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STREETS, UTILITIES AND PUBLIC SERVICES CODE**

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**CROSS REFERENCES**

- Streets Generally - See 3rd Class §2915 et seq. (53 P.S. §37915 et seq.)
- Detours - See 3rd Class §2975 (53 P.S. §37975 et seq.)

14504 (July 19, 2007) provided cross-over exemptions for pre-existing blacktop driveways.  
14863 (December 3, 2010) revised the shade tree ordinance and established fees.

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## 901.01 DEFINITIONS

The following words and phrases, when used in this article, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise:

1. **Alley** (Public) means a minor right-of-way providing secondary access to the side or rear of one (1) or more properties but which shall have a maximum right-of-way width of twenty-four (24') feet.

2. **Appeals Committee** means the body which will review requests to excavate a newly resurfaced or reconstructed street or alley. The committee will consist of five (5) members comprised of the following or their designee:

Council:	Chairperson of Public Works Committee
Engineering:	Manager of Engineering (Chairperson of Committee)
Engineering:	Construction Manager (15102 §1 12/4/13)
Streets Bureau:	Superintendent of Streets
Planning Bureau:	Planning Director

3. **Applicant** means any person who makes application for a permit.

4. **Calendar Year** means January 1 through December 31, inclusive.

5. **City** means the City of Allentown, Lehigh County, Pennsylvania.

6. **City Corporate Authority** means any governmental corporation initiated by Council under the Commonwealth of Pennsylvania Authorities Act of 1945 to administer a revenue-producing public enterprise.

7. **Concrete** includes soil cement, plain cement concrete or reinforced cement concrete. Material contained in the base course of some City streets.

8. **Cost** means actual expenditures incurred by the City for labor, equipment and materials. These expenditures include all fringe benefits and overhead.

9. **Degradation Fee** means a fee paid by the permittee to the City to defray a percentage of the costs for resurfacing and reconstruction of City Streets resulting from the depreciation of streets associated with street openings.

10. **Department** means the City Department of Public Works.

11. **Emergency** means an unforeseen circumstance which calls for immediate action to protect or safeguard life and/or property.

12. **Inspection Fee** means a fee paid by the permittee to the City to defray street opening inspection costs.

13. **Outdoor Sidewalk Cafe** is defined as any portion of a food establishment or drinking place located on a public sidewalk or open space that provides waiter, waitress or take-out service, is unenclosed, and not used for other purposes, immediately abutting in front of (or on the side of a corner property) a new or existing establishment. (13675 §1 5/21/98)

14. **Permit Fee** means a fee paid by the permittee to the City to cover the costs of issuing, processing and filing the street opening permit.

15. **Permittee** means any person who has been issued a permit and has agreed to fulfill all the provisions of this article.

16. **Person** means any natural person, partnership, firm, association, utility or corporation.

17. **Public Utility** means any utility company, excluding corporate authorities of the City, licensed by the Public Utility Commission of the Commonwealth of Pennsylvania.

18. **Residential Streets Capital Funds** means a fund established and regulated by the City, the monies therein are explicitly designated for the resurfacing and reconstruction of City streets.

19. **Sidewalk Area** means that portion of the street right-of-way reserved for sidewalks. Area defined on the City Plan.

20. **Street** (Public) means a right-of-way dedicated to the public for the movement of traffic with space for utilities and providing access to abutting properties. May also be referred to as avenue, road, boulevard, expressway, court or lane with a right-of-way width greater than twenty-four (24') feet.

21. **Work Day** means a normal business day for the City Government, i.e., Monday through Friday, except designated holidays.

Regulating excavations in any street or alley within the City limits, and providing for the issuance of permits granting authority therefore and for the replacement and the payment of the costs thereof. (13083 §1 8/17/91)

#### **901.02 PERMIT REQUIRED**

A. That the opening of the surface of any City street or alley is prohibited unless a permit is obtained for that purpose in the manner hereinafter described. Such permit shall be granted through the Department of Public Works of the City when the person applying for such permit files an application with the Department in compliance with the provisions of this article and pays into the City Treasurer the amounts hereinafter stated.

B. Any person working in the vicinity of a City street or alley who in any manner disturbs such street or alley or who in any manner causes damage to a street or alley will be required by this article to obtain a permit and deposit the necessary fees as required to correct damage. Street or alley excavation permits will not be required for persons excavating adjacent to the curb for the express purpose of installing or replacing curbs and/or sidewalks provided a curb and sidewalk permit has been obtained prior to such work.

C. The obtaining of street excavation permits by City departments and corporate authorities will be waived when work to be performed is completed by their own personnel.

D. All contractors performing work under contract for the City or City corporate authorities will obtain street excavation permits. However, all costs will be waived.

E. Public utilities will obtain street excavation permits for work performed by their own forces or by contract.

It will be the permittee's responsibility to comply with Section 5 of Act 172 of the General Assembly of the Commonwealth of Pennsylvania, as amended. (13083 §1 8/17/91)

#### **901.03 STREET OPENINGS PRIOR TO RECONSTRUCTION OR RESURFACING**

A. When the City or the Pennsylvania Department of Transportation proposes to reconstruct or resurface any street or alley, the Department of Public Works will first serve notice of such improvements to all persons owning property abutting the street or alley about to be improved, and to all public utility companies operating in the City. Within ninety (90) calendar days from receipt of such notice all notified persons will complete or cause to be completed all necessary repairs and replacements of utility mains, service connections and/or laterals existing under the street and designated curb and sidewalk areas. Failure to comply with this provision will cause the owner to relinquish their option of installing any utility for a period of three (3) years within resurfaced streets or alleys and five (5) years with reconstructed streets or alleys from date of work completion. All repairs, replacements and new installation will be in first class condition so that the same cannot be expected to require repairs or renewal with the periods as herein before stated. (15102 §1 12/4/13)

B. Upon failure of any of the notified person or persons to comply with the notice from the Department to place the same in first class condition as hereinbefore provided, the Department will cause existing utility mains, service connections and/or laterals to be placed in first class condition as aforesaid, or to be entirely removed if not used or necessary for the public convenience, whereupon the City will be entitled to collect the cost of such renewals, repairs, caulking, removal or other work from the aforesaid responsible person or persons, either by invoicing the person or persons, or in the case of water or sewer house connections, by filing municipal liens therefore against the abutting properties benefitted by such connections.

C. This section will not forbid, however, the installation of new pipes, conduits or other services or structures, or the repair, replacement or removal of those already existing, in or under the portions of such streets or alleys improved as aforesaid, by tunneling beneath paving in accordance with the ordinances of the City and the directions of the Department of Public Works or the Pennsylvania Department of Transportation, upon obtaining a permit therefore from the Department of Public Works and

upon payment to the City of the same fees as prescribed by the provisions of this article for making a surface opening in the street or alley of the same dimensions. (13083 §1 8/17/91)

#### **901.04 PREREQUISITES TO OBTAINING A PERMIT**

Street or alley excavation permits will only be granted upon compliance with the following express provisions:

A. An application for the issuance of a permit will be filed in the office of the Department of Public Works upon forms furnished by the City for that purpose, and will be signed by the applicant. Such application will set forth the purpose for which such excavation is to be made; the size and location of the same; the full scope of work to be completed; the date or dates during which such excavation is to be permitted; and shall provide that the permittee will faithfully comply with each and every provision contained in this article. An applicant will furnish a drawing of the proposed opening site upon request of the Department. Items required on the drawing will be specified at the time of request.

B. Prior to the issuing of permits, every applicant will pay to the City Bureau of Engineering the amount hereafter required for the purpose hereinafter provided and will exhibit to the Department a receipt for the amount aforesaid. This deposit will be based upon a rate per square yard of restoration and a degradation fee as affixed by the Director of the Department of Public Works of the City and as set forth subsequently in this article or as amended from time to time by Ordinance. No permit will be issued to any applicant unless the applicant pays to the City any and all monies then due to the City, for prior excavations made or for any loss, damages or expense in any manner occasioned by, or arising from the excavation of streets or alleys of the City under prior permits. (15102 §1 12/4/13)

In the case where the permittee requests to perform the permanent surface restoration the City will advise the permittee of the standards and specifications which are to be followed. City inspectors will be assigned to assure work is in accordance with these regulations and standards. Deposits for restoration fees will be retained by the City for a period of twelve (12) months. Upon the expiration of this twelve (12) month retainage period, 85% of the funds deposited for the rate per square yard of restoration will be refunded the permittee. The 15% retainage will cover costs of supervision and inspection for permitted excavation and permanent restoration.

A fee will be paid by the applicant to cover cost of issuing the permit. Said fee is also to be established by the Director of the Department of Public Works of the City and as set forth subsequently in this article or as amended from time to time by Ordinance. (15102 §1 12/4/13)

In all cases where a permit has been issued and the work set forth in such permit has not commenced within sixty (60) days the same will be canceled and the deposit for restoration and degradation fee will be refunded by the City Treasurer. Any fee for issuance of the permit will not be refundable. (13186 §1 4/9/93)

The City will by proper voucher refund to the said permittee the difference in cost of the replacement of said excavation and the amount deposited should the square yards of restoration be less than estimated on the application. In case the cost of restoration exceeds the amounts deposited then the excess will be charged to the permittee. The sums due the City will be paid within thirty (30) days from the date of rendering a statement to the said permittee.

C. Except in emergency situations, the appeals Committee will at its discretion be permitted to allow the opening of a street or alley which has been resurfaced within a three (3) year period or reconstructed within a eight (8) year period prior to the date of request for permit based on criteria established by Appeals Committee. (15102 §1 12/4/13)

D. Except in emergency situations, applications for street or alley openings will be submitted to the Department at least two (2) work days prior to the proposed date of excavation. The Department will review each application and grant or deny the applicant a permit upon completion of their review.

E. No street or alley opening will be performed, except in the case of emergency, when seasonally prohibited or, in the judgment of the Director of Public Works conditions are unreasonable for such work.

F. The applicant will agree to pay the entire cost and expense incurred in the replacement of the excavation and that the City will at all times have the right and authority to correct any and all omissions in the conduct of the work and to have the power to take possession of and to do all the work and charge the expense thereof to the permittee. The expense so charged will be deducted and paid by said City out of such monies as may have been deposited with the City, and in case such expense will exceed the sum on deposit, then the said permittee will pay the amount of the excess to said City.

G. The permittee will also agree to safeguard and maintain in good order the excavation until such time as the City may temporarily or permanently restore the excavation, and to assume all cost and expense due to defective backfilling for the period of one year after the date of the completion of the excavation.

H. The permittee during the progress of the work will provide and maintain such fences, barriers, street closures, danger signs, lights and watchmen as may be necessary to prevent accidents to the public and adjoining tenants. Permittee shall comply with the regulations in PennDOT Pub 2113, Work Zone Traffic Control Regulations.(15102 §1 12/4/13)

The convenience of the public and temporary approaches to and crossings of intersecting streets will be provided for and kept in good condition where practicable. The sidewalks or portions of the street adjoining the work or its vicinity will not be littered or obstructed more than necessary and the drainage gutters and inlets to the storm water sewers will at all times be kept clean and unobstructed. All necessary best practices for stormwater management shall be followed. (15102 §1 12/4/13)

I. Excavation will be by open cut from the surface and no tunneling or drifting will be permitted except by permission and so noted on the permit. The amount of trench opened and also the amount unfilled will at all times be subject to the decision of the department. No trench or excavation will be under-cut or have a greater width at the bottom than at the top. In case of slips or slides of the sides of the excavation the same will be trimmed to solid earth and the top surface cut back to the limit of the same before any backfilling is commenced. When necessary or required, the sides of a trench will be sheathed and braced and rendered secure until the construction has been laid therein and the trench refilled. Care will be taken not to move or disturb other sub-surface structures and in crossing these or running parallel with or near them, they will be securely hung, braced and supported in place until the work is completed. The applicant will maintain their respective services and will repair all damage done to any of the said structures.

In rock excavation, all drilling and blasting will be conducted with the greatest possible care and all possible precautions taken to guard against accidents. The permittee will at all times exercise the utmost care in the use of explosives so as not to endanger life or property and will at all times comply with Title 25, Rules and Regulations for the storage, handling and use of explosives as set forth by the Pennsylvania Department of Environmental Resources. Blasting delays less than one-half (1/2) second will not be permitted in the City except when waived by the Engineer. Permittee will be required to obtain Blasting Permits from the City Fire Bureau.

J. In back-filling, only approved crushed aggregate as recommended by the Department of Public Works will be used. The method of back-filling will be such as to insure that the fill is thoroughly compacted. The method or methods used to compact will be subject to the approval of the Department of Public Works which will have the power to issue regulations as to such method. 13186 §1 4/9/93)

In all unimproved streets the surface of the trenches after being filled and settled will be finished in a most work-like manner without needless delay and will in every respect be equal in quality, character and materials to the street surface existing previous to making the excavation. In all improved streets the crown of the surface will conform to the adjacent street surface until sufficient time has elapsed to warrant the restoration either temporarily or permanently of the pavement surface. All such restorations of pavement surfaces will be made by the City under existing contracts or by its own forces and the cost thereof charged to the applicant.

In the replacement or restoration of permanent roadway surfaces the City will have the right and authority to cut back the surface and supporting base as far as may be deemed necessary to afford a good support upon firm earth or to remove any part of the surface and base which may have become injured by reason of the said excavation.

K. In no case will an applicant open or remove a greater area or surface and at no other location than specified in the original application, provided however, that if at the time of actually doing the work it should be necessary to open or remove a greater area of surface than originally applied for, the applicant will first notify and secure, by telephone or otherwise, the consent of the department to do so, upon the express condition that the said applicant will, before 12 o'clock noon of the following business day, file a supplementary application for the making of an additional excavation.

L. All permits will at all times be in the possession of a competent person actually on the work site and will be shown at all times to any police officer or properly authorized officer or employee of the Department of Public Works upon demand.

M. In case of an emergency arising at night, Sundays, legal holidays or at such time as the office of the Department of Public Works is closed and an immediate excavation may be necessary for the protection of public or private property, the same will be reported to the police department, which will grant permission to make the necessary excavation, upon the express condition that an application be made to the Department of Public Works on or before 12 o'clock noon of the following business day.

N. All excavations will be commenced and completed by the use of a reasonable work force working around the clock, or in the alternative, all excavated material will be removed and at the cessation of work suitable steel plates will be placed over the excavation or trenches will be backfilled for protection and to allow traffic to resume. All steel plates shall sit on a minimum of one (1) foot of solid surface with each plate pinned on. There shall be no less than 2 pins on each side, maximum pin spacing of eight (8) feet, and pins on corners to be no further than twelve (12) inches from the corner. (15102 §1 12/4/13)

O. Restoration fees for the utility companies, i.e., U.G.I., Bell of Pennsylvania, PP&L, and cable companies will be waived. Each utility will be required to make permanent restoration in accordance with City regulations at their own expense.

