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## **Chapter 1: GENERAL PROVISIONS**

**[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]**

### **ARTICLE I: Adoption of Code**

**[Adopted 2-4-2002 by Ord. No. 2002-1]**

#### **§ 1-1. Approval, adoption and enactment of Code.**

Pursuant to Section 1008(b) of the Borough Code [53 P.S. § 46008(b)], the codification of a complete body of ordinances and resolutions for the Borough of Penbrook, County of Dauphin, Commonwealth of Pennsylvania, as revised, codified and consolidated into chapters, articles and sections by General Code Publishers Corp., and consisting of Chapters 1 through 266, together with an Appendix, are hereby approved, adopted, ordained and enacted as a single ordinance of the Borough of Penbrook, which shall be known and is hereby designated as the "Code of the Borough of Penbrook," hereinafter referred to as the "Code."

#### **§ 1-2. Effect of Code on previous provisions.**

The provisions of this Code, insofar as they are substantively the same as those of ordinances and resolutions in force immediately prior to the enactment of this ordinance, are intended as a continuation of such ordinances and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinance or resolution. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the Borough Council of the Borough of Penbrook, and it is the intention of said Borough Council that each such provision contained within the Code is hereby reenacted and reaffirmed as it appears in said Code. Only such provisions of former ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3 below, and only changed provisions, as described in § 1-6 below, shall be deemed to be enacted from the effective date of this Code, as provided in § 1-15 below.

#### **§ 1-3. Repeal of ordinances not contained in Code.**

All ordinances or parts of ordinances of a general and permanent nature adopted by the Borough of Penbrook and in force on the date of the adoption of this Code and not contained in the Code are hereby repealed as of the effective date given in § 1-15 below, including the prior Code of the Borough of Penbrook, adopted 6-1-1981 as Ord. No. 81-5, except as hereinafter provided.

#### **§ 1-4. Ordinances saved from repeal; matters not affected by repeal.**

The adoption of this Code and the repeal of ordinances provided for in § 1-3 of this ordinance shall not affect the following ordinances, rights and obligations, which are hereby expressly saved from repeal; provided, however, that the repeal of ordinances pursuant to § 1-3 or the saving from repeal of ordinances pursuant to this section shall not be construed so as to

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revive any ordinance previously repealed, superseded or no longer of any effect:

- A. Any ordinance adopted subsequent to 12-27-2000.
- B. Any right or liability established, accrued or incurred under any legislative provision of the Borough prior to the effective date of this ordinance or any action or proceeding brought for the enforcement of such right or liability or any cause of action acquired or existing.
- C. Any offense or act committed or done before the effective date of this ordinance in violation of any legislative provision of the Borough or any penalty, punishment or forfeiture which may result therefrom.
- D. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this ordinance, brought pursuant to any legislative provision of the Borough.
- E. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Borough or any lawful contract, obligation or agreement.
- F. Any ordinance appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Borough or other instruments or evidence of the Borough's indebtedness.
- G. Any ordinance adopting an annual budget or establishing an annual tax rate.
- H. Any ordinance providing for the levy, imposition or collection of special taxes, assessments or charges.
- I. Any ordinance authorizing the purchase, sale, lease or transfer of property or acquiring property by acceptance of deed, condemnation or exercise of eminent domain.
- J. Any ordinance annexing land to the Borough.
- K. Any ordinance providing for or requiring the construction or reconstruction or opening of sidewalks, curbs and gutters.
- L. Any ordinance or part of an ordinance providing for laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, sidewalk, park or other public place or property or designating various streets as public highways.
- M. Any ordinance establishing water, sewer or other special purpose districts and designating the boundaries thereof; providing for a system of sewers or water supply lines; or providing for the construction, extension, dedication, acceptance or abandonment of any part of a system of sewers or water supply lines.
- N. Any ordinance providing for the making of public improvements.
- O. Any ordinance providing for the salaries and compensation of officers and



- employees of the Borough or setting the bond of any officer or employee.
- P. Any ordinance concerning changes and amendments to the Zoning Map.
  - Q. Any ordinance relating to or establishing a pension plan or pension fund for municipal employees.
  - R. Any ordinance relating to adult entertainment establishments.
  - S. Any ordinance relating to building construction and property maintenance and the adoption of standardized regulations pertaining thereto (e.g., BOCA).
  - T. Any ordinance or resolution providing for the regulation of vehicles, parking and other related matters.

