the particular space in the Rights-of-Way.

(3) The availability of other locations in the Rights-of-Way or in other Rights-of-Way for the Facilities of the particular company.

(4) The applicability of Ordinances or other regulations of the Rights-of-Way that affect location of Facilities in the Rights-of-Way.

(5) The degree of compliance of the Applicant with the terms and conditions of its franchise, this Ordinance, and other applicable ordinances and regulations; the degree of disruption to surrounding neighborhoods and businesses that will result from the use of that part of the Rights-of-Way.

(6) The condition and age of the Rights-of-Way, and whether and when it is scheduled for total or partial Construction; and the balancing of the costs of disruption to the public and damage to the Rights-of-Way, against the benefits to that part of the public served by the expansion into additional parts of the Rights-of-Way.

c. A Permittee may appeal a decision of the Municipality or its designee, as described in Section 17 of this Ordinance.

**Section 266. Enforcement.**

a. Permittees hold Permits issued pursuant to this Ordinance as a Privilege and not as a right.

b. If the Borough Manager or his/her designee determines that the Permittee has violated a material term or condition of any statute, ordinance, rule, regulation or any condition of the Permit, the Borough Manager or his/her designee shall issue a Notice of Violation to the Permittee to remedy such violation. The Notice of Violation shall provide requirements for correction of violation, any applicable penalties for continued violation, the requirements regarding continuance of work until violation is resolved, and the process and procedures for enforcement that may be applicable as required under the general ordinances of the Municipality. A material violation by Permittee shall include, but shall not be limited to, the following:

(1) The violation of any material provision of the Permit.

(2) An evasion or attempt to evade any material provision of the Rights-of-Way Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Municipality or its citizens.

(3) Any material misrepresentation of fact in the Application for a Permit.

(4) The failure to maintain the required bonds and/or insurance.

(5) The failure to complete the work in a timely manner.

(6) The failure to correct a condition indicated on an order issued pursuant to this Ordinance.

c. Within forty-eight (48) hours of receiving a Notice of Violation, Permittee shall contact the Borough Manager or his/her designee with a plan, acceptable to the Borough Manager or his/her designee, for its correction. Permittee's failure to so contact the Borough Manager or his/her designee, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for the Municipality to recover costs, expenses or damages from the Construction Bond or to deny further Rights-of-Way Construction or to revoke a Permit.

**Section 267. Appeal Procedure.** A Rights-of-Way Applicant or user that: (1) has been denied a permit; (2) has had a permit revoked; or (3) believes that the fees imposed are invalid, has the right to have the denial, revocation, or fee imposition reviewed, upon written request, by the Borough Manager and if resolution is not obtained Applicant may take the appeal to a court of competent jurisdiction.

**Section 268. Compliance with Construction Standards.** All Construction or maintenance of Facilities shall be in accordance with the requirements of a Franchise, License, or Use Agreement or other lawful authority, and this Ordinance.

**Section 269. Location of Facilities.**

a. A Permittee shall not place Facilities above or below ground where the same will interfere with any gas, electricity, telephone fixtures, sanitary and storm sewers, water hydrants, traffic control system and loops, or other Facilities or other utility use, and all such poles, conduits or other fixtures, in or upon any street shall be so placed as to comply with all requirements of the Municipality and Applicable Ordinances.

b. A Permittee shall give notice to alert all businesses and residents that may be affected by the proposed work prior to commencement of such work, except for work that is not reasonably anticipated to result in disruption or the loss of use of the property.

c. All construction and maintenance of Facilities by Permittee or its subcontractors shall be performed in accordance with the Municipality's standards and the requirements of this Ordinance. Permittee shall have no vested right in any Facilities location, and such Facilities shall be relocated or removed by Permittee at its own cost and expense (except as otherwise may be provided herein or, in regard to cost, where reimbursement is available under state or federal law), whenever the same restricts or obstructs or interferes with the operation or location or any future operation or location of said Rights-of-Way and places in accordance with this Ordinance or a Use Agreement.

d. Permittee shall comply with all Pennsylvania One-Call laws.

e. Permittee shall be responsible for providing, installing and maintaining all applicable work zone traffic control in accordance with the most current PENNDOT publication.