1. If two (2) cuts are made less than one-hundred (100) feet apart, the entire area between the 2 cuts and including the two (2) cuts shall be milled and overlaid for a width of one-half the street/alley width, unless the repair crosses the centerline of the street/alley, then the mill and overlay shall be for the full width of the street/alley.
2. If more than 4 cuts are made within a five-hundred (500) foot span in the street/alley, the section must be milled and overlaid for one-half (1/2) the width of the street/alley, unless the repair crosses the centerline of the street/alley, then the mill and overlay shall be for the full width of the street/alley for the entire length of work.
3. Milling and overlay may also be required wherever designated by the Director of Public Works.
4. The time from milling to final paving shall not exceed 24 hours. The milled section of street/alley shall be closed to traffic until final restoration is complete. Permittee is responsible for Traffic control during the street closure.
5. Permittee is responsible for the final restoration of the street for one year from the date of final restoration.
6. Permittee shall inspect all temporary patches on a weekly basis and make necessary repairs until final repair is made.
7. Permittee shall inspect final patches and restorations every three (3) months for a period of one year from the date of the final restoration to ensure the original street/alley grades and cross sections are maintained. (15102 §1 12/4/13)

P. Permittee agrees to save the City, its officers, employees and agents from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of such work to be done in such application. The acceptance of any permit under this article will constitute such an agreement by the applicant whether the same is expressed or not.

Q. An applicant or designee will secure a certificate of insurance from the Department and have the certificate properly executed by the applicant's insurance agency. Properly executed certificates of insurance will be filed with the Department and verify that the applicant is insured against claims for personal injury as well as against claims for property damages which may arise from or out of the performance of the excavation work, whether such work was performed by the applicant or anyone directly employed by them. Such insurance will include protection against liability arising from completed operations, underground utility damage and collapse of any property. Liability insurance for bodily injury will be in an amount not less than Three Hundred Thousand (\$300,000) Dollars for each person and Three Hundred Thousand (\$300,000) Dollars for each accident and for property damages an amount not less than Three Hundred Thousand (\$300,000) Dollars. Failure of an applicant to file a certificate of insurance will be sufficient reason for denying a permit. The applicant will save and hold harmless the City from any and all damages and liability by reason of personal injury or property damage arising either directly or indirectly from the work to be performed under the provisions of this article, irrespective of the cause of such injury or damage. Liability insurance requirements for blasting may be obtained from the City Fire Bureau. Blasting permits will be obtained from the Bureau of Fire.

R. Public utility companies desiring to open a City street or alley will be required to file with the Department a properly executed indemnity agreement for the faithful compliance with the ordinance of the City relating to the making of excavation in streets and alleys. (13115 §1 3/5/92)

S. A street or alley opening permit will be obtained for any test hole work. No test holes will be made in or upon a greater surface of the street or alley than as specified in such permit, and no excavation or test holes will interfere with any of the water pipes, sewers, drains of the City or any other underground utility service. Test holes having an area of four (4) square inches or less will be filled by the applicant with a grout composed of one part cement and two parts sand and a sufficient quantity of water, filled to the surface of the street or alley, and the surrounding surface of the street or alley will be placed in the same condition as before. Test holes greater than four (4) square inches in area will be backfilled in accordance with the provisions of this article, unless otherwise directed by the Department of Public Works.

T. The permittee will guarantee and maintain his work for twelve (12) months from the completion of the restoration and replacement work. Within this twelve (12) month period, upon notification from the City of necessary correction work required, the permittee will correct or cause to be corrected all restoration work required within five (5) calendar days of receipt of the notification. The Department of Public Works will determine the extent of restoration required and the method of correction. Any and all work not completed within this five (5) day period may be completed by the City at the discretion of the Director of Public Works. The City will invoice the permittee for all costs incurred by the City in performance of this work. The sums due the City will be paid within thirty (30) days from the date of sending a statement to the permittee. In the case of public utility companies, payment not made within thirty (30) days of the invoice date will be chargeable against the restoration fee including all fees and costs involved in the collection of this payment.

U. In the case where the permittee, other than public utilities, will disturb or remove existing concrete sidewalk, the City will, by letter, notify the property owner of their responsibility to acquire proper permits and replace sidewalk area in accordance with current City standards within sixty (60) days of the completion of work, allowance will be made for restoration requirements by the Director of the Department of Public Works, regarding permits and work completed during the winter months. (13186 §1 4/9/93)

#### **901.05 FEES**

1. Fees or deposits must be in the form of either cash or check (person or company). (§1 8/17/91)
2. See the current City of Allentown, Administrative Information Manual (AIM) for "RESTORATION" and "DEGRADATION" fee schedules. The number of square yards of excavation shall be computed to the nearest whole square yard, rounded upward. This will include any pavement that must be removed to enable an overlap of the surface course and base course on the existing subgrade or as determined by the City Engineer. (13186 §1 4/9/93; 13679 §1 6/4/98)
3. The Director of Finance, or designee, will place collected degradation fees into Residential Streets Capital Fund. (13083 §1 8/17/91; 13679 §1 6/4/98)

#### **901.06 PERMIT**

Private or quasi-public utilities will make application and be granted a permit for street or alley cuts prior to commencing work in accordance with the fee as set forth in the current Ordinance. (13186 §1 4/9/93; 15102 §1 12/4/13)

#### **901.99 PENALTY**

Any person violating the provisions of this article will, upon conviction thereof, be fined not more than Six Hundred (\$600.00) for each and every offense, together with costs, and in the default of payment thereof, be imprisoned for not more than thirty (30) days. Each failure to obtain a permit, or having obtained a permit, to comply with any of the requirements of this article, and each day during which such violation continues, will constitute a separate offense.

The Department of Public Works reserves the right to deny the issuance of future street opening permits to any person who violates the provisions of this article.  
(10839 §12 11/16/65; 11995 §1 2/21/73; 13083 §1 8/17/91)

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### **ARTICLE 903 PERMANENT OBSTRUCTIONS**

- 903.01 Definitions
- 903.02 Permanent Obstructions
- 903.03 Public Telephones in the Right-of-Way
- 903.04 Penalty

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#### **903.01 DEFINITIONS**

1. **Cartway** shall mean that portion of the right-of-way designated for vehicular use. This shall include both opened and unopened streets.
2. **Person** shall mean any individual, firm, partnership, association or corporation.

3. **Permanent obstructions** shall mean any type of structure that cannot be moved without demolishing or destroying it or any permanent change to the right-of-way area which would impede, obstruct or otherwise limit or prevent that area's use for the free flow of pedestrian and/or vehicular traffic.

4. **Property line** shall mean that line which is coincident to and identical with the line marking the extremity of the right-of-way.

5. **Right-of-way** shall mean the width of a strip of land between property lines set aside for public use or ownership as a street, alley, crosswalk, easement or other facility.

6. **Sidewalk** shall mean that portion of the sidewalk area which is paved for pedestrian use.

7. **Sidewalk area** shall mean that area extending from the curb line to the property line which is designated by the City of Allentown for pedestrian use.

8. **Street** shall mean an area designated for vehicular traffic which includes sidewalk area, cartway and sidewalk. (12456 §1 3/4/81)

9. **Tree Well** shall mean a dirt-filled opening in a sidewalk bounded on one side by a street curb and used for the purpose of growing a tree and/or other plants. (14625 §1 8/26/08)

10. **Tree Well Surround** shall mean a rigid, four-sided structure encircling a tree well at its outer boundaries. (14625 §1 8/26/08)

### 903.02 PERMANENT OBSTRUCTIONS

No person shall put, place, maintain, erect or cause to be put, placed, maintained or erected any permanent obstruction in the right-of-way of any public thoroughfare, except as hereinafter allowed and provided for:

A. Permanent obstructions such as:

1. Steps and/or open porches now in existence and essential for ingress and egress to property abutting the sidewalk area, providing such obstruction does not extend beyond the property line into the sidewalk area more than five (5') feet along streets having a right-of-way width of sixty (60') feet or more, and on all other streets of less width more than one-third (1/3) the width of the sidewalk area measured from the property line. Permanent awnings may be erected over such steps and/or open porches, providing such awning does not extend farther into the area over the sidewalk than do the steps and/or open porch.

2. Tree well surrounds, provided they do not exceed a height of more than eighteen (18" inches above the existing sidewalk level, do not extend beyond the existing street curb, and do not unduly hinder the flow of pedestrian traffic. (14625 §2 8/26/08)

B. Certain permanent encroachments shall be permitted upon the approval of the Bureau of Building Safety and Standards subject to the following conditions:

1. Permissible encroachments shall include steps, porches, planters, fences, building projections, and service structures of utilities related to the right-of-way such as public telephones or bus shelters. Specific regulations for public telephones are found in Section 903.03. (13783 §1 10/21/99)

2. A permissible encroachment may not exceed one-third (1/3) of the sidewalk area measured from the property line and may not reduce the width of the abutting sidewalk to less than five (5') feet. Public telephones are subject to standards in Section 903.03. (13783 §1 10/21/99)

3. Such an encroachment shall be reviewed by and meet the approval of the following City officials:

- a. Designee of the Bureau of Engineering.
- b. Designee of the Bureau of Code Enforcement.
- c. Designee of the Bureau of Traffic Planning and Control.



4. Such encroachments shall not:

- a. Impede or endanger the free flow of pedestrian or vehicular traffic.
- b. Adversely affect the passage of light or air to adjoining properties.
- c. Adversely affect in any other manner the health, safety or welfare of adjoining property owners or the public in general.
- d. Represent a significant variance from the number or size of encroachments existing in the immediate block area.

5. No permanent obstruction shall be allowed on any right-of-way area, located in an area designated as a Historic District in the Codified Ordinances of the City of Allentown, without a review by and the approval of the Board of Historical Architectural Review (HARB) that said obstruction is historically appropriate and shall not detract from the historic character of the district.

6. The owner proposing such an encroachment shall enter into a contract with the City of Allentown to ensure compliance with these and any other conditions deemed necessary for the protection of the City.

7. The City shall reserve the right to require the removal of any encroachment so approved at the owner's expense and without compensation upon thirty (30) days written notice.

C. Permanent obstructions which are either not permitted under subsection (b) above or not approved by the Bureau of Building Safety and Standards set forth in subsection (b) above may be permitted upon the expressed approval of City Council in the form of a Resolution. (12456 §1 3/4/81)

### 903.03 PUBLIC TELEPHONES IN THE RIGHT-OF-WAY

A. Purpose: The city recognizes the legitimate need for public telephones by residents, many of which in the Center City do not have phones in their households, and the right-of-businesses to offer the service to customers. The City also has an obligation to provide a safe and unobstructed passage of the City's public rights-of-way. Because the rights-of-way are public, their use is subject to regulations which protect their use. The purpose of this section is therefore, to:

1. Improve the quality of life of residential neighborhoods and eliminate problem public telephones and public nuisances, such as loitering and noise, which may be associated with them;
2. Regulate the placement of the public telephones within the public rights-of-way;
3. Promote an orderly and fair distribution of public telephones, and recognize an open market for public telephone services;
4. Promote the safe installation of public telephones within the public rights-of-way in a competitively neutral and non-discriminatory basis;
5. Establish standards and require bonding and insurance to protect City assets, and to protect the City from claims arising from the vendor's locating and installing of the phones.

B. Definitions:

1. **Act 78:** The Public Safety Emergency Telephone Act, Act 78 of 1990 P.L. 340 No.78.
2. **Amortization:** The removal of a public telephone after a specified period of time.
3. **Chief of Police:** The Department Director of the Police Department of the City of Allentown, or his designee.
4. **Public Telephone:** A telephone available to the public accepting coins, credit or prepaid phone cards for payment of rates or charges associated with placing local or interexchange calls from the telephone.

5. **Public Telephone Owner:** For the purposes of this ordinance a public telephone owner shall include local exchange carriers and payphone service providers owning, leasing or operating coin, credit or prepaid phone card telephones within the City of Allentown, Pennsylvania.

6. **Illegal Drugs:** Any controlled substance referred to in Title 35 P.S. Section 780-101, *et seq.*

7. **Problem Public Telephone:** A public telephone, which based upon evidence obtained by the Police Department, is used for drug trafficking, other criminal activity, or determined to be a public nuisance. For the purposes of this section, a problem public telephone shall also include those phones, which are credit-, prepaid phone-, or other card operated.

8. **Public Nuisance:** An interference with the enjoyment and use of property.

9. **Public Utility Commission (PUC):** The Public Utility Commission of the Commonwealth of Pennsylvania.

10. **Nonresidential Zoning District:** Any zoning district not defined by the City of Allentown Zoning Ordinance as residential.

11. **Residential Zoning District:** Any zoning district defined by the City of Allentown Zoning Ordinance as residential.

12. **Structure:** Anything constructed or erected, which requires its permanent location on or below the ground, or which is permanently attached to something having permanent location upon the ground.

C. Responsibility of Public Telephone Owners:

1. All public telephones shall be in compliance with Commonwealth of Pennsylvania Act 78, as amended, and provide *Emergency 911* service without coin insertion or other charge.

2. It shall be the responsibility of each public telephone owner to take reasonable measures to insure that every public telephone it owns in the public right-of-way is not used for the purpose of illegal drug activity, other criminal activity or other public nuisance. These measures may include but are not limited to, designation as "outgoing calls only" set forth at 52 Pennsylvania Code Section 63.96.

3. Failure of a public telephone owner to comply with the terms of this ordinance shall be grounds to revoke permits for existing phone installations and/or refuse permit applications for additional public telephones in the public right-of-way.

D. Existing Public Telephones in the Public Right-of-Way:

1. Application: Public telephone owners shall make application for permanent encroachment permits for all existing phones located within the public right-of-way without any previous encroachment or other required permits, within forty-five (45) days of the enactment of this Section.

a. Encroachment and electrical permits (as required) shall be issued only for those public telephones meeting the standards of this ordinance.

b. Permits will be issued only for complete applications.

c. Where there are two or more applications for locations within the Five Hundred (500') Foot radius specified in Section G.9, of this ordinance, and when all other requirements of this ordinance are met, a permit will be issued to the first complete application received.

d. Only one public telephone shall be listed on each permit application.

e. Permits will not be issued for multiple phones on one pedestal or more than one phone at the same location.

2. Amortization and Removal: All existing public telephones located within the public right-of-way without: (1) a previously approved permit; and (2) not receiving a permit consistent with this ordinance shall be removed by their owner after an amortization period of twelve (12) months. The amortization period shall begin with the adoption date of this ordinance. Removal shall be accomplished upon completion of the amortization period. Any phone not removed by its owner may, after notification by the City, be removed by the City at the owner's expense.

E. Permit Required for New Public Telephone Installations within the Public Right-of-Way:

A permanent encroachment permit from the City's Bureau of Code Enforcement and Rehabilitation, shall be required for all public telephones located within the City's rights-of-way. Permits will only be issued for those applications that are in full compliance with this ordinance, and specifically, the standards outlined in Section G, below. Public telephone owners who do not apply for permits shall be subject to Section 903.99, Penalty, of this ordinance and removal of the unpermitted telephone at the owner's expense, after notification by the City.

F. Problem Public Telephones

1. There may be public telephones within the right-of-way facilitating public nuisances, and posing concerns for public safety. In these cases, the Chief of Police may conduct an investigation determining whether a particular public telephone is a problem public telephone.

2. On the basis of the results of the foregoing investigation, the Chief of Police may take the following action:

a. Recommend to the PUC that the telephone be modified to prohibit incoming calls or that the telephone be closed during certain hours.

b. Require the removal of the telephone thirty (30) days after legal notice to the owner.

3. No permit shall be issued for a period of one (1) year for the reinstallation of a public telephone at a location where the Chief of Police has required the removal of a problem public telephone.

G. Standards for the Location and Installation of Public Telephones within the Right-of-Way.

1. All public telephone installations shall be in conformance with Article 903.

2. For the purposes of this ordinance, a location shall be that area of the public right-of-way immediately adjacent to an addressed property.

