

Chapter 21

Streets and Sidewalks

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Part 1**Openings and Excavations****§21-101. Permit Requirement; Permitted Activities.**

1. It shall be unlawful for any person, firm, association, corporation or other entity to open, occupy or break the surface of the ground within the boundary of any public highway, roadway, alley, sidewalk, footpath or other public right-of-way, except for the purposes set forth in subsection .2 hereof and after first having obtained a permit to do so from the Code Enforcement Department. See also §21-114.1.

2. The Code Enforcement Department may issue a permit authorizing the opening, excavation or occupation of areas within the boundary of any public highway, roadway, alley, sidewalk, footpath or other public right-of-way only for the following purposes:

A. Laying, repairing, replacing or connecting public water or sewer pipes, drains or conduits undertaken by the Bucks County Municipal Water and Sewer Authority or by any other entity with the prior approval and under the express direction of the Township.

B. Laying, repairing, replacing or connecting pipes, drains or conduits of public utilities or other public service companies.

C. Setting, planting, replacing or removing telephone or telegraph poles, streetlights or traffic control signs.

D. Laying, constructing, installing, repairing or replacing driveways, sidewalks, curbs and gutters, except where the Code Enforcement Department shall determine that no permit is required for such activity pursuant to §21-111.

E. Constructing or installing mailboxes.

3. No permit shall be issued to perform an opening or excavation of any Township highway, roadway, alley or other public right-of-way that was constructed, reconstructed or resurfaced fewer than 3 years prior to application for a permit under this Part, unless the applicant agrees in writing to overlay or pave the surface of the public right-of-way, from curb to curb and intersection to intersection, to the satisfaction of the Township. The Township may grant an exception to this Section in the case of an emergency in which the exigencies of public health or safety require such an exception. [Ord. 566]

(Ord. 213, 5/9/1984; as amended by Ord. 313, 7/11/1990; and by Ord. 566, 2/27/2013, §III)

§21-102. Application Requirements.

Before such permit is issued and said work is begun, a written application on a blank form to be furnished for that purpose by the Zoning/Code Enforcement Director must be filed with the Code Enforcement Department, setting forth the purpose for which the said highway, road, street, avenue, lane, alley, sidewalk or footpath is to be opened, excavated or occupied and the location of the said proposed work, and in such application the applicant shall agree to assume all liability for all or any damages to

person or property accruing to the public or to the said Township which may or might result from the opening, excavation or occupying of said highway, road, street, avenue, lane, alley, sidewalk or footpath.

(Ord. 213, 5/9/1984)

§21-103. Emergencies.

Whenever the exigencies of public health or safety require that immediate repairs be made and the procurement of a permit prior to the commencement of the work is impracticable, it shall be lawful for the work to be begun without a permit, provided that an application for said permit is filed and the proper fee paid within 48 hours from the time when the emergency arose, and, provided further, that any person(s) and/or corporation beginning said work under the provisions of this Section shall do so subject to the conditions and obligations imposed by this Part upon any person(s) and/or corporation opening or excavating public highways, etc., as though an application for a permit had been filed.

(Ord. 213, 5/9/1984)

§21-104. Fees; Liability Insurance.

1. Before the issuance of a permit, the applicant shall make payment to the Township in sums set forth by resolution of the Board of Supervisors for the following:

A. For openings or excavations in any highway, road, street, avenue, alley, sidewalk or footpath.

B. For openings or breaks in improved sidewalks and for breaking the surface of any improved curb for the purpose of building any driveway across the same or for any other purpose.

C. For the erection, setting or planting of any pole in the public right-of-way.

D. For the occupancy of a highway, avenue, street or sidewalk with building or other materials.

(1) No such permit shall authorize the occupying of more than one-third of the width of the roadway between curbs, nor shall the occupied area exceed in extent the dimensions of the frontage of the premises about to be built upon or repaired, except that when no objection is made by the adjoining property owners and the space is not to be used for storage of materials other than those to be used in construction, the permittee shall be permitted to occupy an additional 30 feet on each side of the building frontage for which the permit is granted.

(2) Provision shall be made by the applicant for such a permit for maintaining at all times a clear and unobstructed passage along the sidewalk at least 6 feet in width and a free passage for water in the gutter.

(3) No building or other materials or other obstruction shall at any time be placed in the highway within 25 feet of any fire hydrant.

(4) All the materials or other obstructions occupying the highway shall be removed prior to the expiration of the time for which the permit was issued or for which it was renewed.

2. If, in the course of reviewing an application, the Zoning/Code Enforcement

Director determines that additional inspection work shall be required by either the Township Engineer or Public Works Superintendent, an inspection deposit may be required to cover any and all additional costs related to the inspection of the work covered by the permit. Any such funds remaining with the Township after the work has been certified complete by the Code Enforcement Department shall be released to the applicant.

3. No permit provided for under the provisions of this Section shall be issued until the applicant shall first file with the Code Enforcement Department a certificate showing that he carries public liability insurance in the limits of at least \$25,000 and \$50,000 and property damage insurance in the amount of at least \$5,000.

(Ord. 213, 5/9/1984)

§21-105. Expiration and Renewal of Permit; Exhibit.

1. Permits shall be issued by the Zoning/Code Enforcement Director and shall not be operative for more than 60 days from the date of issue. Permits may be renewed for a like period upon payment of a renewal fee as established by the Board of Supervisors by resolution.

2. The permit shall at all times be kept in the possession of a competent person actually engaged in the work and, upon demand, shall be exhibited to any police officer or properly authorized employee of the Township, County or State.