**Section 270. Erection of Poles Prohibited; Above-Ground and Underground Facilities.**

a. Notwithstanding anything to the contrary in this Ordinance, a Permittee shall not erect, for any reason, any pole on or along any Rights-of-Way without the approval of the Municipality. Nothing herein shall be construed to limit or eliminate any right, requirement or obligation a Permittee may have to enter into a pole attachment agreement and/or agreement for conduit use with the Municipality or a private utility for the use of another's pole or conduit.

b. Notwithstanding anything contained in this Ordinance, to the contrary, and except due to technological reasons or due to the size or shape of Facilities that would result in unreasonable expense and therefore exempted as determined by the Borough Manager or his/her designee, or as otherwise described in a Franchise, License, or Use Agreement:

(1) In those areas within the Municipality where primarily all Facilities are currently placed underground, all Facilities shall remain or be placed underground.

(2) In areas where utility facilities are primarily above ground at the time of a Permittee's installation, the Municipality may allow Permittee, at Permittee's sole cost and expense, to install its Facilities above ground, provided that at such time as the Municipality adopts an underground plan and primarily all utility facilities or other Facilities are placed underground, Permittee shall likewise place its Facilities underground without cost to the Municipality. If as part of a plan to underground above-ground Facilities public funding is available, all Permittees shall be treated similarly unless such funding is made available from a source other than the Municipality and is designated for a specific use.

(3) In no event shall Permittee be authorized to place above ground any Facilities that have previously been underground without prior approval from the Municipality.

**Section 271. Least Disruptive Technology.** Applicants are required to perform Construction and maintenance of Facilities in a manner resulting in the least amount of damage and disruption of the Rights-of-Way, unless otherwise approved by the Borough Manager or his/her designee. Applicants may be required to use Trenchless Technology for construction projects, within roadway limits, in arterial and other high volume streets unless otherwise approved by Borough Manager or his/her designee and such approval shall not be unreasonably withheld. The Borough Manager or his/her designee may require Trenchless Technology in other locations, where extreme circumstances prevent or make open cut methods impractical. Applicants may be required to use trenching, the open cut method or Trenchless Technology for projects outside roadway limits.

**Section 272. Rights-of-Way Restoration.**

a. The work to be done under the Permit, and the Restoration of the Rights-of-Way as required herein, must be completed within the dates specified in the Permit. In addition to its own work, the Permittee is responsible for the restoration of the general area of the work, including all disturbed sidewalk, concrete curb, landscaping, planting and improvement materials and the permitted areas, including the paving and its foundation, per the Construction Standards described in this Ordinance.

(1) If the Permittee opens pavement having a bituminous concrete surface and the wearing course is less than five (5) years old, the Permittee shall, in addition to the restoration conditions outlined in the permit and in this section, overlay the pavement in accordance with the following conditions:

(a) When a longitudinal opening longer than 100 lineal feet has been made in the pavement, the Permittee shall overlay the traffic lane(s) in which the opening was made, for the entire length of street that was opened, in accordance with the Municipality's Construction Specifications.

(b) When two (2) or more transverse openings have been made within 100 lineal feet of pavement, the Permittee shall overlay traffic lanes in which the openings were made, for the entire length of street between the openings, in accordance with the Municipality's Construction Specifications.

(c) When four (4) or more emergency openings have been made by the same Permittee within 100 lineal feet of pavement, the Permittee shall overlay traffic lanes in which the openings were made, for the entire length of street between openings, in accordance with the Municipality's Construction Specifications.

(d) If disturbed lanes adjacent to undisturbed lanes are overlaid, the edge of the disturbed lane shall be saw cut or milled to a depth of 1-1/2 inch or the depth of the existing wearing course, whichever is less, for the length of the opening to ensure a smooth joint, with proper elevation and cross-section. A full width overlay may be authorized on various streets instead of saw cutting or milling the disturbed lane.