3. Public telephones installed within the right-of-way may not extend into the right-of-way more than eighteen (18") inches from the right-of-way line onto the sidewalk at the phone's greatest extent, whether pedestal or wall mounted. Pedestal bases shall be no longer than twenty-four (24") inches as measured parallel to the right-of-way line.

4. Conformance to City building and electrical codes: All public telephones shall be in conformance with all appropriate codes, including electrical, and apply for permits.

5. No public telephone shall be located outside a residential use. Telephones may not be placed in front of, nor closer than six (6') feet from a window of a residential dwelling unit in any zoning district.

6. Within all Residential and Nonresidential Zoning Districts, public telephones may only be located within the right-of-way outside of nonresidential, or mixed nonresidential and residential uses subject to any other regulations found in this section.

7. Public telephones within the right-of-way may not be placed in a manner that would obstruct the normal flow of traffic to steps, porches or entrances of buildings, or uses along the right-of-way.

8. Public telephone owners shall be responsible for replacing and properly repaving that portion of any sidewalk, curbing or street pavement which may have been damaged during the installation or removal of a public telephone within the public right-of-way. All replacement of sidewalk, curbing and street pavement shall be performed in accordance with standard specifications currently in use by the City of Allentown and shall be done at the sole expense of the public coin telephone owner.

9. Separation distance: No telephone shall be closer than a radius of Five Hundred (500') Feet, measured from the nearest legally established public phone to the applicant's proposed location.

H. Bonding and Insurance

1. Every owner of public telephones located in the public right-of-way shall at all times fully indemnify, protect and save harmless, the City of Allentown, from and against all claims, actions, suits, damages and charges, and against all loss and necessary expenditures arising out of the installation and operation of the public telephone, or from the neglect or failure to maintain its equipment in good order and condition.

2. Public telephone owners shall procure and maintain insurance to protect themselves and the City of Allentown from any and all claims for damages to property and/or personal injury, including death, which may arise from their operations and the maintenance of the public telephones. Certificates of Insurance shall be filed with the Bureau of Code Enforcement and Inspections and kept in force at all times. The limits of insurance shall be subject to the approval of the City's Risk Manager. (13783 §1 10/21/99)

### 903.99 PENALTY

Any owner, lessee or other person violating any of the provisions of this Article shall, upon conviction thereof, be fined not more than Six Hundred (\$600.00) Dollars or imprisoned not more than ninety (90) days, or both. Each day's violation shall constitute a separate offense. (12456 §1 3/4/81; 13783 §1 10/21/99)

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## ARTICLE 904 TEMPORARY OBSTRUCTIONS

- 904.01 Definitions
- 904.02 Temporary Obstructions
- 904.03 Appeals to City Council
- 904.04 Fees
- 904.05 Form of Permit
- 904.06 Posting of Permit
- 904.07 Duration of Permit
- 904.99 Penalty

[History: 13359 (10/19/95) requires all dumpsters in the cartway to be marked with reflective tape.]

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### 904.01 DEFINITIONS

1. **Cartway** shall mean that portion of the right-of-way designated for vehicular use. This shall include both opened and unopened streets.

2. **Outdoor Sidewalk Cafe** is defined as any portion of a food establishment or drinking place located on a public sidewalk or open space that provides waiter, waitress or take-out service, is unenclosed, and not used for other purposes, immediately abutting in front of (or on the side of a corner property) a new or existing establishment. (13675 §1 5/21/98)

3. **Person** shall mean any individual, firm, partnership, association or corporation.

4. **Property line** shall mean that line which is coincident to and identical with the line marking the extremity of the right-of-way.

5. **Right-of-way** shall mean the width of a strip of land between property lines set aside for public use or ownership as a street, alley, crosswalk, easement or other facility.

6. **Sidewalk** shall mean that portion of the sidewalk area which is paved for pedestrian use.

7. **Sidewalk area** shall mean that area extending from the curb line to the property line which is designated by the City of Allentown for pedestrian use.

8. **Street** shall mean an area designated for vehicular traffic which includes sidewalk area, cartway and sidewalk.

9. **Temporary obstructions** shall mean any type of structure or obstruction that can be readily and easily moved, including dumpsters and vending machines, but not limited to, displays of merchandise or produce simply sitting on sidewalk area. (12457 §1 3/4/81, 13066 §1 7/22/91)

## 904.02 TEMPORARY OBSTRUCTIONS

No person shall place or cause to be placed any temporary obstruction in the right-of-way area in any city street, except upon having obtained a Use Permit, to be issued by the Director of Community Development or the Director's designee upon the following conditions: (13066 §2 7/22/91)

- A. That such temporary obstruction must be one that can be readily removed from the right-of-way area.
- B. That such temporary obstruction extend into the sidewalk area no more than one-third (1/3) the width of the sidewalk area, but in no case more than three (3') feet except for sidewalk cafes covered in section M. (13675 §1 5/21/98)
- C. Temporary obstructions must be so constructed and maintained that they will not be a hazard to the public using the sidewalk area.
- D. All dumpsters in the cartway shall be clearly marked with reflective tape. For the purposes of this section, the cartway is defined as the area between curbs. (13359 §1 10/19/95)
- E. The temporary obstruction which involves the display of merchandise or produce must be removed from the sidewalk area one (1) hour after sunset and not be put back until after sunrise, unless the area is amply lighted and an attendant is present from sunset to sunrise.
- F. Plans and specifications for the construction of all temporary obstructions must accompany application for a Use Permit and must be approved by the Division of Inspections.
- G. No Use Permit shall be issued by the Director of Community Development or his designee if, in his opinion, such temporary obstruction will create a safety hazard to the use of the sidewalk area or cartway by pedestrians or vehicles or if such temporary obstructions are not aesthetically appropriate to the surrounding area.
- H. No temporary obstruction shall be allowed on any right-of-way area, located in an area designated as a Historic District in the Codified Ordinances of the City of Allentown, with a review by and the approval of the Board of Historical Architectural Review (HARB) that said obstruction is historically appropriate and shall not detract from the historic character of the district.
- I. Temporary obstructions related to construction, demolition, rehabilitation, and alteration shall be governed by the Allentown Building Code. (12457 §1 3/4/81)
- J. For temporary obstructions other than on the Hamilton Street, no temporary obstruction will be permitted without the written approval of the property owner responsible for maintenance of the sidewalk and/or right-of-way area to be obstructed. (12610 §1 7/18/84)
- K. No vending machine other than newspaper and advertising vending machines shall be permissible hereunder. (13066 §2 7/22/91; 13339 §1 6/8/95)
- L. Publication distribution boxes such as those used for newspapers and advertising brochures shall be permitted in the public right-of-way pursuant to the following guidelines:
  - 1. No boxes or vending machines may be placed in the right-of-way area of any City street, except after having obtained a Use Permit to be issued by the Director of Community Development or the Director's designee. The Use Permit should include a Hold Harmless Clause to protect both the City and the property owner.
  - 2. Boxes will not be permitted in residential or park zones. In non-residential zones, boxes will be prohibited in the sidewalk area abutting residential properties.
  - 3. No boxes or vending machines may be placed in the right-of-way area of any City street without written permission from the owner of the abutting property.
  - 4. No boxes or vending machines may be placed in the right-of-way area of any City street without the owner furnishing a certificate of insurance evidencing that adequate liability coverage exists and that the City is added as an additional insured.

5. Boxes may not be placed on any sidewalk unless the sidewalk exceeds five (5') feet in width.
6. Boxes cannot be chained to structures owned by utility companies without their written permission.
7. No boxes or vending machines may be placed in the right-of-way area of any street unless such placement is in compliance with the Subdivision Ordinance section dealing with clear sight triangles. (13339 §1 6/8/95)

M. Sidewalk Cafes, as defined in this Article, are permissible so long as the property owner receives an annual permit and the following conditions are met:

1. The seating arrangements must be located immediately in front of (or can be on the side of in the case of a corner property) the establishment and only in that portion of the right of way abutting the property from which the sidewalk cafe is operating.

2. The seating arrangement must include a minimum walkway of five (5') feet free of any obstructions.

3. There can be no permanent fixtures established on the sidewalk or public space.

4. Tables, chairs and other items used for the sidewalk cafe can not be stored in the public right of way and must be kept off the sidewalk or public space when the business is closed.

5. In the case of alcoholic beverages, the "sidewalk cafes" must secure all necessary appropriate licenses or permits for extensions of their premises as required by appropriate agencies, including the Bureau of Health.

6. The property owner must have public liability insurance in the amount and type which meets the satisfaction of the City's Risk Manager and sign a public place indemnity agreement to the satisfaction of the City Solicitor.

7. Additional seating must comply with all applicable provisions of the Zoning Ordinance.

8. The seating arrangement shall not block any required exit discharge.

9. That the Director of the Department of Community Affairs can promulgate any necessary rules, regulations and forms necessary for carrying out this section.

10. Patrons shall not be served unless seated at a table. (13675 §2 5/21/98)

#### **904.03 APPEALS TO CITY COUNCIL**

Temporary obstructions which are not permitted under Section 904.02 may be permitted upon the expressed approval of City Council, in the form of a Resolution. (12469 §1 7/15/81)

#### **904.04 FEES**

In all cases where Use Permits are issued a charge will be established by the Administrative Information Manual (AIM). (12457 §1 3/4/81; 13339 §1 6/8/95)

#### **904.04 FORM OF PERMIT**

The Use Permit shall contain the following information:

- A. City of Allentown, Lehigh County, Pennsylvania
- B. Name and address of applicant
- C. Name and address of business
- D. Area of temporary obstruction in square feet
- E. Amount of fee paid for Use Permit
- F. Date of issue
- G. Signature of the Director of Community Development or his designee (12457 §1 3/4/81)

#### **904.06 POSTING OF PERMIT**

Upon the issuance of the Use Permit by the Director of the Community Development or his designee, the Use Permit must be displayed in a conspicuous place in front of the premises plainly visible to passerby and kept there for the duration of the permit. The applicant is responsible for the maintenance of this permit and should it be destroyed or removed, must immediately obtain another copy. (12457 §1 3/4/81)

#### **904.07 DURATION OF PERMIT**

The Use Permit shall be issued for the time period approved by the Director of Community Development or his designee. Use Permits may be secured either on a monthly or annual basis and renewable every January. The City may cancel or revoke a permit previously granted for violation of this Article. (12457 §1 3/4/81)

#### **904.99 PENALTY**

Any owner, lessee or other person violating any of the provisions of this Ordinance shall, upon conviction thereof, be fined not more than Three Hundred (\$300.00) Dollars or imprisoned not more than ninety (90) days, or both. Each day's violation shall constitute a separate offense. (12457 §1 3/4/81)

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### **ARTICLE 905 PROTECTION OF STREETS; PRIVATE DRIVEWAYS**

- 905.01 Regulation of Certain Vehicles and Mobile Equipment
- 905.02 Permits for Private Driveways
- 905.99 Penalty

#### **CROSS REFERENCES**

Curb and Sidewalk Excavations - See S. U. & P. S. 907.02 - Driveway Construction -  
See S. U. & P. S. 907.08 - Commercial Vehicles in Parks -  
See S. U. & P. S. 951.06 - Driveways - See ZON. 1377.16

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#### **905.01 REGULATION OF CERTAIN VEHICLES AND MOBILE EQUIPMENT**

##### **A. Protection of Pavement Required**

Road rollers, traction engines, well-drilling machines, trucks or vehicles of any description whatever, the wheels of which have plates, angles or metal projections of any kind whatever attached to the rims of the wheels, or any crawler type of equipment which has plates attached or metal projections of any kind, are prohibited from passage over, along or across any of the brick, asphalt or amiesite paving of the City without first having placed thereon sufficient covering or protection on the wheels or over the pavement to prevent damage to same.

##### **B. Permit; Fee**

Before any such road rollers, traction engines, well-drilling machines or vehicles of any description, the wheels of which have plates, angles or metal projections of any kind whatever attached to the rims of the wheels, or any crawler type of equipment which has plates attached or metal projections of any kind, may pass over, along or across any of the brick, asphalt or amiesite paving in the City, the owner thereof shall secure a permit from the office of the City Engineer, after having first paid the sum of Twenty (\$20.00) Dollars therefore at the office of the City Treasurer.

##### **C. Inspector to Accompany Machine**

Upon issuing of the permit, the City Engineer shall furnish an inspector who shall accompany the machine mentioned in Section 905.01(a) along its entire trip on transit. The inspector shall have complete and entire authority to protect the brick asphalt or amiesite paving over, along or across which the machine may pass. (8118 §1-3 8/7/56)

#### **905.02 PERMITS FOR PRIVATE DRIVEWAYS**

In the interest of public safety, all applications for permits for the vehicular use of private driveways and the construction and maintenance of private driveways across the sidewalks, except on Hamilton Street between Penn and Twelfth Streets, shall be forwarded to the Bureau of Engineering, Department of Operations. Such permit shall be issued by the Director of Public Works upon approval by the City Engineer and the Bureau of Traffic. All permits issued under the provisions of this

Section shall contain any conditions which in the opinion of the Director of Public Works may seem necessary to promote public safety. (9647 §1-3 10/31/61)

#### **905.99 PENALTY**

Any person violating the provisions of this Article shall be fined not more than Three Hundred (\$300.00) Dollars or imprisoned not more than ninety (90) days or both. (11995 §1 2/21/73)

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### **ARTICLE 907 SIDEWALKS, CURBS, RAMPS FOR HANDICAP AND CROSS-OVERS**

- 907.01 Duty to Construct Sidewalks, Curbs, Ramps for Handicap and Cross-overs (Driveways)
- 907.02 Failure to Comply
- 907.03 Definitions
- 907.04 Variances
- 907.05 Warrant of Survey
- 907.06 Maintenance of Points and Stakes
- 907.07 Work Orders
- 907.08 Certificate of Insurance
- 907.09 Cross-Over (Driveway) Permits
- 907.10 Handicap Curb Ramps
- 907.11 Cement Concrete
- 907.12 Concrete Curing Compound and/or Protective Coatings
- 907.13 Cold Weather Concreting
- 907.14 Concrete Curbing (Straight and Radius)
- 907.15 Sidewalk/Planter Strip/Brick Sidewalk
- 907.16 Roof Drains
- 907.17 Slabjacking (Grout Injection)
- 907.18 Inspections
- 907.19 Standards
- 907.20 Fees
- 907.21 New and Experimental Procedures
- 907.98 Severability
- 907.99 Penalty

#### **CROSS REFERENCES**

- Power to Require Sidewalk Construction - See 3rd Class §3001 (53 P.S. §38001)
- City to Construct for Failure - See 3rd Class §3002 (53 P.S. §38002)
- Emergency Repairs - See 3rd Class §3003, 3004 (53 P.S. §38003, 38004)

[HISTORICAL NOTE: City records indicate that as far back as March 29, 1932, sidewalks and footways that were in a state of disrepair were declared a nuisance and that abutting property owners within ten days of receiving a notice had to repair the sidewalk or risk a fine of \$10 and in default spend 48 hours at the city station.(2888). On March 21 1950, the City passed the first significant regulations on the construction of curbs, gutters and sidewalks in the City. The ordinance specified the nature of the aggregate; requiring machine mixing of concrete and other miscellaneous specifications. (6313) On December 7, 1956 the City required warrants of survey (8232). Permits were required for allowing vehicles to cross sidewalks for private driveways on October 31, 1961 (9647). The fees for the warrants of survey were amended on May 1, 1962 (9801). The City imposed a duty on abutting property owners to construct sidewalks at their own expense on November 27, 1962 when the City opened a public street. Ordinance 9984 also specified certain widths of sidewalks and gave the owners 30 days to construct the curb and sidewalk or the City would do it.]