(Ord. 213, 5/9/1984)

§21-106. Measurements.

All measurements required to be made in applying the above fees shall be made by the Code Enforcement Department and shall include any enlargement of openings which may be required to be made as an incident of the repair of such paving or to restore the same to its former condition.

(Ord. 213, 5/9/1984)

§21-107. Tunneling.

No highway, road, street, avenue, lane, alley, sidewalk or footpath shall be tunneled except where special written permission therefor shall have been granted by the Township Engineer.

(Ord. 213, 5/9/1984)

§21-108. Backfilling; Temporary and Permanent Paving.

1. All breaks or openings shall be refilled by the applicant for the permit, to the approval of the Department of Public Works, without raising the surface of the highway, road, street, avenue, lane, alley, sidewalk or footpath, due allowance being made for the structure being placed in the trench. All refilling must be done with suitable materials thoroughly compacted by puddling or hard tamping in uniform layers not exceeding 6 inches in depth and all surplus dirt must be removed from the job.

2. Materials used in backfilling, temporary and/or permanent paving shall conform to Township specifications promulgated by the Township Engineer and Public Works Superintendent and available at the Code Enforcement Department. (See

Appendix 22-A, Chapter 22, Subdivision and Land Development).

3. Permanent paving shall be constructed, weather permitting, 60 days after the installation of the temporary paving. If, within one-year after the installation of the permanent paving, defects appear therein resulting from defective backfilling by the applicant, the applicant shall reimburse the Township for the cost of all necessary repairs to the permanent paving.

4. Each person issued a permit shall submit to the Township, not later than 30 days after completion of the permitted construction (or any part thereof, if required by the Township), two paper copies and one electronic copy of as-built map or maps and engineering specifications as set forth by the Township depicting and certifying the location of the facilities constructed. Such engineering specifications and electronic and paper maps shall be submitted in a format and include the information required by the Township. If the maps are not provided electronically in the required format, then the person shall reimburse the Township for the cost of converting paper maps into electronic form or the cost of converting electronic maps in another format into the required format. [Ord. 566]

(Ord. 213, 5/9/1984; as amended by Ord. 566, 2/27/2013, §IV)

§21-109. Safety Precautions.

All materials, openings or excavations made or obstructions created under such permits must be properly marked from sunset to sunrise by red lights so placed as to indicate, from the roadway in both directions, the exact location and limits of said work or obstruction, and at all times must be properly guarded.

(Ord. 213, 5/9/1984)

§21-110. Responsibilities of Public Utilities and Public Service Companies.

The filing of an application by a public utility, public service company or the Bucks County Municipal Water and Sewer Authority and the issuance of a permit for activities permitted under this Part shall constitute an agreement on the part of said applicant that it will at any time thereafter, upon notice from the Department of Public Works, at its own expense, make such change in location or construction of the concerned facilities as may be required by the Township.

(Ord. 213, 5/9/1984; as amended by Ord. 313, 7/11/1990)

§21-111. Sidewalks, Curbs and Gutters.

1. Sidewalks, curbs and gutters shall not be placed or replaced within the boundaries of any public highway, road, street, avenue, lane or alley in the Township of Northampton by any owner, person, firm, association or corporation without first obtaining from the Code Enforcement Department a permit for such purpose, which shall be fully set forth in written application showing such purpose and assuming all liability for all and any damage which might result from the performance of such work; except where repairs to existing sidewalks, curbs or gutters involve no change in line or grade and where no new stakes for lines and grades are required to be set, there shall be no need of any permit.

2. For giving or defining grades or lines for the placing or replacing of sidewalk, curb or gutter within the boundaries of any public highway, road, street, avenue, lane

or alley, a charge, payable to the Township, will be made in accordance with standard rates adopted by resolution of the Board of Supervisors.

3. The Township Engineer, with approval of the Township Manager, is hereby empowered to give or define grades or lines for the placing or replacing of sidewalk, curb and gutter within the boundaries of any public highway, road, street, avenue, lane or alley within said Township, and no act on the part of any other official or employee shall bind the Township or make it liable therefor.

4. The Township Engineer, after making the necessary survey, shall, with the approval of the Township Manager, fix the lines and grades of sidewalk, curb and gutter proposed to be placed or replaced in conformity with the lines and grades fixed by this Board, and no sidewalk, curb and gutter shall be placed or replaced except after a permit is thus obtained and after the Township Engineer shall have given the line and grade.

5. Property owners and their contractors or agents shall protect the public by proper guards and lights against any danger or injury while the highway is open in the work of placing or replacing sidewalk, curb and gutter or any matter pertaining thereto, including the guarding against injury by materials that may be placed in the highway for that purpose.

(Ord. 213, 5/9/1984)

§21-112. Responsibilities of Property Owners.

1. The owner or owners of any lot, parcel, tract of land or premises fronting or abutting on an affected public street, road or avenue within the Township of Northampton upon which a grade has heretofore or hereafter been established shall, upon receipt of 60 days written notice from the Township, at their respective costs and expense, begin to construct, repair and maintain the curbing and/or sidewalk or footwalk in front of and along the property owned by them or on the part of said public street, road or avenue abutting their respective properties.

2. The notice shall be sent by registered mail by the Township Manager to the last known address of the individual or individuals, association or corporation in whose name the title to the lot, parcel or tract of land or premises appears on public record to be owned, and if such registered mail is returned unclaimed, then and in that event such notice shall be given by posting one copy of the same on the land or premises involved.