(2) Regardless of the age of the wearing course:

(a) If more than 100 lineal feet of longitudinal or transverse openings, or both, are made in the pavement, the Municipality may require the Permittee to overlay traffic lanes in which the openings were made, for the entire length of street that was opened, if the Municipality determines that the ride-ability or structural integrity of the pavement has been impaired by the openings.

(b) If four (4) or more openings are made by the same Permittee within 100 lineal feet of pavement, the Municipality may require the Permittee to restore the entire disturbed pavement between openings by milling and overlaying the entire disturbed pavement in accordance with the Municipality's Construction Specifications.

(c) Permittee shall submit the proposed skid resistance level (SRL) of the overlay material.

(d) If an opening is made in a bituminous concrete pavement within 3 feet from the edge of pavement or other longitudinal joint or opening, the surface restoration shall be extended to the edge of pavement or other longitudinal joint or opening.

(e) At each end of an overlay, the Permittee shall install a paving notch, by milling to provide a minimum 10-foot transition.

(f) The transition areas at each end of an overlay shall follow the contour of the surrounding surface, unless otherwise directed by the Borough Engineer or his/her designee.

(g) When pavement markings on more than 100 lineal feet of street are covered or destroyed by the permitted work, including overlays, they shall be replaced in their former locations.

**b.** By restoring the Rights-of-Way, the Permittee guarantees its work for twenty-four (24) months following its completion, said work to be guaranteed by a Maintenance Bond. During this twenty-four (24) month period, the Permittee shall, upon notification from the Borough Manager or his/her designee, correct all Restoration work to the extent necessary using the method required by the Borough Manager or his/her designee. Said work shall be completed within the time specified by the Borough Manager or his/her designee.

**Section 273. Inspection.** Once a permit has been issued, the Permittee shall provide a minimum of 48 hours advance notification of the actual start of construction to the Borough Manager or his/her designee to schedule inspection.

**a.** Permittee or its contractor shall be solely responsible for the safety of the construction site and operations therein. The Municipality has the right to inspect and give notice to the Permittee or its contractor of any unsafe condition or operations. The Municipality does not assume any liability for any unsafe conditions that it may become aware of by inspection which will be the sole responsibility of Permittee.

**b.** Permittee shall make the work site available to the Borough Manager or his/her designee and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work.

c. At the time of inspection, the Borough Manager or his/her designee may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

d. The Borough Manager or his/her designee may issue a Notice of Violation to the Permittee for any work which does not conform to this Ordinance. The Notice of Violation shall provide requirements for correction of violation, any applicable penalties for continued violation, the process and procedures and right of Permittee that may be applicable as required.

e. Once construction is complete, the Permittee shall schedule a final inspection by the Borough Manager or his/her designee for the purposes of determining if the surety can be released.

**Section 274. Other Obligations.** Obtaining a Rights-of-Way Permit does not relieve Permittee of its duty to obtain all other necessary Permits, Franchises, Licenses, or Use Agreements, and authority and to pay all applicable fees.

a. A Permittee shall comply with all requirements of local, State and federal laws, including a Franchise, License, or Use Agreement or other lawful authorization duly adopted by the Municipality's elected officials, as well as the Pennsylvania call excavation notice system.

b. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the Rights-of-Way pursuant to its Permit, regardless of who performs the work.

c. Except in the case of an Emergency, and with the approval of the Borough Manager or his/her designee, no Rights-of-Way Obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

d. A Permittee shall not so Obstruct a Rights-of-Way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with.

e. Private vehicles not owned by or under contract to Permittee may not be parked within or adjacent to a permit area.

**Section 275. Advertising. Signs or Extraneous Markings.** Unless otherwise authorized by a Franchise, License, or Use Agreement or Applicable Law, Permittee shall not place or cause to be placed any sort of signs, advertisements, or other extraneous markings, whether relating to the Permittee or any other Person or entity on Rights-of-Way, except such necessary minimal markings as approved by the Municipality as are reasonably necessary to identify the System for service, repair, maintenance, or emergency purposes, or as may be otherwise required to be affixed by Applicable Law or regulation.