#### **907.01 DUTY TO CONSTRUCT SIDEWALKS, CURBS, RAMPS FOR HANDICAP AND CROSS-OVERS (DRIVEWAYS)**

It shall be the duty of owners of property having frontage on a dedicated and opened public street or alley to construct sidewalks, curbs, handicap ramps and cross-overs (driveways) where any of the following apply:

- A. Construction of new residential or non-residential structure
- B. Additions to non-residential structures



C. Resurfacing, repaving, or other street or alley reconstruction (13823 §1 4/24/00)

D. Where deemed necessary by the City Engineer for safety reasons or where drainage problems exist

Further, it shall be the duty of property owners, as above, to construct concrete ramps, where feasible, and crosswalks when new installation of sidewalk and/or curb are made or when a replacement of same is made so as to make the transition from street to sidewalk easily negotiable for handicapped persons in wheelchairs and for other persons who may have difficulty in making the required step up or down from curb level to street level.

All such curbs, sidewalks, handicap ramps, cross-overs (driveways) and crosswalks shall be constructed and maintained at the expense of the property owner for the safety and convenience of the public in accordance with this article, and standards and specifications established and maintained by the City of Allentown, Bureau of Engineering.

All improvements in the public right-of-way shall require approval of the City Engineer and the issuance of a work order for same.

The City Engineer may waive the requirements for curbs and/or sidewalks along an alley where said alley represents only a secondary means of access to the property in question and to all other properties abutting the same alley within the block in question and where no public purpose would be served.

#### 907.02 FAILURE TO COMPLY

##### A. Maintenance

If the owners fail to construct and/or repair existing sidewalks, curbs, and/or handicap ramps within thirty (30) calendar days of the date of notice to do such maintenance from the City, the Department of Public Works, Bureau of Engineering, may perform the necessary work, and certify the same, to the City Solicitor, who shall forthwith proceed to collect the cost thereof as provided by law and to put a lien upon such premises from the time of the completion of the work, which date shall be determined by the City Engineer and certified to the City Solicitor. (13826 §1 4/24/00)

##### B. Streets and Pedestrian Safety Program

If the property owners fail to either construct new curb and/or sidewalk, apply for a curb and/or sidewalk variance under §907.04, or notify the City, in writing, of their commitment to engage a private contractor to perform the work identified in the notice, from the City, requiring them to install new curb and/or sidewalk within sixty (60) calendar days of the date of such notice, the Department of Public Works, Bureau of Engineering, may perform the necessary work and certify, to the City Solicitor, who shall forthwith proceed to collect the cost thereof, as provided by law, and to put a lien upon such premises from the time of the completion of the work, which date shall be determined by the City Engineer, and certified to the City Solicitor. (13826 §1 4/24/00)

#### 907.03 DEFINITIONS

1. **A.I.M.** Regulations shall mean the City of Allentown Administrative Information Manual. The manual is intended to disseminate City policies or procedures that are not otherwise stated in City ordinances or resolutions.

2. **Alley** shall mean a minor right-of-way providing secondary access to the side or rear of one (1) or more properties but which shall have a maximum right-of-way width of twenty-four feet (24').

3. **Bureau of Fire** shall mean the Bureau of Fire of the City of Allentown.

4. **Cartway** shall mean that portion of the right-of-way designated for vehicular use. This shall include both opened and unopened streets.

5. **City Engineer** shall mean the City Engineer of the City of Allentown or his assignees.

6. **Contractor** shall mean any person, firm, corporation, association, partnership or other form of organization which constructs or attempts to construct curbing, sidewalks, cross-overs (driveways) and handicap ramps on any street or alley (right-of-way) in the City of Allentown.

7. **Department** shall mean the Department of Public Works of the City of Allentown.

8. **Permanent obstructions** shall mean any type of structure that cannot be moved without demolishing or destroying it or any permanent change to the right-of-way area which would impede, obstruct or otherwise limit or prevent that area's use for the free flow of pedestrian and/or vehicular traffic.

9. **Person** shall mean any natural person, partnership, firm, association, utility or corporation.

10. **Property line** shall mean that line which is coincident to and identical with the line marking the extremity of the right-of-way.

11. **Reconstruction** shall mean any construction, paving, surfacing, repaving, resurfacing, repair or maintenance work which removes or disturbs any portion of the existing structure of any right-of-way. (13826 §2 4/24/00)

12. **Right-of-way** shall mean the width of a strip of land between property lines set aside for public use or ownership as a street, alley, crosswalk, easement or other facility.

13. **Sidewalk** shall mean that portion of the sidewalk area which is paved for pedestrian use.

14. **Street** shall mean a right-of-way dedicated to the public for the movement of traffic with space for utilities and providing access to abutting properties. May also be referred to as avenue, road, boulevard, expressway, court or land with a right-of-way width greater than twenty-four feet (24').

#### 907.04 VARIANCES

##### A. Sidewalks

The Allentown Planning Commission will hear requests from property owners for variances from the duties to construct a sidewalk imposed by this article. The Commission may grant variances either modifying or postponing the obligation imposed by this article up to a period of ten (10) years where:

1. The character of the neighborhood is such that the installation of sidewalks would not serve any public purpose; or

2. Where unique physical conditions make the installation of sidewalks an undue hardship, and the absence of this installation would not materially affect the public safety and conveniences.

In granting a variance, the Commission may attach such reasonable conditions and safeguards as it deems necessary to protect the public safety and convenience, including the requirement that a bond be posted where appropriate.

##### B. Curbs

An Appeal Committee shall be established, appointed and headed by the City Engineer consisting of a member of the Traffic Planning and Control Bureau, a member of the Police Department, a member of the Engineering Bureau, and a member of the Planning Bureau who shall hear requests from property owners for variances from the duties to construct curbing imposed by this article. The committee may grant variances either modifying or postponing the obligation imposed by this article up to a period of five (5) years where:

1. The character of the neighborhood is such that the installation of curbs would not serve any public purpose; or

2. Where unique physical conditions make the installation of curbs an undue hardship, and the absence of this installation would not materially effect the public safety and convenience.

3. In the opinion of the Appeal Committee the installation of the curb is not feasible due to lack of proper grades or where the installation of curb causes the construction or reconstruction of the entire street or alley.

In granting a variance, the committee may attach such reasonable conditions and safeguards as it deems necessary to protect the public safety and convenience, including the requirement that a bond be posted where appropriate.

##### C. Responsibility of Property Owner

If a variance is granted for construction of sidewalk or curb, the property owner shall still be responsible for properly grading the area and seeding as necessary. The property owner shall be responsible for continued maintenance of the sidewalk area and shall at all times keep the area suitably passable for pedestrians as determined by the City Engineer. Materials other than grass, concrete, or brick pavers are not permitted in the public right-of-way unless special permission via a permit is granted by the City Engineer.(12484 12/2/81)

#### **907.05 WARRANT OF SURVEY**

Every owner of lots or real estate or his contractor, prior to the setting or resetting of curbing, laying or relaying of sidewalks, cross-overs (driveways) and handicap ramps on any street or alley (right-of-way) in the City of Allentown, shall pay the fee as set forth in the A.I.M. Regulations and secure a Warrant of Survey from the City Engineer fixing the line and grade for the setting or resetting of curbing, the laying or relaying of sidewalks, cross-overs (driveways) and handicap ramps. Such Warrant of Survey when duly served and recorded by the City Engineer shall be sufficient authority when issued along with a permit and/or Work Order for such owner or contractor to commence and complete along such lot or ground as may be described in such Warrant of Survey, and in accordance with the regulations, rules specifications and ordinances, to set or reset curbing, lay or relay sidewalks, cross-overs (driveways) and handicap ramps for which such warrant has been granted. If construction has not been completed within the calendar year of issue a new Warrant of Survey shall be obtained.

#### **907.06 MAINTENANCE OF POINTS AND STAKES**

All points and/or stakes placed under the Warrant of Survey shall be protected, maintained and kept clear by the contractor. An inspector shall not be required to conduct an inspection if the points and/or stakes are not exposed when he arrives at the site. A charge as set forth in the A.I.M. Regulations will be made against the party named on the Work Order for each point which must be replaced or reset by the City.

#### **907.07 WORK ORDERS**

Prior to the setting or resetting or curbing, laying or relaying or sidewalks, construction or reconstructing cross-overs (driveways) and the placement or replacement of a handicap ramp on any street or alley (right-of-way) in the City of Allentown every owner of lots of real estate, or his contractor, must pay the fee set forth in the A.I.M. Regulations to secure a **WORK ORDER** from the City Engineer. Such **WORK ORDER** when duly served and recorded by the City Engineer shall be sufficient authority for such owner or his contractor to commence and complete the work in accordance with the regulations, rules and specifications set forth herein and as shall be established in the future relating to the scope of the work. If construction or reconstruction has not been started within sixty (60) days of the date of issue, the **WORK ORDER** will be required. This requirement may be waived by the City Engineer if, in his opinion, the delay was created by a public agency.

#### **907.08 CERTIFICATE OF INSURANCE**

An applicant or designee will secure a certificate of insurance from the Department and have the certificate properly executed by the applicant's insurance agency. Properly executed certificates of insurance will be filed with the Department and verify that the applicant is insured against claims for personal injury as well as against claims for property damages which may arise from or out of the performance of the excavation work, whether such work was performed by the applicant or anyone directly employed by them. Such insurance will include protection against liability arising from completed operations, underground utility damage and collapse of any property. Liability insurance for bodily injury will be in an amount not less than Three Hundred Thousand (\$300,000) Dollars for each person and Three Hundred Thousand (\$300,000) Dollars for each accident and for property damages an amount not less than Three Hundred Thousand (\$300,000) Dollars. Failure of an applicant to file a certificate of insurance will be sufficient reason for denying a permit. The applicant will save and hold harmless the City from any and all damages and liability by reason of personal injury or property damage arising either directly or indirectly from the work to be performed under the provisions of this article, irrespective of the cause of such injury or damage. Liability insurance requirements for blasting may be obtained from the City Fire Bureau. Blasting permits will be obtained from the Bureau of Fire.

#### **907.09 CROSS-OVER (DRIVEWAY) PERMITS**

Every owner of lots of real estate or his contractor, prior to the construction or reconstruction of cross-overs (driveways) will make application and pay the fee set forth in the A.I.M. Regulations for a cross-over (driveway) permit. Said application will be directed to the City Engineer for review by the Bureau of Traffic Planning and Control and the Bureau of Engineering. If the application is approved, the permit will be issued to the owner of the property, at which time all other required

permits may be obtained by the owner or his contractor. All crossovers (driveways) shall conform to the standards and specifications for commercial and residential crossovers of the Bureau of Engineering.

#### A. Commercial Cross-overs

Commercial driveways across the sidewalk area may not exceed fifty (50') feet in width unless special conditions dictate.

#### B. Residential Cross-overs

Residential driveways across the sidewalk area may not exceed thirty (30') feet in width unless special conditions dictate.

Where a property owner has been directed to lay out and install sidewalks for the first time on a property, and where a pre-existing bituminous concrete (blacktop) driveway in good repair already extends from the interior of the property or garage apron to the street cart way, the property owner may allow the blacktop driveway to remain intact and end and then continue the cement concrete sidewalk on the other side of the driveway, so long as the joint between the blacktop driveway and the cement sidewalk is appropriately matched to avoid any trip hazard or change in elevation. This exemption shall apply if the Director of Public Works, or his designee, determines that the blacktop driveway is in sound condition. (14504 7/19/07)

Variances to the above requirements can only be granted by the Bureau of Traffic Planning and Control and the City Engineer, jointly.

### **907.10 HANDICAP CURB RAMPS**

It will be the duty of the property owners to install handicap ramps at intersections, where feasible, when setting or resetting curbing. These ramps are to make the transition from the street to sidewalk easily negotiable for handicapped persons in wheelchairs and other persons who may have difficulty in making the required steps up or down from curb level to the street.

All ramps will conform to the standards and specifications maintained by the Bureau of Engineering and the American Disability Act and its latest revisions. The contractor will secure the required work orders and contact the Bureau of Engineering prior to placement of the any handicap ramps.

Permits for handicap ramps placed at locations other than intersections will require an application and will be reviewed as a crossover under Section 907.09 of this article.

If a property has existing curb and sidewalk, when it is in good condition, in the opinion of the City Engineer, and installation of a handicap ramp is required solely because of street work being performed by the City, said handicap ramp shall be initially installed at the expense of the City, however, the property owner shall be responsible for all maintenance, repair and reconstruction of the handicap ramp. (13320 §1 4/6/95)

Any property owner who was required to install a handicap ramp in 1994 and who would otherwise qualify for City installation pursuant to this paragraph, may apply for and receive a refund of the costs of construction and permits. (13320 §1 4/6/95)

### **907.11 CEMENT CONCRETE**

Cement concrete shall consist of Portland Cement, fine aggregate, coarse aggregate, water and admixtures, where required. The materials for cement concrete shall conform to the specifications and standards maintained by the Bureau of Engineering and the PennDOT Specifications Form 408 and latest revisions.

All concrete used within the public right-of-way in the City of Allentown will be subject to testing. These tests will be made by the City and as directed by the City Engineer. Concrete not meeting the specified requirements will be subject to replacement at the expense of the contractor or supplier.

### **907.12 CONCRETE CURING COMPOUND AND/OR PROTECTIVE COATINGS**

Concrete curing compound and/or protective coatings shall be applied to the surface and all exposed concrete at the specified rate and times for these materials.

#### A. Concrete Curing Compound

Concrete Curing Compound shall be a liquid membrane-forming curing compound, clear or white.

#### B. Protective Coating

Protective coating shall be an application of boiled linseed oil applied as specified. It shall be applied starting October 1 or as directed by the City Engineer.

The curing compound and protective coatings shall consist of and be applied as specified in the standards and specifications maintained by the Bureau of Engineering and the PennDOT specifications Form 408 and latest revisions.

### **907.13 COLD WEATHER CONCRETING**

Placing of concrete in the public right-of-way will be permitted during cold weather. Types of concrete, covering, insulation and protective coatings will be as specified in the standards and specifications maintained by the Bureau of Engineering. All work must be completed for the construction season as specified by the City Engineer.

Winter concreting and emergency concrete work will be permitted on a restricted basis. The Bureau of Engineering must be contacted for a special Work Order and additional requirements.

All street/gutter excavations for curing set or reset after November 1, will be the responsibility of the permittee to permanently restore. This restoration must be completed before the end of the construction season.

Where the permittee performs the permanent restoration, the City will advise the contractor of the standards and specifications which are to be followed. City inspectors will be assigned to assure work is in accordance with these regulations and standards.

Excavations not restored due to the unavailability of material, shall be temporarily restored with cold patch material. This excavation shall be maintained by the permittee until material is available for the required permanent restoration.

### **907.14 CONCRETE CURBING (STRAIGHT AND RADIUS)**

All concrete curing set or reset shall comply with the dimensions, jointing, expansion joints and finish as specified in the standards, drawings, specifications and grade plans as established and maintained by the Bureau of Engineering.