3. Upon failure of any owner or owners to comply with the provisions of this Part and to commence the construction of said curbing, sidewalk or footwalk or repair and maintain the same within 60 days after the mailing of said notice and to complete fully such construction, repair and maintenance within 60 days after the date of said notice, the Township of Northampton shall enter upon said premises and construct, pave, repair or maintain the curbing, sidewalk or footwalk and enter the cost thereof, together with 10 percent additional, as a lien against the said lot, parcel, tract of land or premises.

4. All curbing, sidewalk or footwalk construction or repair shall be performed in accordance with specifications referenced in §21-118 of this Part.

(Ord. 213, 5/9/1984)

§21-113. Effect of Permit Fees.

No permit fee paid under this Part shall be considered to be in lieu of any annual license fee now required to be paid or which may at any time be required to be paid by ordinance of the Township of Northampton.

(Ord. 213, 5/9/1984)

§21-114. Obstructions; Overhanging Vegetation.

1. It shall be unlawful for any person or persons to erect, set up, place or maintain any gasoline pump, oil tank or other obstructions or to plant any trees, shrubbery or similar obstruction within the boundaries of any public highway, road, street, avenue, lane, alley, sidewalk or footpath in the Township of Northampton.

2. Trees and hedges overhanging the sidewalk shall be trimmed to provide clear passage of not less than 12 feet above the sidewalk or roadway.

3. Any such obstruction shall be removed promptly by the property owner whenever written notice to remove such obstruction is given by the Zoning/Code Enforcement Director. If the owner fails to comply with such notice, the Township shall remove the obstruction and charge the cost thereof to the owner.

(Ord. 213, 5/9/1984)

§21-115. Obstruction of Gutters.

Every lane and entrance road connecting with any public highway, street, road or avenue of the Township of Northampton shall be so constructed or altered that the water and surface drainage shall not be blocked or diverted from the course of the gutter and that the surface drainage from such lane or entrance road shall flow into the gutter of said public highway, road, street or avenue and not upon the roadbed thereof.

(Ord. 213, 5/9/1984)

§21-116. Rubbish and Fires in Streets.

1. No paper, trash, rubbish, ashes, junk, waste or discarded materials of any kind shall be thrown, deposited or dumped in any ravine, ditch or gutter or any highway, road, street, avenue, lane, alley, sidewalk or footpath in the Township of Northampton, nor in any public place or private property, vacant or occupied, within the limits of said Township.

2. No leaves, grass, weeds, hedges or tree trimmings shall be burned within the boundaries of any public highway, nor shall any fire be made which will cause damage to the highway or street paving.

3. Nothing in this Part shall be construed to prohibit municipal dumps maintained by the Township of Northampton or a reasonable accumulation of rubbish on private property by the owner thereof; provided, however, that such rubbish shall be kept in tightly covered metal containers.

(Ord. 213, 5/9/1984)

§21-117. Closing of Streets.

It shall be unlawful for any person, firm, association or corporation to close any public highway, road, street, avenue, lane or alley in the Township of Northampton

unless and until a permit for this purpose has been obtained from the Township Manager.

(Ord. 213, 5/9/1984)

§21-118. Highway Improvements; Standard Specifications.

Standard specifications for highway improvements shall be designated and approved by the Township Engineer and shall be in accordance with those specifications found in the Appendix 22-A of the Subdivision and Land Development Ordinance [Chapter 22], as amended.

(Ord. 213, 5/9/1984)

§21-119. Violations and Penalties.

Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

(Ord. 213, 5/9/1984; as amended by Ord. 285, 2/22/1989; and by Ord. 561, 4/25/2012)

Part 2**Snow and Ice Removal****§21-201. Removal Required.**

All owners, tenants and occupants of land on which is located a sidewalk or sidewalks adjacent to a public highway and all owners of land which is vacant but which contains a sidewalk or sidewalks adjacent to a public highway shall hereafter keep said sidewalks free and clear of snow and ice. All such persons shall clear said sidewalks of snow and ice within 24 hours after the snow has stopped falling.

(*Ord. 213, 5/9/1984*)

§21-202. Throwing Snow onto Highway.

It shall be unlawful to throw, shovel or plow snow into or upon any roads and streets within the Township from adjoining property with the intent of allowing such snow to remain on such roads and streets.

(*Ord. 213, 5/9/1984*)

§21-203. Violations and Penalties.

1. Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not less than \$25 nor more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense. [*Ord. 561*]

2. In the event of a violation of this Part, any police officer of the Township of Northampton may present to the owner, tenant or occupant a notice indicating the nature of the offense and bearing the statement that no prosecution shall be instituted for 48 hours hereafter if, during said 48-hour period, the offender shall voluntarily appear at the office of the Police Department of the Township of Northampton, 55 Township Road, Richboro, Pennsylvania 18954, and voluntarily enter a plea of guilty and pay a penalty of \$15 to the Township. In the event such person fails to comply with such notice, the offense will thereafter be prosecuted and the penalty collected in a manner prescribed by existing laws.

(*Ord. 213, 5/9/1984; as amended by Ord. 561, 4/25/2012*)

Part 3**Right-of-Way Management Ordinance****§21-301. Short Title.**

This Part shall be known as the “Northampton Township Right-of-Way Management Ordinance.”

(*Ord. 566, 2/27/2013, §I*)

§21-302. Definitions.

Terms used in this Part shall have the following meanings, whether or not the terms are capitalized. Unless otherwise expressly stated, terms not defined in this Part shall be construed consistent with Title 47 of the United States Code, and, if not defined therein, with their common and ordinary meaning.

Aerial facilities—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, street banners, canopies or other minor obstructions located in the rights-of-way.