**Section 276. Clearing Poles and Cables.** Permittee shall comply with all applicable Municipality and state laws, rules, regulations and ordinances and other Applicable Law with respect to the removal, trimming and cutting of trees and keeping its Facilities clear of trees in and along Rights-of-Way. Except in emergency situations, in installing, maintaining, and removing its Facilities, Permittee shall neither remove, cut, trim nor damage any trees within the Rights-of-Way, alleys and public places of the Municipality except with the prior consent of the Municipality, or, where on private property, without the property owner's consent.

Within five (5) days notice from the Municipality, a Permittee shall promptly, if it can safely to do so, remove all or any portion of a tree which has fallen upon the aerial Facilities of the Permittee. Failing therein, the Municipality may remove such fallen tree, or portion thereof, at the Permittee's expense and obtain reimbursement for all costs associated therewith within thirty (30) days of invoicing. In such event the Municipality shall not be liable to Permittees whose Facilities are affected thereby and shall be indemnified and held harmless in accordance with this Ordinance.

**Section 277. Removal and Relocation of Facilities.** A Permittee may, or as may be determined by the Borough Manager or his/her designee, be required, at its expense, to promptly protect, support, temporarily disconnect, relocate in, or remove from, Rights-of-Way, lands or places, any Facilities of Permittee whenever required by the Municipality upon reasonable notice applicable to the conditions warranting such disconnection and as then determined by Borough Manager or his/her designee by reason of traffic conditions, public safety, Rights-of-Way construction or any other reasonable public purpose.

**Section 278. Temporary Movement of Facilities.** Permittee, on the request of the Borough Manager or his/her designee, or any Person holding a lawful permit issued by the Municipality, or any permit issued by an appropriate state agency, shall temporarily move its Facilities to permit the moving of large objects, vehicles, buildings or other structures. Except where requested by the Municipality or other governmental entity in connection with a public project, the expense of such temporary moves shall be paid to Permittee by the Person requesting the same and Permittee shall have the authority to require such payment in advance. In no event shall the Municipality pay such expense. Nothing herein shall be construed to abrogate the provisions for moving Facilities contained in any pole attachment agreement the Permittee has with another Person.

**Section 279. Joint Trench Coordination; Planned Infrastructure.**

**a.** Whenever it is possible and reasonably practicable to joint trench or share bores or cuts or joint share conduit, Permittee shall work with the Municipality and other Permittees and licensees, so as to reduce, as far as possible, the number of street cuts within the Municipality.

**b.** If required of other users of the Rights-of-Way, when Permittee installs any new trench and/or conduit as part of its Facilities, the Permittee may, at the request of the

Municipality or its designee install, at the expense of the Municipality, sufficient additional space and/or conduit or other related Facilities to meet the Municipality's planned public improvement and infrastructure needs. Permittee may make such trench space and/or conduit available to the Municipality on the basis of not more than the pro rata cost of that portion of the space in a trench and/or conduit determined by the total labor and material cost of all Facilities and Facilities at that location. The Municipality shall have the option to lay its own conduit or place other public improvements that do not cause significant cost, delay or redesign, including without limitation, wiring for traffic signals, street lights, etc., in Permittee's open trenches during the initial construction and during any future rebuilds or repairs. Permittee shall provide written notice of the proposed construction to the Municipality and the Municipality will then have twenty (20) business days after receipt to indicate in writing to the Permittee, unless Permittee requires a shorter time for Municipality reply, as to its construction needs and request for additional Facilities.

c. Permittee agrees to comply with all applicable Municipality requirements applicable to Municipality trenching requirements, including but not limited to how long a trench shall remain open and unfilled as well as any requirements related to signs or other markings that shall be utilized by Permittee to ensure safety to others. For purposes of this Section, "open" shall mean and include any degree of refilling and/or restoration of the trench short of the final restoration of the pavement or the ground to its original grade.