Line and grade for setting or resetting curbs shall be established by the City of Allentown. A Work Order (authorization to work) and a Warrant of Survey are required by the owner or contractor to commence work in the public right-of-way in the City of Allentown. Fees for this Work Order and Survey will be as established in the A.I.M. Regulations.

Accepted methods of installation shall be by curb forms, preferably steel or other materials rigid enough to resist springing out of shape and by slipform paving (extruded cement concrete curbing) method as specified in the standards and specifications of the Bureau of Engineering.

All concrete used for curbing shall meet the requirements for concrete, curing compounds/protective coatings or cold weather concrete as specified in the standards and specifications of the Bureau of Engineering.

### **907.15 SIDEWALK/PLANTER STRIP/BRICK SIDEWALK**

All sidewalks and/or planter strips installed or replaced in the public right-of-way shall comply with the dimensions, jointing, finish and slopes as specified in the standards and specifications as maintained by the Bureau of Engineering.

A Work Order (authorization to work) is required by the owner or contractor to commence work in the public right-of-way in the City of Allentown. Fees for this permit will be as established in the A.I.M. Regulations.

All cement concrete or brick pavers used for sidewalk/planter strip shall meet the requirements for cement concrete or brick pavers as specified in the Standards and Specifications of the Bureau of Engineering.

Blacktop placed in the sidewalk/planter strip shall be approved by the City Engineer and comply with specifications as established and maintained by the Bureau of Engineering. Blacktop sidewalk/planter strip will only be allowed in non-residential areas in the City of Allentown except that where a property owner has been directed to lay out and install sidewalks for the first time on a property, and where a pre-existing bituminous concrete (blacktop) driveway in good repair already extends from the

interior of the property or garage apron to the street cart way, the property owner may allow the blacktop driveway to remain intact and end, and then continue the cement concrete sidewalk on the other side of the driveway, so long as the joint between the blacktop driveway and the cement sidewalk is appropriately matched to avoid any trip hazard of changed in elevation. (14504 7/19/07)

#### **907.16 ROOF DRAINS**

It shall be unlawful to conduct or allow to conduct the direct drainage of roof or other waste water over and across sidewalks in the City of Allentown in such a manner as to create a public nuisance or hazard as determined by the City Engineer.

All water conducted to the street or storm sewer shall be by means of plastic pipe, formed channel or by use of a drainage swale formed in the concrete sidewalk provided such swale will not constitute a public nuisance or hazard as described above.

All methods shall meet the requirements as specified in the standards and specifications maintained by the Bureau of Engineering. All drainage devices, whether on or below the surface of the sidewalk shall be the responsibility of the property owners to construct and maintain.

#### **907.17 SLABJACKING (GROUT INJECTION)**

This article shall permit the use of pressure injection of cement grout under concrete pavements for the purpose of lifting and leveling the affected slabs to correct displacement and eliminate hazards. This method will be considered temporary since future leveling may be required if settlement should occur.

This slabjacking shall be done in accordance to the standards and specifications as maintained by the Bureau of Engineering and the PennDOT specifications Form 408 and latest revisions.

A work order will be required before any work is performed. A site inspection by the Bureau of Engineering will be made to determine feasibility of this method before the work order is issued. Final determination of feasibility shall be made by the City Engineer.

#### **907.18 INSPECTIONS**

All work performed in the public right-of-way within the City is subject to inspection by the Bureau of Engineering.

##### **A. Preliminary**

The contractor, prior to placing any concrete, shall request an inspection of his forms twenty-four (24) hours in advance. A preliminary inspection slip will be issued if the work is in accord with the established lines, grades and applicable standards and specifications.

##### **B. Final**

After concrete has been placed and finished in accordance with standards and specifications a final inspection will be conducted. If work meets all specified requirements, the contractor will be given a final approval slip.

All work not meeting specifications, standards and ordinances is subject to removal. All costs associated with such removal shall be borne by the contractor and not the property owner or the City.

#### **907.19 STANDARDS**

All standards set forth in this article shall be the responsibility of and maintained by the City Engineer.

#### **907.20 FEES**

Prior to the issuance of any Warrant or Survey, Work Order or Permit required herein, the owner or his contractor shall pay a fee for the same. These fees shall be established and charged as set forth in the A.I.M. Regulations.

The fee schedule shall be periodically revised and reviewed by the City Engineer as he deems necessary in the best interest of the City.

### 907.21 NEW AND EXPERIMENTAL PROCEDURES

The City of Allentown reserves the right to employ the use of new and experimental procedures not presently covered under this ordinance. Temporary regulations and standards may be authorized by the City Engineer for procedures which are determined to be beneficial and in the best interest of the public.

The procedures will be in effect for a period not to exceed one (1) year, at which time they will be evaluated as a valid procedure. At that time, it will be processed into an ordinance or dismissed.

All temporary procedures shall comply with the requirements of this article, except for additions for this new procedure.

The City may cancel or revoke this temporary regulation at any time it deems necessary within the one (1) year trial period.

### 907.98 SEVERABILITY

The provisions of this ordinance are severable. If any sentence, clause or section of this ordinance, if for any reason, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses or intent of the City that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause or section not been included herein.

### 907.99 PENALTY

Any person or persons violating any of the provisions or requirements of this ordinance, standards and specifications, or refusing or neglecting to comply with the same, shall forfeit and pay a fine or penalty or not more than Three Hundred (\$300.00) Dollars or imprisonment or not more than ninety (90) days or both for each offense. Also, a like penalty will be assessed for each and every day any work remains contrary to the provisions of this ordinance along with the standards and specifications set forth by the City. (13144 §1 8/6/92)

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## ARTICLE 909 LOT AND HOUSE NUMBERING

- 909.01 Definitions (15434 §1 3/14/18)
- 909.02 Numbering Determination (15434 §1 3/14/18)
- 909.03 House Numbers; Duty to Affix
- 909.04 Location and Size of Numbers
- 909.05 City Engineer to Designate Numbers
- 909.06 Permit from City Engineer
- 909.94 Enforcement
- 909.97 Violation Ticket Appeals Process (15434 §1 3/14/18)
- 909.98 Severability
- 909.99 Fines and Penalties (15434 §1 3/14/18)

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### 909.01 DEFINITIONS (15434 §1 3/14/18)

**City** shall mean City of Allentown.

**Notice of violation** is a written document issued to a person in violation of a city ordinance which specifies the violation and contains a directive to take corrective action within a specified time frame or face further legal action.

**Public Officer** means any authorized inspector, or public official designated by the Mayor to enforce the City Ordinances.

**Violation Ticket** is issued by a public officer to a person who violates a provision of this Article.

### 909.02 NUMBERING DETERMINATION (15434 §1 3/14/18)

All property numbers will be determined by the City's official map as established by the Bureau of Engineering.

### 909.03 HOUSE NUMBERS; DUTY TO AFFIX

It shall be the duty of the owner of every lot front on any of the streets of the City, when any house or building shall be constructed or built thereon, to place on it a number, the size and location of which shall be as noted in Section 909.04. (1609 §1 3/10/24)

#### **909.04 LOCATION AND SIZE OF NUMBERS**

The numbers shall be fastened on the door or other suitable place on the front of the house or building and shall be of such size that they may easily be read from the street. (1609 §2 3/10/24)

#### **909.05 CITY ENGINEER TO DESIGNATE NUMBERS**

The numbers to be placed on each and every building shall be obtained from the plans on file in the office of the City Engineer. (1609 §3 3/10/24)

#### **909.06 PERMIT FROM CITY ENGINEER**

All owners of houses in the City not already numbered or not numbered in accordance with City regulations shall procure from the City Engineer permits for the numbering of such houses, free of cost to the owners, each of which permits shall contain the number of the house and the name of the street so to be numbered. Upon receipt of the permit, the owners of the houses shall procure, place and maintain upon the same the numbers contained in the permits.

No owner of any house shall number the same or change the number thereof without first obtaining a permit therefor, and no numbers so given in the permit shall at any time thereafter be changed nor any other numbers placed on the houses than the ones contained in the permit, without the consent and approval of the City Engineer, evidenced by his permit so procured and given as aforesaid. ( 676 §1 4/30/18)

#### **909.94 ENFORCEMENT (15434 §1 3/14/18)**

- A. The provisions of this Article shall be enforced by any other public officer authorized to enforce ordinances.
- B. Any violation of the provisions of this Article may be cause for a citation, a violation ticket and/or a notice of violation to be issued to the violator.
- C. A notice of violation or violation ticket shall be served upon a violator by handing it to the violator, by handing it at the residence of the person to be served to an adult member of the household or other person in charge of the residence, by leaving or affixing the notice or violation ticket to the property where the violation exists, by handing it at any office or usual place of business of the violator, to his/her agent or to the person for the time being in charge thereof, or by mailing the notice to the violator's address of record.
- D. Each day a violation continues or is permitted to continue may constitute a separate offense for which a separate fine may be imposed.

#### **909.97 VIOLATION TICKET APPEALS PROCESS (15434 §1 3/14/18)**

- A. A person in receipt of a violation ticket may appeal to the Bureau of Public Works by filing a request within ten (10) days of receipt of the violation ticket.
- B. A Hearing Officer, designated by the Public Works Director, may uphold the Appeal, deny the Appeal or may modify the violation ticket and/or any associated costs, fines or penalty amounts.

#### **909.98 SEVERABILITY (15434 §1 3/14/18)**

If any provision, paragraph, word, section or subsection of this Article is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, or subsection shall not be affected and shall remain in full force and effect.

#### **909.99 FINES AND PENALTIES (15434 §1 3/14/18)**

- A. Violation Ticket Fines
  - 1. Any offense of a violation of this Article, the violation tickets shall be issued in the amounts of One Hundred (\$100) Dollars.
  - 2. Any persons who receives a violation ticket for any violation of this article, may within ten (10) days, admit the violation, waive a hearing and pay the fine in full satisfaction.



## B. Violation Ticket Penalties

1. If the person in receipt of a one hundred (\$100) dollar violation ticket does not pay the fine or request a hearing within ten (10) days, the person will be subject to a twenty-five (\$25) dollar penalty for days eleven (11) through twenty (20).

2. Failure of the person to make payment or request a hearing within twenty (20) days of a violation ticket shall make the person subject to a citation.

## C. Citation Fines

Any person violating the provisions of this Article shall be fined not more than Three Hundred (\$300.00) Dollars or imprisoned not more than ninety (90) days, or both. (11995 §1 2/21/73)

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## ARTICLE 911 SHADE TREES

- 911.01 Definitions
- 911.02 Shade Tree Commission
- 911.03 Permits
- 911.04 Prohibited Activities
- 911.05 Trees in Public Land or in a Public Right of Way (15277 § 3/16/16)
- 911.06 Trees on Private Property
- 911.07 Licensing System
- 911.08 Compliance with Zoning Ordinance
- 911.09 Shade Tree Fees
- 911.99 Penalty

Editorial Note: Ordinance 14863, passed in December of 2010, to become effective January 1, 2011, substantially revised the Shade Tree Ordinance and established certain fees (14863 §1 12/3/10).

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### 911.01 DEFINITIONS (15277 § 3/16/16)

Words used in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular. As used in this Article certain terms are defined as follows:

1. **ADA** - the Americans with Disabilities Act of 1990
2. **Arborist License** - the City license issued under the provisions of Article 911.07.
3. **Caliber** – for existing trees, the diameter of a tree trunk measured at a point four and one-half (4 1/2) feet from the ground surface. For all new landscape trees planted in accordance with any City ordinance, the diameter of a tree trunk measured at a point six (6) inches above the ground surface.
4. **Champion Tree** – any tree designated by the Construction Operations Manager or designee as such, due to unique qualities of size, location, age or other significant factors.
5. **City** – the City of Allentown, Pennsylvania.
6. **Commission** means the Shade Tree Commission of the City of Allentown.
7. **Cost of Cure** – the total cost for the replacement of a given tree with one of equal size and condition as calculated by the standards of the International Society of Arboriculture (ISA).
8. **Crown Density** – the ratio of the size of live branches in a tree to the total space occupied by the tree crown.

9. **Diameter Breast Height (DBH)** – the standard height above the surface of the ground for measuring the circumference, diameter or radius of a tree. For all existing trees, the diameter breast height is set at four and one-half (4 1/2) feet.

10. **Emergency Work** – any tree service performed for the purpose of preventing or mitigating damage to any trees or other property due to a sudden or unexpected tree hazard that threatens to or actually does cause such damage.

11. **Historic Tree** – any tree with a significant and documented historic event associated with such tree or with the property upon which the tree is located.

12. **Improvements Agreement** – any contract between the City and any property owner, developer or their representative or agent which memorializes the rights and obligations of the parties with respect to the installation of any property improvements required by any City Ordinance.

13. **Irrevocable Protective Covenant** – a binding obligation, running with the land, in favor of the City and binding the property owner and all successors in interest to maintain and protect the trees specified in the covenant.

14. **Land Development** –

a. The improvement of one (1) lot, or two (2) or more contiguous lots, tracts or parcels of land for any purpose involving:

1). A group of two (2) or more buildings, or

2). The division or allocation of land or space between or among two (2) or more existing or prospective occupants by means of, or for the purpose of, streets, common areas, leaseholds, condominiums, building groups or other features.

b. A subdivision of land; land development shall include but not be limited to the constructing, installing, placing, planting or building of surface and/or subsurface structures, utility lines, shopping centers and malls, golf courses, residential structures, industrial complexes, schools, roads, parking areas or any other similar activity.

15. **Landscape Tree** – a single stemmed tree of 2.0”– 2.5” minimum caliber, with normal specie characteristics, no co-dominant stems, free of insects and disease with a root ball meeting the current Nursery Standards for the size of the tree. The lowest branch shall have a minimum clearance of seven (7) feet above the surface of the ground.

16. **Large Tree** – any tree with a height of forty-five (45) feet or more.

17. **Living Hazard** – any tree that is so structurally weakened by any cause that all or any significant part of tree is likely to fall.

18. **Lot** – A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

19. **Lot Line** – a line dividing one lot from another, from a street or from any public place.

20. **Maintenance or maintain** - clipping, pruning, fertilizing, spraying, treating for disease, insects or injury and any similar work done to promote health, growth or beauty to trees.

21. **Medium Tree** - any tree with a height of at least thirty (30) feet, but less than forty-five (45) feet.

22. **Nuisance** – the following are declared to be a nuisance under this Article:

a. Any physical condition regarded as a public nuisance or attractive nuisance at common law.

b. Any condition, which interferes with the normal use or enjoyment of any property or endangers human health, safety or welfare.

c. Any insect or disease infestation.

d. Any discharges, flowers, fruits, berries or other seeds which create noxious odors, or other offensive conditions.

e. As further described in Title 53 P.S. Municipal and Quasi-Municipal Corporations, Part V. Cities of the Third Class, Chapter 81, Third Class City Code, Article XXIII, Public Health, B Abatement of Public Nuisances § 37320.  
**Definition**

23. **Person** - any natural person, firm, partnerships, association, corporation, company or any other organization of any kind.

24. **Planting** means putting or setting into the ground. (12241 §1 4/6/77)

25. **Planting Strips** – the unpaved area between the sidewalk and the curb.

26. **Public right of way** – the strip of land between property lines set aside for public use or ownership as a street, alley, crosswalk, easement or other facility.

27. **Public Trees** – any shade or ornamental trees located within any right-of-way.

28. **Remembrance Tree** – any documented tree that was planted as a memorial to any person or significant event.