Affiliate—a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

Cable Act—the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as hereafter amended (47 U.S.C. §521 *et seq.*, as hereafter amended).

Cable franchise or franchise—right-of-way use authorization pursuant to this Part authorizing a person to own, construct, operate and maintain a cable system to provide cable service within the Township.

Cable franchise agreement—right-of-way use authorization required pursuant to the Cable Act and the Township Code for any cable franchise issued by the Township.

Cable operator—a person providing or offering to provide cable service over a cable system within the Township as that term is defined in the Cable Act.

Cable service—the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable system—facilities consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the Township; but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended,

except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. §541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. §573; or, (5) any facilities of any electric utility used solely for operating its electric utility system. A reference to a cable system refers to any part thereof. This definition of “cable system” shall in no way be deemed to circumscribe or limit the valid authority of the Township to regulate or authorize the facilities and/or services of any other telecommunications provider or other person that owns, constructs, operates, or maintains facilities in the right-of-way.

Communications Act—the Communications Act of 1934, 47 U.S.C. §151 *et seq.*, as amended and as hereafter amended.

Emergency—a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the rights-of-way to be unusable and result in loss of the services provided.

Facility(ies)—conduit, pipes, cables, wires, lines, towers, optic fiber, poles, associated equipment and appurtenances, and any other facilities located in the right-of-way and designed, constructed, and/or used, by telecommunications providers, public utilities, or other persons for transmitting, transporting, or distributing communications, telecommunications, electricity, natural gas or manufactured gas, oil, gasoline, steam, or any other form of energy, signal or substance. The term “facility” or “facilities” does not include “wireless telecommunications facilities” as defined below.

Franchise—a right-of-way use authorization pursuant to this Part that authorizes a person to own, construct, operate and maintain a cable system to provide cable service within the Township.

Franchisee—a person that is issued a franchise by the Township.

Franchise agreement—a cable franchise agreement.

Information service—the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications (whether over a cable system, telecommunications system, open video system, or any other type of facilities), and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Non-tower wireless communications facility (non-tower WCF)—all non-tower wireless communications facilities including, but not limited to, antennae and related equipment non-tower WCF shall not include support structures for antennae and related equipment.

Permittee—the recipient of a right-of-way use permit, cable franchise or other right-of-way use authorization that is issued by the Township pursuant to this Part, and persons holding existing franchises, special ordinances, or other authorizations that are subject to the transitional provisions set forth in §21-305.

Person—corporations, companies, associations, joint stock companies, firms,

partnerships, limited liability companies, and other entities; municipal, industrial development, housing, redevelopment, and other authorities and corporations established pursuant to statutes of the Commonwealth of Pennsylvania; and individuals; provided, that person does not include or apply to the Township or to any department or agency of the Township.

Policies and procedures—the written regulations, standards, operations and/or courses of action established by the Township to implement the provisions of this Part.

Public Utilities Commission or PUC—the State administrative agency, or lawful successor thereto, authorized to regulate and oversee public utilities and telecommunications providers and telecommunications services in the commonwealth of Pennsylvania, to the extent provided by law.

Public utility or utility—shall be defined as that term is defined in the Pennsylvania Code as of the effective date of this Part, and as hereafter amended.

Right-of-way, rights-of-way or ROW—the surface of and space above and below any real property in the Township in which the Township has a regulatory interest, or interest as a trustee for the public, as such interests now or hereafter exist, including, but not limited, to, all streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the Township, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for utility purposes but excluding lands other than streets that are owned by the Township. The phrase “in the right(s)-of-way” and means “in, on, over, along, above and/or under the right(s)-of-way.”

Right-of-way use authorization or ROW use authorization—a right-of-way use permit or cable franchise issued pursuant to this Part.

Right-of-way use permit or ROW use permit—a right-of-way use permit issued pursuant to this Part.

Service(s)—any telecommunications service, cable service, video programming service, information service, utility service (including, but not limited to, electric, gas, water, or steam service), or other form of service provided by means of facilities located in the right-of-way.

Street—a strip of land or part thereof within the right-of-way, whether dedicated or not, that is intended or used for vehicular and pedestrian traffic. The phrase “in the (a) street(s)” means “in, on, over, along, above and/or under the (a) street(s).”

Street opening permit—a permit for excavation of a street for the construction or installation of facilities in any right-of-way in the Township including, but not limited to, installation of underground conduit, ducts, manholes, handholes, and/or appurtenances thereto, or any other type of underground facilities; for construction or erection of poles; for installing fiber optic or other cable(s) in already installed conduit or ducts; for maintenance activities that involve such construction, installation, or erection; or otherwise for the installation or construction of facilities in any right-of-way.

System—any cable system, telecommunications system, or integral part thereof.

Telecommunications—the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications facilities—the plant, equipment and property within the Township used to transmit, receive, distribute, provide or offer telecommunications service.

Telecommunications provider—a person who provides telecommunications service over telecommunications facilities.

Telecommunications service—the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telecommunications system—a system that offers telecommunications service.

Tower-based wireless communications facility (tower-based WCF)—any structure that is used for the purpose of supporting one or more antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, utility poles and light poles and hub facilities for distributed antenna systems.

Township Code—the Code of the Township of Northampton, Bucks County, Pennsylvania.

Township Engineer—the person engaged by the Township to perform engineering services on behalf of the Township.

Township property—all real property now or hereafter owned by the Township whether in fee ownership or other interest.

Township work—all construction work performed by the Township 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 Township or for which the Township is responsible.