**Section 280. Work Done Without a Permit.**

a. Each Permittee shall notify the Borough Manager or his/her designee (by telephone or in person) of any event regarding its Facilities which it considers to be an Emergency by the next business day. The Applicant may proceed to take whatever actions are necessary in order to respond to the Emergency. Within two (2) business days after the occurrence of the Emergency, the Applicant shall apply for the necessary Permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Ordinance for the actions it took in response to the Emergency.

b. In the event that the Borough Manager or his/her designee becomes aware of an Emergency regarding an Applicant's Facilities, the Borough Manager or his/her designee shall attempt to contact the local representative of each Applicant affected, if known, or potentially affected, by the Emergency, who must comply with this Ordinance. In any event, the Borough Manager or his/her designee may take whatever action deemed necessary in order to respond to the Emergency.

c. Except in the case of an Emergency, any Person who Obstructs or Excavates a Rights-of-Way without a Permit must subsequently obtain a Permit, pay double the normal fee for said Permit, pay double all the other fees required by the Code, is subject to the issuance of a Notice of Violation, deposit with the Borough Manager or his/her designee the fees necessary to correct any damage to the Rights-of-Way and comply with all of the requirements of this Ordinance.

**Section 281. Company Identification.** Permittee shall ensure that all of its vehicles and employees are clearly identified to the general public as being associated with Permittee while engaged in outside construction maintenance or service. Said employee identification requirement may be satisfied by the carrying of and presentment, upon request, of a company identification card.

**Section 282. Abandonment of Construction.** Except as otherwise provided under a Municipality's ordinances or other Applicable Law, in the event Permittee abandons construction, either overhead or underground, once commenced, of the Facilities, for more than six (6) consecutive months prior to such time Facilities are available for the intended use, the Municipality may reasonably request Permittee to dismantle such Facilities located within Rights-of-Way after reasonable notice and opportunity to be heard by Municipality's elected officials. If Permittee fails to so dismantle based on a decision of the Municipality's elected officials, the Municipality may dismantle at Permittee's expense and Permittee shall reimburse the Municipality within thirty (30) days of receipt of an invoice therefor. In the event a Permittee has been requested to relocate its Facilities located in the Rights-of-Way due to the abandonment or discontinued use of a structure supporting its Facilities, the Municipality may reasonably request Permittee to relocate such Facilities to a new support structure. If Permittee fails to so relocate, the Municipality may relocate at Permittee's expense and Permittee shall reimburse the Municipality within thirty (30) days of receipt of an invoice therefor.

**Section 283. Municipality Does Not Accept Liability.** By reason of the grant of a Rights-of-Way Permit, the Municipality does not assume any liability:

- a. For injuries to Persons, damage to property, or loss of Service claims by parties other than the Applicant or the Municipality.
- b. For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Facilities by Applicants or activities of Applicants.

**Section 284. Applicant or Permittee Indemnifies Municipality.** Including as required by a Franchise, License, or Use Agreement or other lawful authorization by accepting a Permit, a Permittee is required, to indemnify, and hold the Municipality whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the Construction, presence, installation, maintenance, repair or operation of its Facilities, or out of any activity undertaken in or near a Rights-of-Way, whether any act or omission complained of is authorized, allowed, or prohibited by a Rights-of-Way Permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the Municipality for any claim nor for any award arising out of the presence, installation, maintenance or operation of its Facilities, or any activity undertaken in or near a Rights-of-Way, whether the act or omission complained of is authorized, allowed or prohibited by a Permit. The foregoing does not indemnify the Municipality for its own negligence. This section is not, as to

third parties, a waiver of any defense or immunity otherwise available to the Applicant or to the Municipality; and the Applicant, in defending any action on behalf of the Municipality, shall be entitled to assert in any action every defense or immunity that the Municipality could assert in its own behalf.

**Section 285. Surety.**

**a.** The Applicant shall be required to provide a Construction Bond or certified cashier's check, except as any such Construction Bond as may be required by a Franchise, License, or Use Agreement, to guarantee the proper construction and completion of Rights-of-Way work and restoration. Such Bond or certified cashier's check shall be made available to the Borough Manager or his/her designee before any Permit is issued and such Construction Bond must include a procedure for the Municipality to follow to recover costs, expenses or damages in order to insure enforcement of the terms and conditions of this Ordinance in compliance with Section 16 or a Franchise, License, or Use Agreement or other lawful authorization applicable to Rights-of-Way use. A Construction Bond will not be required for small projects if no paved area or Rights-of-Way is disturbed by the project.