29. **Right-of-Way** – The width of a strip of land between property lines set aside for public or private use or ownership as a street, alley, crosswalk, easement, or other facility.

30. **Shade tree** - any trees, shrubs, and woody vegetation in a public right of way.

31. **Small Tree** - any tree with a height of less than thirty (30) feet.

32. **Street** – A right-of-way dedicated to the public for the movement of traffic with space for utilities and providing access to abutting properties.

33. **Street Tree Management Plan** – a written plan that defines future objectives for sustaining the street trees. Such plan shall be derived from collected field data and inventories of existing trees, shall provide specific recommended arboricultural practices for the various different areas and growing conditions found in the City and shall seek to identify and maintain the benefits of the individual and collective trees in the urban forest.

34. **Street Line** – A line which separates the right-of-way from the lot upon which the street abuts.

35. **Tree Protection Zone Plan** – a plan designed to protect designated tree root structures, trunks and crowns from damage during construction or earth moving activity in proximity to the protected tree. At a minimum, such plan will provide for the protection of the entire tree structure within the tree drip line by specifying any necessary fencing, machinery restrictions and procedures to prevent soil compaction.

36. **Tree Value** –systematic approach to secure a value by using four major factors: size, species, condition, and location. With the four factors established a Cost of Cure or Trunk Formula can be implemented to the result of a value for a tree. Formulas are based upon “Guide for Plant Appraisal (9<sup>th</sup> edition) by the Council of Tree and Landscape Appraisers and the ISA.

37. **Shade Tree Fees** – the fund specifically established as a separately budgeted line item for the purposes set forth in this article.

38. **Urban Forest** – the aggregate population of all trees contained within the limits of the City.

39. **Urban Forester** – the person designated by the Construction Operations Manager to enforce the provisions of this Article.

40. **Urban Forestry Management Plan** – a written plan that defines future objectives for sustaining the urban forest. Such plan shall be derived from collected field data and inventories of existing trees, shall provide specific recommended arboricultural practices for the various different areas and growing conditions found in the City and shall seek to identify and maintain the benefits of the individual and collective trees in the urban forest.

## **911.02 SHADE TREE COMMISSION (15277 § 3/16/16)**

### **A. Membership**

1. The Shade Tree Commission is hereby created in accordance with the Municipal Planning Code and shall consist of a total of eight (8) members, five (5) appointed Commissioners and three (3) ex officio Commissioners.
2. The appointed Commissioners shall be five (5) City residents who are knowledgeable in the subject of shade trees and their maintenance.
3. The normal term of office for an appointed Commissioner is five (5) years. The initial Commissioners shall be appointed to staggered terms of one (1) year, two (2) years, three (3) years, four (4) years and five (5) years respectively. On the expiration of the term of any Commissioner, he shall be reappointed or a successor shall be appointed to serve a new term of five (5) years.
4. Commissioners shall be appointed by the Mayor with the advice and consent of Council.
5. *Ex-officio* Commissioners shall be the Mayor (or his designee), the Construction Operations Manager, and one (1) member of Council to be designated by the President of Council.
6. The Shade Tree Commission shall promptly notify the Mayor of any vacancies, which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.
7. Any Commission member may be removed at the discretion of the Mayor with the advice and consent of Council.

### **B. Organization**

1. The Commission shall elect from its appointed Commissioners a chairman who shall serve an annual term and who may succeed himself.
2. For the conduct of any meeting and the taking of any action, a quorum shall not be less than a majority of the voting members of the Commission. Majority vote of the quorum is necessary for the taking of action. The ex-officio members shall not have a vote in Commission issues nor be counted as part of the quorum.
3. The Commission shall keep full records of its business and shall submit a report of its activities to the Mayor and City Council at least once a year.
4. The Commission shall have the power to establish its own procedural rules, not inconsistent with this Article. Such rules may provide for the internal governance of its operations, to include provisions for a secretary or other officers.

### **C. Powers and Duties**

1. The Commission shall act as an advisory body to the Mayor on all matters concerning shade trees within or encroaching upon public land or public right of way. The Mayor shall consider the advice of the Commission on matters concerning the application of this Article. The Commission shall carry out any duties and responsibilities conferred upon it by the Mayor including those herein conferred.
2. The City, having exclusive custody and control of all shade trees in public lands and the-public right of way, and may plant, remove, maintain and protect such shade trees. The Commission shall give recommendations and advice as to species selection, planting, maintenance, preservation or removal of trees on all public lands and public rights of way.
3. The Commission shall develop and establish an Urban Forest Management Plan to determine the streets and sidewalks to be planted as well as the varieties to be planted thereon, and shall have the right to establish rules and regulations pertaining thereto with the consent and advice of the Mayor. It is the responsibility of the Construction Operations Manager, or his designee, to enforce the regulations of the Commission.

4. The Commission to encourage and advise shall require proper planting and maintenance of trees by private persons and concerned agencies to advise private persons and concerned agencies to plant according to the Urban Forestry Management Plan when planting shade trees in the public right of way and/or public lands. The Commission shall make public advice on the desirable species and cultivars of trees, methods of planting and maintaining trees and other educational information about trees.

5. The Commission shall work with all other concerned agencies in the planning of trimming, planting, transplanting and removal of shade trees in public lands and public rights of way.

6. In order to document and illustrate the benefits of the Urban Forest, the Commission shall pursue, update and maintain a current inventory of the Urban Forest.

#### 7. Plan Review

a. The Commission shall review the planting plan of shade trees within any new sub-division and/or land development for conformity with the Urban Forestry Management Plan.

b. All such planting shall be done in accordance with the planting specifications governing shade trees contained herein and such regulations as may be issued under the provisions of this Article.

c. The Shade Tree Commission shall review and provide recommendations regarding new subdivisions and/or land developments to the Planning Commission.

d. The Shade Tree Commission shall review and provide recommendations regarding all proposed work within public lands or the public right-of-way including, but not limited to, sidewalk construction and replacement, utility installation, replacement or repair and driveway construction. Such review shall be coordinated by allied city departments such as Engineering, Public Works, Building and Zoning.

8. The Commission shall have the power to issue rules and regulations regarding the details of the administration and enforcement of the powers and duties granted by this Article. Such regulations shall include recommending the fees charged for all permits issued under this Article.

### **D. Notification that Work is to be Performed**

1. The Commission shall provide at least ten (10) days written notice to any property owner directly adjoining any scheduled planting, transplanting or removal of shade trees in public lands or public right-of-way.

2. The Construction Operations Manager may declare work done to rectify a public nuisance caused by weather, accident or any hazardous defects within a tree to be emergency work. In the case of emergency work, written notice to adjoining property owners is not required.

### **E. Subdivisions and Land Development**

1. All Land Developments, Subdivisions and other development applications shall comply with the provisions of this Article.

2. Pursuant to the City of Allentown Codified Ordinance Section 1375.03 I 3 and Section 1375.04 E 9, all subdivision and land development plans approved in the City of Allentown shall be compliant with the provisions of this Article and the regulations issued under said Article.

### **F. Public Works within Public Lands or a Public Right-of-Way**

1. Any proposed change in width in a public street right-of-way or any proposed street improvement shall, where feasible, include allowances for shade trees.

2. Plans and specifications for planting such areas shall be integrated into the general plan of improvements in compliance with the standards set forth in this Article and the regulations issued under this Article.

3. It shall be the duty of the City Engineer to coordinate the design of all such street improvements with the Shade Tree Commission, prior to completion of the final plans.

## **G. Private Works within the Public Right-of-Way**

1. Any privately conducted modifications, alterations, renovations or construction within the public right-of-way shall be subject to review by the Commission for compliance with the standards set forth in this Article and the regulations issued under said Article.

2. It shall be the duty of the Director of Community and Economic Development to include in the permit review process a review for compliance with the standards set forth in this Article and the regulations issued under said Article.

### **911.03 PERMITS (15277 § 3/16/16)**

A. No person, without first obtaining a permit from the Construction Operations Manager, shall:

1. Prune, spray, plant, remove or cut any shade tree in public lands or a public right of way.

2. Attach a guy rope, cable, electric wire or other fixture to any tree, tree guard or support thereof in public lands or a public right-of-way. Temporary attachments shall be allowed if a permit is issued. The temporary attachments shall cause no harm to the tree and there shall be a prescribed timetable for removal of the temporary attachments.

3. Excavate, trench, tunnel, or bore, within the drip-line of any tree. Permit applications for such work will contain at a minimum an excavation plan indicating the tree protection zone and maintenance precautions to be used during construction.

4. Install lighting within tree crown. Any permit issued for tree crown lighting shall include a specified time of installation and time of removal, not to exceed one (1) calendar year.

B. The Commission shall by regulation set the application procedure, technical requirements and recommend fee schedules for all permits issued under this Article and the regulations issued under said Article.

C. Permit Time Requirements

1. A permit shall be secured not less than five (5) days in advance of the time the work is to be done.

2. All work done under any permit issued under this Article shall be completed within the time period specified on the permit, not to exceed sixty (60) days from the date issued.

3. The Construction Operations Manager may extend the duration of the permit for good cause shown.

4. The Construction Operations Manager or his designee shall be notified within five (5) days after completion of the work to allow for inspection.

D. A person who is refused a permit may make an appeal to the Commission in writing within twenty (20) days following the denial. Following a notice and hearing before the Commission, the Commission shall issue a written decision within twenty (20) days. Further appeals of Commission decision shall be taken under the provisions of the Local Agency Law, 2 Pa.C.S.A. § 751 *et. seq.* to the court of common pleas of Lehigh County.

### **911.04 PROHIBITED ACTIVITIES (15277 § 3/16/16)**

No person under any circumstances shall:

1. Cut, break bark or otherwise injure or disturb any tree, tree guard or support thereof in public lands or a public right-of-way;

2. Fasten or maintain any sign on any tree or tree guard support thereof in public land or a public right-of-way;

3. Reduce the size of an existing tree pit, planting strip, or root zone of an existing tree in public land or the public right-of-way.

4. Deposit any stone, asphalt, gravel, cement, lumber or other material in such a way as to obstruct the free access of air and water to the roots of any tree in public land or a public right-of-way or cause compaction of any soil in public land or a public right-of-way;

5. Allow any tree in public land or a public right-of-way to be injured or removed during the erection, repair, alteration or removal of any building or structure. No person in charge of such erection, repair, alteration or removal shall leave any tree in public land or in a public right-of-way in the vicinity of such a building or structure without such good and sufficient guards or means of protection as shall prevent injury to the tree, arising out of or caused by the erection, repair, alteration or removal. In all such cases, a tree protection zone plan shall be required as a part of the building permitting process.

6. Cause or allow any boiler, heater, machine or device generating fumes, fires, gas, smoke or vapor to remain under or adjacent to any tree in public land or in a public right-of-way, or cause or allow it to be done.

7. Fasten a bicycle, carriage, animal or motor vehicle of any kind to any shade tree, tree guard or support thereof;

8. Authorize or procure any gas, hot water, steam brine water, oil, dye or other substance harmful to tree life to, life or health or to lay, pour, flow, leak or drip on or into the soil about the base of a tree in any public land or public right of way;

9. Build or kindle a fire near to any tree on any public land or public right of way, so as to endanger the trunk, limbs, foliage or roots of such shade tree;

10. Interfere, cause, authorize or procure any interference with the agents or employees of the City while they are engaged in:

a. The planting, cultivating, mulching, pruning, spraying or removing of trees, or

b. removing stone or cement sidewalk or other materials or substances in the open ground maintained for the protection and care of any shade tree in public land or the public right of way.

11. Attach any advertisements to any tree or shrub in any public land or public right of way. (12241 §1 4/6/77)

#### **911.05 TREES IN PUBLIC LAND OR IN A PUBLIC RIGHT OF WAY (15277 § 3/16/16)**

##### **A. Tree Requirements:**

1. **General** - Shade trees shall be planted within the public right-of-way of all subdivisions, land developments, and improved properties including land abutting existing streets as required herein. The type and spacing of shade trees shall adhere to this Article and regulations issued under said Article. Shade trees shall be planted by the developer or owner in accordance with the approved plan and within the time period specified by the improvements agreement.

2. **Types of trees permitted** – Trees shall be of nursery stock quality of a species approved by the Shade Tree Commission, grown under the same climatic conditions as the subject property. Site locations, land use, topography, natural features and historical features shall be considered by the developer or owner and the Commission in selecting and approving species. Guidelines for selection shall be specified by regulation.

3. **Quality and Size** – Trees shall be of symmetrical growth, single stemmed, free of insect pests and disease, and deemed durable by regional nursery standards. Trees shall measure 2 (two) to 2-1/2 (two and one-half) inches caliber measured six (6) inches above grade, shall have a root ball to the approved Nursery Standards for the size of the tree with visible root flare upon removal of degradable burlap and twine. Trees shall have a minimum clear branching height of 7 (seven) feet above grade level at the time of planting. The Commission may modify the size requirements of trees upon presentation of unique and particular circumstances.

4. **Quantity and Location of street trees** – In all subdivisions, land developments and or improved properties, shade trees shall be planted within the street right-of-way at a quantity of not less than 1 per 40 feet of frontage on any public right-of-way, but in no case shall the required number of trees be less than one (1). Existing Shade Trees within the right-of-way may count toward this requirement provided that they are appropriate for the site/development, comply with all other aspects of this ordinance, and can be adequately protected during construction. The spacing of trees may vary depending on species and location specifics but in no case shall be more than forty (40) feet on centers with exceptions relative to vehicular sight distance,

under ground utility conflicts, ADA requirements or other circumstances determined to be necessary by the Shade Tree Commission. In the event the required number of trees cannot be planted due to circumstances identified in this section, the developer or owner shall be responsible for one of the following:

- a. Install the required number of shade trees along a nearby right-of-way.
- b. Install the required number of shade trees on private portions of the property with irrevocable protective covenants acceptable to the Commission.
- c. A combination of the two options above or;
- d. Pay the City of Allentown the equitable cost fee. Such funds to be used exclusively for new tree planting within the City as directed by the Commission.

5. **Tree Protection** – Before any earthwork, construction work or approved tree removal shall commence, in connection with any subdivision, land development or land improvement, fencing or guards shall be placed around all existing shade trees to be protected to insure that there is no unnecessary encroachment with the tree protection zone by changing grade, trenching, stockpiling of building materials or topsoil, parking and/or circulation of vehicles or construction equipment contributing to the compaction of the soil and roots. Such tree protection shall be accomplished with the specifications as outlined in the Rules and Regulations.

6. **Tree Replacement** – The developer or owner shall make every effort to preserve and maintain all existing shade trees within the right-of-way and develop site designs and plans in order to accommodate such trees. If a tree is approved for removal it must be replaced on a one-for-one basis.

a. Any shade tree(s) or tree(s) encroaching into a public right-of-way or on public property shall be preserved if it can be classified as:

- 1). A **Historic Tree**, with a historic background, or
  - 2). A **Champion Tree**, with significant features of the species, including size, age or specie traits
- or
- 3). A **Remembrance Tree**, planted as a memorial to an individual or event.

b. Only upon exhausting all remedial arboriculture practices under ISA ANSI A300 or the equivalent best design practices, will a removal permit will be issued for the removal of a tree protected under section 911.05A6a.

c. **Approved removal** – if the removal of existing shade trees was shown on an approved plan, as a tree to be removed, and if proposed replacement trees were shown on such approved plan, then the total number of replacement trees shall be not less than the total number of removed trees. For each existing shade tree approved for removal, the developer or owner shall provide and install one shade tree under the requirements of this Article.

d. **Unapproved removal** – if an existing shade tree is removed without either prior approval as part of an approved plan, or a property owner does not possess either a valid permit for such tree removal, or a valid notice authorizing such tree removal, then:

- 1). The owner shall be required to replace such trees as provided herein.
- 2). The replacement of trees shall be governed by a rule of replacing each inch of tree diameter removed with one inch of replacement tree diameter, such that for each inch of existing shade tree removed, as measured 4.5 feet above grade, in violation of this chapter or in violation of a plan approval, the developer or owner shall provide and install shade trees with a total sum of the diameters, as measured 4.5 feet above grade, equivalent to the diameter of the tree or trees removed.
- 3). The Construction Operations Manager or his designee shall make all determinations of diameter for any trees removed without authorization.