Transfer of interest—as applied to a right-of-way use permit and/or the facilities authorized thereby: the assignment, transfer, or other disposition, directly or indirectly, by sale, lease, merger, consolidation, or other act, by operation of law or otherwise, of any interest, in whole or in part, in the ROW use authorization, including, but not limited to, actual control over the ROW use authorization. Any transaction (whether between affiliated entities or unaffiliated entities) which results in any change, in any manner, of the ownership or control (including, but not limited to financial control and actual control) of the permittee, the facilities authorized thereby, or the capacity, transmission capacity, or bandwidth of the facilities or system, or such ownership or control of any affiliated entities having ownership or control of the permittee, where such ownership or control is 25 percent or more of the total ownership or control interest, shall be considered a transfer of interest.

Underground facilities—utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for aerial facilities.

Wireless telecommunications facility(ies)—the antennae, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for

the purpose of transmitting, receiving, distributing, providing, or accommodating wireless telecommunications services.

(*Ord. 566, 2/27/2013, §II*)

§21-303. Right-of-Way Use Authorization.

Except as otherwise provided in this Part, no person shall own, construct, operate and/or maintain facilities in any right-of-way of the Township to provide or to enable others to provide services to persons or areas in the Township or outside the Township without a right-of-way use authorization. The types of right-of-way use authorization are a right-of-way use permit and a cable franchise.

(*Ord. 566, 2/27/2013, §II*)

§21-304. Right-of-Way Use Permit.

1. *Permit Required; Term and Scope of Permit.*

A. No person, other than a franchisee, may own, construct, operate and/or maintain facilities that occupy the right-of-way without first obtaining a ROW use permit. Any ROW use permit shall be subject to such conditions as the Township may from time to time establish and shall otherwise conform to the requirements of this Part and applicable law. A ROW use permit shall be for a term of 1 year. A ROW use permit and the rights, benefits and permissions conferred thereby shall apply to the entire geographic area of the Township.

B. Any person wishing to construct, operate and/or maintain wireless telecommunications facilities, such as tower-based WCFs or non-tower WCFs, that occupy the rights-of-way is not required to obtain a ROW use permit pursuant to this Part, but is required to comply with all of the applicable terms and conditions of the Township's Wireless Telecommunications Facilities Ordinance, codified at Chapter 27 of the Northampton Township Code.

2. *Approval by Township.* A ROW use permit shall be authorized only by the Township and shall not become effective unless or until so authorized. In addition to the other requirements contained herein, the applicant shall demonstrate:

A. It has a history of compliance with applicable law and regulation relating to the management, construction and maintenance of facilities in streets and rights-of-way, wherever located.

B. It possesses all licenses, permits, authorizations, and other permissions required by the Federal Communications Commission, the PUC, the Commonwealth of Pennsylvania and the Township as a condition of its using the right-of-way and furnishing the services and operating the facilities proposed by the applicant.

3. *Security.* Each permittee shall furnish to the Township, at the permittee's expense, a bond or other form of financial security, in such form as required by the Township in consultation with the Township Solicitor. Such bond shall be executed by a reputable surety company licensed to do business in the Commonwealth of Pennsylvania. The letter of credit or other form of financial security shall be in the amount of \$100,000. The security shall be a continuing obligation during the entire term of the right-of-way use permit.

4. *Insurance.* Each permittee shall, at all times during the entire term of the right-of-way use permit, 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 Township 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 rights-of-way. The amounts of such coverage shall be as determined by the Township by regulation. The Township shall be designated as an additional insured under each of the insurance policies required by this Section. Permittee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section. Permittee shall provide the Township with at least 30 days advance written notice of any material changes or cancellation of any required insurance policy.

5. *Indemnification.* Each permittee shall, at its sole cost and expense, indemnify, defend and hold harmless the Township, 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, but not limited to, the construction, installation, operation, maintenance or removal of permittee’s system or facilities in the rights-of-way. Each permittee shall defend any actions or proceedings against the Township in which it is claimed that personal injury, including death, or property damage was caused by the permit holder’s construction, installation, operation, maintenance or removal of permittee’s system or facilities in the rights-of-way. The obligation to indemnify, hold harmless and defend 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.

6. *Application for Right-of-Way Use Permit.* Application for a ROW use permit shall be in such form and shall include such information as the Township determines by regulation. Within a reasonable period of time not to exceed 60 days after receiving a complete application hereunder, the Township shall make a determination approving or denying the application. Determinations to grant or deny an application shall be made on a non-discriminatory and competitively neutral basis. If the application is denied, the determination shall include the reasons for denial. The application fee, which shall be paid at the time of the filing of the application, shall be in the amount determined by the Township and authorized by resolution of the Township Board. The application fee shall be sufficient to reimburse the Township for the actual costs of Township staff time and other resources that are required and may be adjusted by resolution of Township Board.

7. *As-Built Maps.* Each person applying for a ROW use permit shall submit to the Department two paper copies and one electronic copy of as-built map or maps and engineering specifications as set forth in the policies and procedures depicting and certifying the location of all its existing facilities within the right-of-way. Such electronic and paper maps and engineering specifications shall be submitted with the application. If the maps are not provided electronically in the required format, then the person shall reimburse the Township for the cost of converting paper maps into electronic form or the cost of converting electronic maps in another format into the

required format.

8. *Right to Inspect.* The Township shall have the right to inspect all of the facilities of the permittee, including aerial facilities and underground facilities, to ensure health and safety with respect to such facilities, other facilities, the rights-of-way and any other public or private property, and to determine compliance with the terms of this Part and other applicable laws and regulations. Permittees are required to cooperate with all such inspections and to provide information requested by the Township as part of the inspection.