**b.** Municipality departments performing installation of facilities, routine maintenance and repair, and other agencies working in the Rights-of-Way that are not involved in the installation, repair and maintenance of utilities, are exempt from the requirements of paragraph A in accordance with this Section.

**Section 286. Liability Insurance.**

**a.** Unless otherwise described in a Franchise, License or Use Agreement or other lawful authorization, a Permittee shall maintain the insurance as required by this Section, and furnish evidence of the same to the Municipal Engineer with its application for a permit. At a minimum, the Permittee shall be required to provide liability insurance with a company licensed to do business in the State of Pennsylvania with a rating by Best of not less than "A", insuring Permittee and the Municipality with regard to all damages mentioned in this Section, in the minimum amounts of:

(1) One million dollars (\$1,000,000.00) for bodily injury or death to any one (1) Person.

(2) Five million dollars (\$5,000,000.00) for bodily injury or death resulting from any one accident.

(3) Five million dollars (\$5,000,000.00) for all other types of liability.

**b.** The amounts shown in paragraph A shall be increased by amendment to this Ordinance.

**Section 287. Workers' Compensation Insurance.** A Permittee will obtain and maintain workers' compensation insurance for all Permittee's employees, and in case any work is sublet, Permittee will require any subcontractor similarly to provide workers' compensation insurance for all subcontractor's employees, in compliance with state laws, and to fully protect the Municipality from any and all claims arising out of work-related occurrences. Permittee shall indemnify the Municipality in accordance with Section 34 for any damage resulting to it from failure of either Permittee or any subcontractor to obtain and maintain such insurance. Permittee will provide the Municipality with a certificate of insurance indicating workers' compensation insurance prior to operations under a Franchise, License or Use Agreement or other lawful authorization and the commencement of any construction, system upgrade, reconstruction, or maintenance of the Facilities. The certificate of insurance should confirm that the required endorsements are in effect.

**Section 288. Penalty.** Any person, firm or corporation violating any of the provisions of this Ordinance shall, upon conviction thereof, be fined not less than **\$1,000** plus costs of restoration for each offense, to be collected as fines or penalties are by law collectible.

**Section 289. Non-exclusive Remedy.** The remedies provided in this Ordinance are not exclusive or in lieu of other rights and remedies that the Municipality may have at law or in equity. The Municipality is hereby authorized to seek legal and equitable relief for actual or threatened injury to the Rights-of-Way, including damages to the Rights-of-Way, whether caused by a violation of any of the provisions of this Ordinance or other provisions of this Ordinance,

**Section 290. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any Permit or right or any portions of this chapter is illegal or unenforceable, then any such Permit or right granted or deemed to exist hereunder shall be considered as a Permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable Permit shall be the same requirements and conditions as set forth in the Permit or right respectively, except for conditions relating to the term of the Permit and the right of termination. If a Permit or right shall be considered a revocable Permit as provided herein, the Permittee must acknowledge the authority of the Municipality's elected officials to issue such revocable Permit and the power to revoke it.

**Section 291. Reservation of Regulatory and Police Powers.** The Municipality by the granting of a Rights-of-Way Permit, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the Municipality under the Constitution and statutes of the State of Pennsylvania to regulate the use

of the Rights-of-Way by the Permittee or to charge reasonable compensation for such use; and the Permittee by its acceptance of a Rights-of-Way Permit must agree that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the Municipality, shall be in full force and effect and subject to the exercise thereof by the Municipality at any time. A Permittee or Applicant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the Municipality to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the Municipality pursuant to such powers.

Any conflict between the provisions of a Rights-of-Way Permit and any other present or future lawful exercise of the Municipality's regulatory or police powers shall be resolved in favor of the latter.

**Section 292. Exception.** This Ordinance shall not in any way be construed to contradict or contravene any of the provisions of any Pennsylvania Laws.