4). If the tree removed in error/violation is not available for measurement and if the tree in question cannot be identified by locale and if its size was not previously identified, the diameter will be established as twenty-four (24) inches.

e. In the event the required numbers of replacement trees cannot be planted due to circumstances relative to vehicular sight distance, under ground utility conflicts, ADA requirements or other circumstances determined to be necessary by the Shade Tree Commission, the developer or owner shall be responsible for one of the following:

- 1) Install the required number of shade trees along a nearby right-of-way.
- 2). Install the required number of shade trees on private portions of the property with irrevocable protective covenant.
- 3). A combination of the two options above.
- 4). Pay the City of Allentown the equitable cost fee. Such funds to be used exclusively for new tree planting within the City as directed by the Commission.

7. **Inspection** – Upon completion of any required tree installation, developer or owner shall submit a written request for a final inspection to the Construction Operations Manager or designee. The inspector shall insure that all trees are installed per the issued permit or the approved plan and will update the tree inventory.

#### B. Care Provisions

1. The owners of any property abutting a public right of way that has shade trees growing in the public right of way, shall trim each tree within the current arboricultural standards (ANSI A300) or cause such trees to be pruned of all branches interfering with the public right-of-way. At a minimum, such trees shall be trimmed to maintain a minimum height of ten (10') feet above the right of way and sixteen (16') feet above the street, highway or avenue, or higher to maintain a clear sight triangle or other publicly necessary unobstructed view.

2. At the time of planting, all trees shall have a minimum branch clearance of seven (7) feet from the ground to the lowest branch. During the next five (5) years from date of planting, the property owner shall perform careful crown and structure pruning not to exceed twenty-five (25) percent of crown mass at any one pruning, to achieve a minimum height of ten (10) feet above right-of-way and sixteen (16) feet above streets, highways or avenues or higher if required to maintain a clear sight triangle or other publicly necessary unobstructed view.

3. If any property owner neglects or refuses to prune any shade tree as required by this Article upon notice by mail from the City and after the expiration of the time limit specified on the notice, the City may cause such pruning to be done at the expense of the owner. The entire cost thereof shall be paid by the property owner within thirty (30) days. If not paid by the property owner within thirty (30) days, a lien upon such premises and a claim therefore shall be filed and collected by the City Solicitor in the same manner as municipal claims are filed and collected.

#### C. Notice to Remove or Remedy

1. The Construction Operations Manager or designee shall provide a Notice to Remove or Remedy by first class mail to the owner of any property abutting a public right-of-way that has a shade tree growing in the public right-of-way, which is determined by the Construction Operations Manager or designee to be a risk to the life, health, safety or property of the public, or which is afflicted with any contagious disease or insect infestation, or otherwise is a nuisance.

2. The Notice to Remove or Remedy shall include:

- a. The property address and owner's name as shown on the City's property ownership records.
- b. A brief description of the condition that requires a remedy.
- c. A time period for compliance, not to exceed 30 days.

d. A statement that the Notice may be appealed to the Commission along with contact information for initiating an appeal.

e. A statement that failure to comply may result in criminal or civil action and the completion of the work required, by the City, with the costs to be collected from the property owner.

f. A list of all current City Arborists' Licenses as issued under Section 911.07.

3. The Construction Operations Manager or designee shall be authorized to grant reasonable time extensions upon request.

4. If the property owner neglects or refuses to remove or remedy such tree as required by this Section, within the time period specified in such notice, the City may cause such removal to be done at the expense of the property owner; and the entire cost including an administration fee of \$300.00 plus \$5.00 per day non compliance penalty fee thereof shall be paid by the property owner within thirty (30) days. If not paid by the property owner within thirty (30) days, a lien upon such premises and a claim therefore shall be filed and collected by the City Solicitor in the same manner as municipal claims are filed and collected.

5. Any removed tree shall be replaced in accordance with Article 911.05, Section 6. Tree replacement will be at the the property owner's expense as part of the cost of compliance.

#### D. Liability for Damage

1. Any person who inflicts damage to a tree in public land or in a public right of way, either willfully or negligently, shall be liable to the City for costs of professional care in the treatment of the tree wounds.

2. If the tree dies within three (3) growing season as a direct result of such damage, or if the damaged tree is rendered unsuitable and condemned by the City, then the person responsible shall pay:

a. the current appraised tree value,

b. all costs for the removal of the tree and its stump,

c. all costs of replacing # the tree with a young tree of approved specifications,

d. all costs of any required maintenance including watering, stake removal, fertilizing and pruning.

3. All work under this subsection shall be performed by the City or contracted by the City, with all costs assessed to the responsible person.

4. If the damage described above shall be willful, then the responsible person shall also be subject to the penalties hereinafter provided for violations of this Article. (12241 §1 4/6/77)

### **911.06 TREES ON PRIVATE PROPERTY (15277 § 3/16/16)**

A. Any shade tree or parts thereof growing upon private property but overhanging or interfering with the use of any street, highway, avenue or any public right of way in the City, and which, in the opinion of the City, endangers the life, health, safety or property of the public, is hereby declared a public nuisance.

B. A Notice of Public Nuisance shall be sent by first class mail to any property owner declared to have a public nuisance by the Construction Operations Manager or the designee. Such Notice shall comply with the requirements set forth in Section 911.06 C 2.

C. If the owner of any shade tree declared to be a public nuisance neglects or refuses to correct or remove the shade tree upon notice by mail from the City within the time limit specified on the notice, not to exceed thirty (30) days, the City may cause such correction or removal to be done at the expense of the owner, plus penalties and an administrative cost of \$300. The entire cost thereof shall be paid by the property owner within thirty (30) days. If not paid by the property owner within thirty (30)

days, a lien upon such premises and a claim therefore shall be filed and collected by the City Solicitor in the same manner as municipal claims are filed and collected. (12241 §1 4/6/77)

#### **911.07 LICENSING SYSTEM (15277 § 3/16/16)**

A. All pruning, cutting, removal, spraying, fertilizing and arboricultural procedures to trees and shrubs in the public right of way shall be done only by a person holding a City Tree Surgeon's License, except as hereinafter provided for property owners.

##### **B. Arborist's License**

1. A City Arborist's License (License) shall only be issued to individuals who have passed the required examination prepared by and administered by The International Society of Arboriculture (ISA) and are thereby certified as ISA Certified Arborists.

2. Each License shall bear a unique City Arborist Number and the name and street address of the License holder.

3. All applicants for a License shall make application and pay a fee. The Commission shall set the manner of application and fee schedule by regulation.

4. A yearly license fee shall be levied for each License. Licenses shall be renewed yearly upon presentation of current ISA certification.

5. The Commission may revoke, suspend, or refuse to renew any License, if the Licensee has failed to meet the professional standards of ISA Certified Arborists, lost ISA certification for any reason, failed to perform to the current ANSI A300 Standards and ANSI Z133 Safety Standards or for other good cause shown.

6. At the time of adoption of this ordinance current Tree Surgeon Licenses shall remain valid until time of renewal or six (6) months from the time of this ordinance's adoption, whichever is greater.

##### **C. Property Owner Exemption**

1. Minor tree work may be done by an individual property owner to trees or shrubs planted in the public right of way adjacent to his property, provided he has obtained a permit from the Commission.

2. The Commission shall advise the property owner whether or not the proposed work is minor. The property owner shall comply with accepted pruning standards ANSI 300.

##### **D. Additional Regulations**

1. The Commission may adopt reasonable rules and regulations governing the conduct of business by License holders.

2. Such regulations shall protect the public health and safety, and comply with all other State, Federal, or other lawful regulatory requirements.

3. No License holder shall violate, or neglect to comply with any such rules or regulations.

##### **E. Name and City Arborist Number on Vehicles and Equipment**

1. Each automobiles, truck, or other vehicles operated by any License holder used in such business, shall have the name and City Arborist Number of such License holder displayed on both sides thereof in plain and legible figures and letters not less than three (3") inches in height, which shall be kept in such condition as to permit the same to be readily distinguished and read at a distance of at least sixty (60') feet. It shall be unlawful and grounds of for revocation of the license for any License holder to operate any such vehicle upon the streets, alleys or other public ways within the City without such designation being so displayed thereon. (12241 §1 4/6/77)

#### **911.08 COMPLIANCE WITH ZONING ORDINANCE (15277 § 3/16/16)**

All planting of shade trees in public right of way shall be in compliance with the Zoning Ordinance or any amendments thereto. (12241 §1 4/6/77)

**911.09 SHADE TREE FEES (15277 § 3/16/16)**

A. There shall be established a unique budget line number, entitled 'Shade Tree Fees' for the purposes set forth in this Article.

B. The 'Shade Tree Fees' line item shall be administered by the Commission exclusively in the manner and for the purposes set forth in this Article and the regulations adopted under said Article.

C. The 'Shade Tree Fees' line item shall be the repository for all funds received from:

1. Permit Fees and Inspection fees for Permits issued under this Article;
2. Initial and Annual City Arborist's License fees;
3. Fines, penalties and restitution collected for violations of this Article;
4. Administrative Fees collected for administering the provisions of this Article;
5. Damages collected under Section 911.05 D;
6. Equitable Cost Fees;
7. Grants, gifts and bequests given to the City for any purpose relating to trees.

D. The 'Shade Tree Fees' line item shall be expended only for:

1. Reimbursement to the City for the expense incurred either internally by the City, for work done by City employees, or for the actual cost of contracting out work done by non-City employees for all work done under the provisions of this Article to include at least:

- a. Tree replacement of any kind;
- b. Tree removal, pruning or other maintenance;
- c. Professional services;
- d. Administrative expenses for administering the provisions of this Article;
- e. Grant matching expenses;
- f. Professional training, education and certification;
- g. Public education materials related to Urban Forest issues.

**911.99 PENALTY (15277 § 3/16/16)**

A. Violation of any provision of this Article is a Summary Offense.

B. Any person violating any provisions of this Article shall be fined not more than Five Hundred (\$500.00) Dollars for each infraction, plus restitution in an amount at least equal to the appraised value of the tree involved, plus cost of cure as obtained from Certified Arborists or imprisoned not more than ninety (90) days, or both. (12241 §1 4/6/77)

C. For continuing violations of this Article, each day that the condition continues shall be a separate offense.

D. The penalties contained in this section are in addition to any other remedies at law or in equity.

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**ARTICLE 912  
OVERHEAD UTILITY PERMIT ORDINANCE**

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- 912.01 Definitions
- 912.02 Initial License for Installation of Utilities
- 912.03 License to Reset, Replace or Remove Existing Equipment
- 912.04 Designation of Poles
- 912.05 Locations to be Fixed
- 912.06 Regulations and Standards
- 912.07 Interference with Public Right-of-Way
- 912.08 Consolidation
- 912.09 Repair of Street and Sidewalk
- 912.10 Indemnification; Insurance
- 912.11 Inspection of Poles; Replacement Poles
- 912.99 Penalty

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**912.01 DEFINITIONS**

For the purposes of this Article the following definitions shall apply:

1. **Department** shall mean the Department of Public Works.
2. **Director** shall mean the Director of Public Works or designee.
3. **Person** shall mean any individual, firm, partnership, association or corporation.
4. **Right-of-way** shall mean the width of a strip of land between property lines set aside for public use or ownership as a street, alley, crosswalk, easement or other facility. (12510 §1 6/16/82)

**912.02 INITIAL LICENSE FOR INSTALLATION OF UTILITIES**

No person shall erect any utility pole, wire, cable or guy wire in or upon any public right-of-way within the corporate limits of the City of Allentown without first applying for and securing a license to do so.

All applications for license shall be in such form and shall provide such information as may be required by the Director.

In considering an application for license, the Director shall take into account any objections made to the whole or any part of such application. The Director may attach to any license granted hereunder any conditions or modifications deemed necessary.

Prior to the issuance of said license, the applicant shall pay to the City Treasurer a fee which shall be established by the Mayor. (12510 §1 6/16/82)

**912.03 LICENSE TO RESET, REPLACE OR REMOVE EXISTING EQUIPMENT**

If any person who has been granted permission to erect and maintain any pole, wire, cable or guy wire for any purpose shall at any time desire to reset, replace or remove any pole, wire, cable or guy wire so erected, that person shall obtain a license in accordance with the provisions of Section 912.02 before undertaking any such modification. (12510 §1 6/16/82)

**912.04 DESIGNATION OF POLES**

All utility poles currently in place, or which shall be licensed under this Article, shall bear and be designated by the name or initial of the owner, and each of said poles shall bear an identification number assigned by its owner. Said name and number shall be legibly marked upon each pole. It shall be the duty of each owner of utility poles in the City of Allentown to maintain a record of the identification numbers of each utility pole under its ownership. (12510 §1 6/16/82)

#### **912.05 LOCATIONS TO BE FIXED**

No person shall install any utility pole, wire, cable or guy wire within or upon any public right-of-way of the City of Allentown except in the location specifically noted in the license issued for such installation.

It shall be the responsibility of the licensee to determine the location of street lines, where required, by obtaining a warrant of survey from the office of the City Engineer, so that all poles may be properly positioned. No utility pole shall be cut down without removing that portion of the pole below ground level. (12510 §1 6/16/82)

#### **912.06 REGULATIONS AND STANDARDS**

Each owner of utility poles, wires, cable or guy wires shall be completely responsible for assuring that all facilities are constructed, installed and maintained in accordance with the current regulations of the City of Allentown and the Pennsylvania Public Utility Commission governing the same. (12510 §1 6/16/82)

All wires or cable affixed to utility poles shall be maintained at a minimum vertical height above curb level of eighteen (18') feet, or such other minimum vertical height as may be required by the Pennsylvania Public Utility Commission.

All poles, wires, cable and guy wires shall be erected and maintained in a good, safe order and condition and in accordance with generally accepted engineering practices and safety requirements.