9. *Use Authorized.* No ROW use permit shall confer any exclusive right or privilege to occupy or use the right-of-way for any purpose; or explicitly or impliedly preclude or affect the Township'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 Township determines appropriate; or affect the Township's right to construct, operate or maintain any type of facilities itself or offer any type of services in the right-of-way; or authorize, or excuse any person from securing such further easements, leases, permits or other approvals as may be required by applicable law or regulation to occupy and use the right-of-way; or 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 ROW use permit; or be construed as any warranty of title.

10. *Owner's Consent.* No ROW use permit expressly or impliedly authorizes a permittee to provide any services to, or install any facilities on, any private property without the owner's consent, or to use publicly or privately owned poles, ducts or conduits without a separate agreement with the owners thereof for such use. It is an affirmative violation of this Part to post bills, signs and other advertisements upon utility poles or private property without the owner's consent.

11. *Substantially Similar Terms.* ROW use permits and renewals entered into after the effective date of this Part shall contain substantially similar terms which, taken as a whole upon consideration of all of its material terms and upon consideration of the nature of the services to be authorized and other relevant characteristics of applicants, do not provide substantially more or less favorable terms and conditions than those required of other permittees.

(Ord. 566, 2/27/2013, §II)

§21-305. Transitional Provisions.

1. *Persons Already Authorized to Use the Right-of-Way.* Any person holding a permit or other authorization from the Township to own, construct, operate, and/or maintain facilities in the right-of-way to provide services may continue to conduct those activities expressly authorized until the earlier of the following: (A) the conclusion of the present term of its existing authorization, or (B) 120 days after the effective date of this Part; provided, that in the case of a cable franchise, such authorization shall continue until the expiration of the current term of the cable franchise. Notwithstanding the foregoing, such persons (with the exception of cable franchisees) shall apply for a superseding ROW use permit pursuant to this Part within 90 days after the effective date of this Part and shall be subject to the terms and conditions of this Part.

2. *Pending Applications.* Applications for an authorization to occupy or use the

right-of-way that are pending on the effective date of this Part shall be subject to this Part. A person with a pending application shall submit additional information to comply with the requirements of this Part and applicable regulations of the Township governing applications within 30 days from the effective date of this Part.

3. *Persons Operating Without Right-of-Way Use Authorization.* Any person that owns or operates of any facilities currently located in the right-of-way, the construction, operation, or maintenance of which is not currently authorized, but is required to be authorized under this Part, shall have 90 days from the effective date of this Part to file one or more applications for a ROW use authorization. Any person timely filing such an application shall not be subject to penalties for failure to hold such a ROW use authorization, provided said application remains pending. Nothing herein shall relieve any person of any liability for its failure to obtain any permit or other authorization required under other provisions of this Part, or Township ordinances or regulations, and nothing herein shall prevent the Township from requiring removal of any facilities installed in violation of this Part or Township ordinances or regulations.

(Ord. 566, 2/27/2013, §II)

§21-306. Cable Franchise.

1. *Franchise Required.*

A. No person may own, construct, operate or maintain a cable system within the Township or provide cable service over a cable system without a cable franchise issued by the Township.

B. To the extent permitted by law, facilities used to provide telecommunications service, information service or any form of services similar to cable service, that are also used to provide cable service shall be subject to this Part and shall also require a right-way-use permit pursuant to this Part.

2. *Effect of Authorization.*

A. A cable franchise shall not confer any authority to provide any form or type of telecommunications service or information service in addition to the cable service authorized by the franchise. To the extent permitted by law, a separate right-of-way use permit pursuant to this Part, in addition to the cable franchise, shall be required before any franchisee is permitted to use facilities in the right-of-way to furnish any form or type of telecommunications service or information service.

B. In the event of a conflict between the provisions of this Part and a cable franchise agreement in effect on the effective date of this Part, the provisions of the cable franchise agreement shall govern.

(Ord. 566, 2/27/2013, §II)

§21-307. Renewal and Transfer of Right-of-Way Use Permit.

1. *Renewal of Right-of-Way Use Permit.*

A. *Application.* A person desiring to renew a ROW use permit shall file an application with the Township for renewal of its authorization, which shall include all information and documents required for an initial application and any other information required by the Township by regulation.

B. *Determination.* Within a reasonable period of time not to exceed 60 days

after receiving a complete application for renewal of a ROW use permit, the Township shall make a determination accepting or denying the renewal application. If the renewal application is denied, the determination shall include the reasons for non-renewal. Determinations to grant or deny a renewal application shall be made on a non-discriminatory and competitively neutral basis.

2. *Transfer of Interest in Authorization.* No transfer of interest in any ROW use permit or the facilities authorized thereby may take place without the prior written consent of the Township. Such consent shall be granted provided that the transfer of interest is consistent with the terms and conditions of the permittee's ROW use permit and this Part, and that the proposed transferee agrees in writing to be bound by such terms and conditions. In addition:

A. The permittee and the proposed transferee of a ROW use permit or the facilities authorized thereby shall provide, in addition to all information required by applicable law and regulation, such other information as the Township may reasonably require by regulation in order to determine whether the transfer of interest satisfies the requirements of this subsection.

B. Upon receipt of all information required herein, and any other information required by regulation, the Township shall within a reasonable period of time, not to exceed 60 days, review and either approve or deny the requested transfer. If the application is denied, the determination shall include the reasons for denial. Determinations to grant or deny an application to assign or transfer shall be made on a non-discriminatory and competitively neutral basis.