Each owner of utility poles, wires, cable or guy wires shall insure that adequate measures are used at all times to protect the public safety as affected by the existence, placement and maintenance of its facilities. (12510 §1 6/16/82)

#### **912.07 INTERFERENCE WITH PUBLIC RIGHT-OF-WAY**

In the installation or maintenance of utility poles, wires, cable or guy wires, there shall be no interference with the public use of any public right-of-way more than is necessary to enable the efficient performance of the installation or non-emergency maintenance work. When necessary, in order not to interfere unduly with the public convenience, the Director may fix the hours during which such work may be performed. The judgment of the Director shall be binding in this regard. (12510 §1 6/16/82)

#### **912.08 CONSOLIDATION**

All licenses issued under this Article shall require that wires and cable be placed on existing utility poles and consolidated wherever practical so as to preserve as much as possible the prevailing character of the surrounding neighborhood, and to maintain clear unobstructed streets. (12510 §1 6/16/82)

#### **912.09 REPAIR OF STREET AND SIDEWALK**

It shall be the responsibility of any person installing, replacing or relocating any utility pole, under the provisions of this Article, to replace and properly repave, to the satisfaction of the Director, that portion of any sidewalk, curbing or street pavement which may have been displaced or damaged during the installation or removal of said pole. All replacement of sidewalk, curbing and street pavement shall be performed in accordance with standard specifications currently in use by the City of Allentown and shall be done at the sole expense of the licensee. (12510 §1 6/16/82)

#### **912.10 INDEMNIFICATION; INSURANCE**

Every owner of utility poles, wires, cable or guy wires shall at all times fully indemnify, protect and save harmless the City of Allentown from and against all claims, actions, suits, damages and charges, and against all loss and necessary expenditures arising from the erection, construction or maintenance of said equipment, or from the neglect or failure to maintain its equipment in good order and condition.

The owner shall procure and maintain such insurance as will protect it from any claims for damages to property and/or personal injury, including death, which may arise from its operations and the maintenance of the apparatus hereinbefore mentioned, and certificates of such insurance shall be filed with the City Clerk and kept in force at all times, the limits of insurance to be subject to the approval of the Director of General Services or designee. (12510 §1 6/16/82)

#### **912.11 INSPECTION OF POLES; REPLACEMENT OF POLES**

It shall be the responsibility of every owner of utility poles, wires, cable, guy wires or any other appurtenances to periodically inspect all equipment under its ownership, and to replace any such equipment found to be dangerous or defective.

If the owner neglects or refuses to replace such defective equipment, such owner shall be liable for penalty as provided herein. (12510 §1 6/16/82)

#### **912.99 PENALTY**

Any person violating any of the provisions of this Article shall be fined not more than Three Hundred (\$300.00) Dollars or imprisoned not more than ninety (90) days or both. Each day's violation shall constitute a separate offense. (12510 §1 6/16/82)

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**ARTICLE 913  
CABLE TELEVISION SYSTEMS**

- 913.01 Franchise to Operate
- 913.02 Non-Exclusive Grant
- 913.03 Approval Required
- 913.04 Interference with Public Right-Of-Way
- 913.05 Supervision; Repair of Street and Sidewalk
- 913.06 Installation of Poles and Wires; Indemnification
- 913.07 Insurance
- 913.08 Bond
- 913.09 Use of Other Utilities' Equipment
- 913.10 Removal of Facilities
- 913.11 Contracts with Public Utilities
- 913.12 Acceptance of Terms
- 913.13 Expenses
- 913.14 Right to Impose License Fees
- 913.15 Annual Payment to City
- 913.99 Penalty

**913.01 FRANCHISE TO OPERATE**

Any privilege and permission to operate a Cable Television System within the City of Allentown shall be subject to the provisions of this Article and shall be granted only by written agreement of the Mayor subject to the approval of City Council by resolution.

**913.02 NON-EXCLUSIVE GRANT**

The right to engage in the activities hereof shall not be construed to be an exclusive grant to any one operator of a cable television system so as to prevent the granting of similar privileges to others.

**913.03 APPROVAL REQUIRED**

No poles, cables, equipment or wires for the construction, maintenance and operation of cable television systems shall be installed or the installation thereof commenced on any existing pole within the City until the proposed location, specifications and manner of installation of such cables, equipment and wires shall have been set forth upon a plot or map showing the existing poles, streets, alleys or highways within the City where such installation are proposed and submitted in writing by any person, firm, partnership or corporation desiring to operate a cable television system, to the Director of Public Works and approved by that Department in writing. (10035 §1 1/22/63, 13086 §1 11/7/91)

**913.04 INTERFERENCE WITH PUBLIC RIGHT-OF-WAY**

In the installation or maintenance of such poles, cables, equipment and wires, there shall be no interference with the public use of any street, alley or highway more than necessary to enable the performance and the installation or maintenance work with proper economy and efficiency, and the judgment of the City shall be deemed binding in this connection. When necessary, in order not to interfere unduly with traffic or the rights of the traveling public, the Director of Public Works may determine the hours when such work shall be performed and fix a time when such work shall be completed. (10035 §2 1/22/63, 13086 §1 11/7/91)

**913.05 SUPERVISION; REPAIR OF STREET AND SIDEWALK**

The erection of any poles shall be subject to the consent and supervision of the Director of Public Works and shall be at the operator's own cost and expense, and the operator shall replace and properly repave that portion of any sidewalk or street pavement, to the satisfaction of the City, which may have been displaced or damaged; all replacement of sidewalk or street paving shall be in accordance with standard specifications now in use by the City for this work. Sidewalk pavement shall be restored in whole flags or sections, and restoration of street surfaces shall be made in conformity with Section 1.16 of current "Specifications for Construction of Municipal Improvements." It shall be the responsibility of the operator to determine the location of street lines, where required, by obtaining a warrant of survey from the City Engineer's Office so that all poles may be properly positioned in accordance with the submitted plot plan. (10035 §3 1/22/63, 13086 §1 11/7/91)

### **913.06 INSTALLATION OF POLES AND WIRES; INDEMNIFICATION**

All poles and equipment, cables and wires so attached to existing poles shall be erected or constructed in a good, safe order and condition and in accordance with the best engineering practices and safety requirements. Wires shall, in general, be placed only where service poles for light, telephone and power lines have been or will be installed so as to preserve the prevailing character of neighborhoods and to maintain clear, unobstructed streets as much as possible. Where a street crossing is necessary for transmission or home service lines, a minimum vertical height above the curb of eighteen (18') feet shall be maintained.

The operator of the cable television system and its successors shall at all times fully indemnify, protect and save harmless the City from and against all claims, actions, suits, damages and charges, and against all loss and necessary expenditures arising from the erection, construction or maintenance of the works, or from the neglect or failure to maintain its works in good order and condition. In the event there shall be failure or refusal to comply at any time with any part of this Article, or in the event that the business of the operator of the cable television system and its successors should be discontinued voluntarily or involuntarily, then and in any event such operator and its successors shall, at its own cost and expense, remove its equipment, cables and wires, erected or attached to such existing poles. (10035 §4 1/22/63, 13086 §1 11/7/91)

### **913.07 INSURANCE**

The operator of a cable television system shall procure and maintain worker's compensation, comprehensive general liability and comprehensive automobile liability insurances in amounts specified by the City's Risk Manager, and certificates of such insurance shall be filed with the City Controller and kept in force at all times, the limits of insurance to be subject to the approval of the City's Risk Manager as to the adequacy of protection. (10035 §5 1/22/63, 13086 §1 11/7/91)

### **913.08 BOND**

Any such operator shall also enter into a bond with the City, such bond to be in form and with surety to be approved by Council and in the amount of Five Thousand (\$5,000) Dollars conditioned that the operator shall pay or cause to be paid any sums which may become due and payable to the City because of:

A. Failure to maintain its poles, cables, wires and equipment erected pursuant to this Article across, through, in and along the public streets, alleys and highways within the limits of the City of Allentown, County of Lehigh and State of Pennsylvania, in good and safe order and condition; or

B. Failure to remove its cables, wires and equipment from across, through, in and along the public streets, alleys and highways with the limits of the City in accordance with this Article. In the event that permission under this Article should be revoked by the City, or in the event that the business of the operator of the cable television system and its successors should be discontinued voluntarily or involuntarily, then the bond shall be void, provided the operator of the cable television system and its successors are not in violation of this Article; otherwise to remain in full force and effect. (10035 §6 1/22/63, 13086 §1 11/7/91)

### **913.09 USE OF OTHER UTILITIES EQUIPMENT**

Nothing herein shall be interpreted as meaning that the City conveys or gives the right to use the now-existing poles or facilities or property of the Pennsylvania Power and Light Company, Bell Telephone Company or any utility, railroad or private corporation, person or partnership, without first obtaining written permission from such parties, which written permission shall be filed with the City Clerk before any erection or field work is performed. (10035 §9 1/22/63, 13086 §1 11/7/91)

### **913.10 REMOVAL OF FACILITIES**

If at any time the facilities being used are ordered removed by the Director of Public Works or voluntarily removed by the utility, railroad, private corporation, person or partnership now using such facility, then upon sixty (60) days' notice from the City, the wires, equipment and cables being used at such location shall be removed at the expense of the operator of the cable television system and its successors within such time as ordered, and Council shall have the right to declare any and all privileges granted, withdrawn and forfeited. (10035 §10 1/22/63, 13086 §1 11/7/91)

### **913.11 CONTRACTS WITH PUBLIC UTILITIES**

Certified copies of any existing or future contracts by and between the operator of the cable television system and its successors, with any public utility servicing the City, shall be filed with the City Controller prior to the commencement of any construction, maintenance or installation of any equipment, cables or wires of any kind whatsoever.

### **913.12 ACCEPTANCE OF TERMS**

Any operator of any cable television system shall, under its seal and by its proper officers, signify in writing its acceptance of all the terms, conditions, regulations and restrictions of this Article, and the Agreement prepared by the Mayor, and shall also furnish the aforesaid certificates of insurance and bond and other documents required by this Article. (10035 §12 1/22/63, 13086 §1 11/7/91)



**913.13 EXPENSES**

All legal advertising or printing fees or expenses incurred by the City in connection with the passage of any resolutions under this Article shall be paid by the operator of the cable television system. (10035 §13 1/22/63, 13086 §1 11/7/91)

**913.14 RIGHT TO IMPOSE LICENSE FEES**

The City expressly reserves unto itself the right in the future to impose license or franchise fees upon the operations of cable television systems. (10035 §15 1/22/63, 13086 §1 11/7/91)

**913.15 ANNUAL PAYMENT TO CITY**

In consideration of the City granting privilege and permission for the erection, construction, maintenance and operation of a cable television system. Effective January 1, 1990, any operator of any such cable television system shall pay annually to the City the sum of five (5%) percent of the gross revenues derived from the operator from all cable services provided within the City of Allentown, including, but not limited to monthly subscription fees, installation charges, pay cable service advertising and leased access channels. Where revenues are generated for cable services provided in more than one municipality which levies a franchise fee, the revenue derived shall be apportioned on a prorated basis according to the number/percentage of subscribers of that cable company served in each municipality. This sum shall be paid to the City of Allentown for the privilege of using the streets, sidewalks, lanes, avenues, alleys, bridges and any or all other properties of facilities of the City necessary or used by the operator to carry out the privilege and permission granted under this Article, and to cover the costs of necessary inspection and regulations by the City. (12363 §1 6/6/79, 13086 §1 11/7/91)

The Franchise Fee shall be paid by such operator to the City in quarterly installments on or before April 30, July 30, October 31 and January 31 of each year. Upon failure of the operator to make any of the required payments within the times specified, any privilege and permission granted under this Article shall become null and void and all rights and privileges of the operator hereunder shall cease and terminate. (12363 §1 6/6/79, 13086 §1 11/7/91)

The operator shall furnish annually to the City a detailed report of its operations for the preceding years; the report shall show, inter alia, the total number of customers served and the rate of each customer during the year and its gross income for the period. The City, through its duly authorized employer agent, shall have the right to inspect, examine and, if necessary, audit the books and records of the operator at reasonable times. Any and all information obtained by the City as a result of the inspection, examination and/or audit of the operator's books and records shall be confidential and shall not be disclosed by the City, except in the case of a breach of this Article or any legal proceeding to which the City may be a party involving the privilege and permission granted, or upon the order of a court, agency or administrative body. (12363 §1 6/6/79, 13086 §1 11/7/91)

**913.99 PENALTY**

Any person violating any of the provisions of this Article shall be fined not more than Six Hundred (\$600.00) Dollars or imprisoned not more than ninety (90) days or both. Each day's violation shall constitute a separate offense. (10035 §16 1/21/63, 13086 §1 11/7/91)

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**ARTICLE 915  
STREET VACATIONS**

- 915.01 Procedure
  - 915.02 Reservation of Easement
  - 915.03 Utilities and Drainage Responsibility
  - 915.04 Striking from City Block Plan
  - 915.05 Ordinance Sponsored by Mayor
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**915.01 PROCEDURE**

The procedure for vacating a street shall be as follows:

A. A petition to Council for the vacating of any street, shall be signed by a majority, in number and interest, of the owners of property abutting on the line of the proposed vacation as fixed at the time of presentation of the petition, and shall be verified by the affidavit of one (1) or more of the petitioners. Co-owners of undivided interest in any piece of property shall be deemed as one (1) person for the purpose of the petition and the majority in interest of such co-owners shall determine the position of the co-owners for this purpose.

B. A petition to vacate any street shall include a block plan showing the location and ownership of the abutting properties and shall be filed with the City Clerk upon payment to the City Treasurer by the petitioner of a filing fee in the amount of Three Hundred (\$300.00) Dollars. In addition, the petitioner must pay in full all costs incurred by the City in publishing the legally required advertising for the vacation prior to the final Council action. The purpose of this fee is to partially defray the normal administrative, engineering, advertising, and legal expenses for processing the petition for vacation. This fee shall not be refunded under any circumstances, whether or not the petition is granted. (12655 §1 5/15/85; 14273 §2 3/3/05; 15173 § 12/3/14)

C. Council shall act on the petition to vacate by ordinance. Approval of a petition to vacate shall require the affirmative vote of at least four (4) members of Council.

D. In determining whether to vacate any street, Council shall consider the following:

1. Whether the right of way vacation will adversely affect the street pattern or circulation of the immediate area or of the community as a whole.
2. Whether the public need will be adversely affected.
3. Whether the public right of way may be needed for future public use.
4. Whether any abutting property owner will become landlocked or will have his access substantially impaired. (12245 §1 4/6/77)

#### **915.02 RESERVATION OF EASEMENT**

Unless otherwise specified in the Street Vacation Ordinance, there shall be reserved to the City after vacation an easement over the vacated area for drainage and for passage of public utilities such as electricity, telephone, water, sewer, gas and the like, together with the right of entry thereon for repairs, construction and reconstruction of the drainage facilities and the utilities mentioned, without any liability for damages on the part of the City. Where any such easement is reserved, no construction, temporary or permanent, shall be made over or across the vacated street area without the approval of Council by ordinance. Council may relinquish by ordinance the City's easement rights in any vacated street. (12245 §1 4/6/77)

#### **915.03 UTILITIES AND DRAINAGE RESPONSIBILITY**

Unless otherwise specified in the Street Vacation Ordinance, the abutting owners of the vacated street shall be responsible jointly and severally, for protecting, reconstructing and/or relocating all existing utilities and drainage facilities in such manner as will be satisfactory to the Mayor without any liability for damages on the part of the City resulting therefrom. (12245 §1 4/6/77)

#### **915.04 STRIKING FROM CITY BLOCK PLAN**

Immediately after an ordinance vacating any street becomes effective, the City Engineer is authorized and directed to strike such street between the limits cited from the City Block Plan. (12245 §1 4/6/77)

#### **915.05 ORDINANCE SPONSORED BY MAYOR**

Any ordinance for the vacating of any street may be sponsored by the Mayor without the petition of property owners. In such event, the Street Vacation Ordinance requires for passage the affirmative vote of at least five (5) members of Council. An ordinance sponsored by the Mayor shall not be subject to any filing fee, but the provisions set forth in Sections 915.02, 915.03 and 915.04 shall apply. (12245 §1 4/6/77)

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