3. *Renewal and Transfer Costs.* All permittees shall, within 30 days after the Township's written demand therefor, reimburse the Township for all costs and expenses incurred by the Township in connection with any renewal or transfer of a right-of-way use permit. Such costs and expenses shall include, but not be limited to, engineering review, inspections, attorneys fees, expert fees and other related expenses.

(Ord. 566, 2/27/2013, §II)

§21-308. Construction in the Rights-of-Way.

1. *Street Opening Permits.* No person shall perform any street excavation in the rights-of-way without first obtaining a street opening permit and paying a permit fee pursuant to Chapter 21, Part 1, of the Township Code, §21-101 *et seq.* No person shall perform curb and/or sidewalk construction replacement or repair without first obtaining a permit and paying a permit fee pursuant to §21-111 of the Township Code.

2. *Construction Standards.* All construction, installation, maintenance, and operation of facilities in the ROW shall conform to the requirements of the following publications, as from time to time amended, and such additional or different standards and specifications as the Township may from time to time establish by regulation: the Pennsylvania Department of Transportation Publication Form 408, National Electrical Code, and the National Electrical Safety Code and Township regulations (collectively, the "Township of Northampton ROW Construction Standards").

3. *Security.* Each person performing construction in the ROW shall obtain, at the permittee's expense, a construction bond in the amount of \$100,000 in such form as required by the Township in consultation with the Township Solicitor. Such security shall be executed by a reputable surety company licensed to do business in the

Commonwealth of Pennsylvania.

4. *Right to Inspect Facilities.* The Township may inspect the construction or installation of any facilities, including both aerial and underground facilities, and any construction or repair activity to ensure health and safety with respect to such facilities, other facilities, the rights-of-way and any other public or private property, and determine compliance with the terms of this Part and other applicable laws and regulations. Permittees are required to cooperate with all such inspections and to provide information requested by the Township as part of the inspection.

5. *Interference with the Rights-of-Way.* No permittee may locate or maintain facilities in such a manner as to interfere with the use of the right-of-way by the Township, the general public or other persons authorized to construct, install, operate or maintain facilities in the rights-of-way.

6. *Relocation or Removal of Facilities.* Within 60 days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an emergency, a permittee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Facilities within the right-of-way whenever the Township, consistent with applicable PUC regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

- A. The construction, repair, maintenance or installation of any Township or other public improvement in the right-of-way.
- B. The operations of the Township or other governmental entity in the right-of-way.
- C. Vacation of a street or the release of a utility easement.
- D. An emergency as determined by the Township.

7. *Coordination of Construction Activities.* By December 1 of each year, each right-of-way use permittee shall provide the Township with a schedule (including plans and projected start and finish dates for each project) of its planned construction activities for the following year which may affect the rights-of-way. The schedule shall depict all construction activities the permittee is committed to perform within the year. All ROW construction locations, activities and schedules of permittees shall be coordinated with each other and with the Township's planned ROW construction activities, as directed by the Township, to minimize public inconvenience and disruption and prevent damage to public and private property. A person that fails to comply with this subsection may, in the Township's reasonable discretion, be denied street opening permits until the Township determines the person is in compliance.

8. *Abandonment.* Except as otherwise provided for under this Part, a person may abandon any facilities or property in the rights-of-way only after receiving written approval of the Township, following written notice to the Township of the intent to abandon. If the Township receives notice of intent to abandon from such a person, or if the Township determines (after investigation, notice to the owner or other responsible person, and an opportunity to be heard) that facilities or property are abandoned, the Township may determine that the safety, functioning or use of the right-of-way and/or other facilities in the right-of-way will be adversely affected by the abandonment. If the Township makes this determination, the Township may require the person to remove the facilities and property by a specified date or the Township may remove the facilities

and property and charge the person for all costs and expenses associated with such removal.

9. *Damage to Facilities or Property.* A permittee, including any contractor working for permittee, shall avoid damage to any facilities and/or public or private property. If any facilities and/or public or private property are damaged by permittee, including any contractor working for permittee, permittee shall promptly repair and restore such property within 10 business days. Permittee shall utilize the Pennsylvania One Call System prior to any disturbance of the rights-of-way and dial adhere to all other requirements of the Pennsylvania Underground Utility Line Protection Act.

10. *Field Marking.* Each permittee shall field mark the locations of its underground facilities upon request by other permittees or the Township, consistent with the requirements of the Pennsylvania One Call system and at no cost to the Township.

11. *Pole Extensions.* Aerial facilities shall be installed only on existing poles in compliance with the Township's public works, zoning and planning codes and regulations. Pole extension arms may not be used unless the Township determines in writing that adequate space is not present on the poles and such extensions do not unsafely burden or present a safety hazard to the rights-of-way. Aerial facilities may not be installed or constructed by adding to the height of existing poles without the express written permission of the Township. Permittees may be required to place their facilities underground where the Township determines that adequate space is not present on existing poles.

12. *Above-Ground Appurtenances.* Persons may place appurtenances above ground in the right-of-way only if such appurtenances are approved by the Township and are so placed that they do not interfere with pedestrian and vehicular traffic and the line-of-sight for traffic in the rights-of-way.

(Ord. 566, 2/27/2013, §II)

§21-309. Right-of-Way Management Fee.

1. *Compensation for Right-of-Way Use.* Every ROW use permit is subject to the Township's right to fix annually a fair and reasonable compensation to be paid for use and occupancy of the right-of-way. Such compensation for right-of-way use shall be directly related to the Township's actual right-of-way management costs including, but not limited to, the costs of issuing the permit and the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Township.

2. *Annual Right-of-Way Management Fee.* Each permittee that is not a franchisee shall pay an annual fee to the Township to compensate the Township for its costs incurred in connection with reviewing, permitting, inspecting and supervising the ongoing use and occupancy of the right-of-way. The annual right-of-way management fee shall be determined by the Township and authorized by resolution of Township Board and shall be based on the Township's actual ROW management costs as applied to such permittee. This annual ROW management fee shall not be adjusted for at least 2 years from the effective date of this Part, except for purposes of inflation as determined by the National Consumer Price Index published by the United States Department of Labor. Any adjustments to the fee subsequent to 2 years from the effective date shall be authorized by resolution of Township Board, shall be based on

the Township's actual ROW management costs as applied to such permittee and shall be implemented only after providing at least 30 days prior written notice to all then-current permittees. The costs recovered under this subsection shall not include costs recovered by any other fee provided in this Part or in related Chapters.

(Ord. 566, 2/27/2013, §II)

§21-310. Remedies.

1. *Penalties.* Any person violating any provision of this Part shall be subject upon conviction thereof, to a fine not exceeding \$1,000, for each and every offense, together with attorneys fees and costs, and in default of the payment thereof, imprisonment for not more than 90 days. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur. In addition to an action to enforce any penalty imposed by this Part and any other remedy at law or in equity under this Title, the Township may apply to a Court of Common Pleas for an injunction or other appropriate relief at law or in equity to enforce compliance with or restrain violation of any provision of this Part.

2. *Determination of Violation.* In the event a determination is made that a person has violated any provision of this Part, a right-of-way use permit, such person shall be provided written notice of the determination and the reasons therefore. Except in the case of an emergency, the person shall have 30 days to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the Township may, in its reasonable judgment, extend the time period to cure provided the person has commenced to cure and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the Township may take any and all actions authorized by this Part and/or Pennsylvania law and regulations.

(Ord. 566, 2/27/2013, §II)

§21-311. Miscellaneous.

1. *Proprietary Information.* If a permittee considers information it is obligated to provide to the Township under this Part to be a business or trade secret or otherwise proprietary or confidential in nature, and desires to protect the information from disclosure, then the permittee shall mark such information as proprietary and confidential. Subject to the requirements of the Right to Know Act of 2009, 65 P.S. §67.101 *et seq.*, as amended, and other applicable law, the Township shall exercise reasonable good faith efforts to protect such proprietary and confidential information that is so marked from disclosure. The Township shall provide notice to the permittee in the following circumstances: (A) if the Township receives a request for disclosure of such proprietary and confidential information and the Township Solicitor determines that the information is or may be subject to disclosure under applicable law; or (B) if the Township Solicitor determines that the information should be disclosed in relation to its enforcement of this Part or the exercise of its police or regulatory powers. In the event the permittee does not obtain a protective order barring disclosure of the information from a court of competent jurisdiction within 30 days following receipt of the Township's notice, then the Township may disclose the information without further notice to the permittee.

2. *Leased Facilities.* Subject to the provisions of this Part and with prior written

approval of the Township, a permittee shall have the right to furnish any facilities for which it has the applicable authorization 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:

A. The permittee furnishing its facilities to another shall first deliver to the Township written verification that there is a fully signed and executed lease, rental agreement, or other agreement with such other person pursuant to which the facilities are to be furnished.

B. The person to which the facilities are furnished shall comply with all of the requirements of this Part and other applicable laws and policies and procedures, including, but not limited to, obtaining an appropriate right-of-way use authorization from the Township prior to its construction or operation of its facilities; and, if such permittee does not comply with the foregoing requirements, the Township may determine its facilities to be unauthorized facilities.

3. *Duty to Provide Information.* Within 10 days of a written request from the Township, each permittee shall furnish the Township with information sufficient to demonstrate the following: that the permittee has complied with all requirements of this Part; that all fees and taxes due the Township in connection with the services and facilities provided by the permittee have been properly paid by the permittee; and any other information reasonably related to the permittee's obligations pursuant to this Part.

4. *Right to Inspect Records.* The Township shall have the right, upon 30 days written notice and during normal business hours, to inspect all documents, records, maps and other pertinent information maintained by the permittee with that relate directly to the terms and conditions of this Part.

5. *No Substitute for Other Required Permissions.* No ROW use authorization or ROW use permit includes, means, or is in whole or part a substitute for any other permit or authorization required by the laws and regulations of the Township for the privilege of transacting and carrying on a business within the Township; or any permit or agreement for occupying any other property of the Township.

6. *No Waiver.* The failure of the Township to insist on timely performance or compliance by any permittee holding a right-of-way use authorization shall not constitute a waiver of the Township's right to later insist on timely performance or compliance by that permittee or any other permittee holding such a right-of-way use authorization. The failure of the Township to enforce any provision of this Part on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this Part on any other occasion, nor shall the failure to enforce any prior ordinance or Township Charter provision affecting the right-of-way, any facilities, or any user or occupant of the right-of-way act as a waiver or estoppel against enforcement of this Part or any other provision of applicable law.

7. *Policies and Procedures.* The Township is authorized to establish such written policies and procedures consistent with this Part as the Township deems necessary for the implementation of this Part.

8. *Police Powers.* The Township, by granting any permit or taking any other action pursuant to this Part, does not waive, reduce, lessen or impair the lawful police powers vested in the Township under applicable Federal, State and local laws and

regulations.

(*Ord. 566, 2/27/2013, §II*)