**§ 1-5. Inclusion of new legislation prior to adoption of Code.**

All ordinances and resolutions of a general and permanent nature adopted subsequent to the date given in § 1-4A and/or prior to the date of adoption of this ordinance are hereby deemed to be a part of the Code and shall, upon being printed, be included therein. Attested copies of all such ordinances and resolutions shall be temporarily placed in the Code until printed supplements are included.

**§ 1-6. Changes and revisions in previously adopted ordinances.**

- A. Nonsubstantive grammatical changes. In compiling and preparing the ordinances and resolutions of the Borough for adoption and revision as part of the Code, certain nonsubstantive grammatical and style changes were made in one or more of said ordinances. It is the intention of the Borough Council that all such changes be adopted as part of the Code as if the ordinances and resolutions so changed had been previously formally amended to read as such.
- B. Substantive changes and revisions. In addition to the changes and revisions described above, the changes and revisions of a substantive nature as set forth in Schedule A attached hereto and made a part hereof are hereby made to various ordinances and resolutions included in the Code. These changes are made to bring provisions into conformity with the desired policies of the Borough Council, and it is the intent of the Borough Council that all such changes be adopted as part of the Code as if the ordinances and resolutions so changed have been previously formally amended to read as such. All such changes and revisions shall be deemed to be in effect as of the effective date of the Code specified in § 1-15. <sup>1</sup>
- C. Nomenclature changes. The following changes have been made throughout the Code:
  - (1) "Justice of the Peace" and "District Magistrate" are hereby amended to read

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1. Editor's Note: In accordance with § 1-6B, the chapters, parts and sections which were added, amended, adopted or deleted by this ordinance are indicated throughout the Code by a footnote referring to Chapter 1, General Provisions, Article I. During routine supplementation, footnotes indicating amendments, additions or deletions will be replaced with the following history: "Amended (added, deleted) 2-4-2002 by Ord. No. 2002-1." Schedule A, which contains a complete description of all changes, is on file in the Borough offices.

"District Justice."

- (2) "Burgess" is hereby amended to read "Mayor."
- (3) "Department of Environmental Resources" is hereby amended to read "Department of Environmental Protection."
- (4) "Department of Community Affairs" is hereby amended to read "Department of Community and Economic Development."
- (5) "Building Inspector," "Code Officer" and "Codes Enforcement Officer" are hereby amended to read "Code Official."

**§ 1-7. Interpretation of provisions.**

In interpreting and applying the provisions of the Code, they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience and general welfare. Where the provisions of the Code impose greater restrictions or requirements than those of any statute, other ordinance, resolution or regulation, the provisions of the Code shall control. Where the provisions of any statute, other ordinance, resolution or regulation impose greater restrictions or requirements, the provisions of such statute, other ordinance, resolution or regulation shall control.

**§ 1-8. Titles and headings; editor's notes.**

- A. Chapter and article titles, headings and titles of sections and other divisions in the Code or in supplements made to the Code are inserted in the Code and may be inserted in supplements to the Code for the convenience of persons using the Code and are not part of the legislation.
- B. Editor's notes indicating sources of sections, giving other information or referring to the statutes or to other parts of the Code are inserted in the Code and may be inserted in supplements to the Code for the convenience of persons using the Code and are not part of the legislation.

**§ 1-9. Filing of copies of Code.**

Three copies of the Code in a post-bound volume shall be filed with the Ordinance Book in the office of the Borough Manager and shall remain there for use and examination by the public. Upon adoption, such copies shall be certified to by the Borough Manager, as provided by law, and such certified copies shall remain on file in the office of the Borough Manager, available to persons desiring to examine the same during all times while said Code is in effect.

**§ 1-10. Amendments to Code.**

Any and all additions, deletions, amendments or supplements to the Code, when passed and adopted in such form as to indicate the intention of the Borough Council to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such changes. Whenever such additions, deletions, amendments or supplements to the Code shall be adopted, they shall thereafter be printed and, as provided hereunder, inserted in the post-bound book containing said Code as

amendments and supplements thereto.

**§ 1-11. Code books to be kept up-to-date.**

It shall be the duty of the Borough Manager or someone authorized and directed by him or her to keep up-to-date the certified copies of the book containing the Code required to be filed in the office of the Borough Manager for the use of the public. All changes in said Code and all ordinances and resolutions adopted by the Borough Council subsequent to the effective date of this codification which the Borough Council shall adopt specifically as part of the Code shall, when finally adopted, be included therein by reference until such changes or new ordinances or resolutions are printed as supplements to said Code books, at which time such supplements shall be inserted therein.

**§ 1-12. Publication of notices.**

The Borough Manager, pursuant to law, shall cause to be published in the manner required a notice of the introduction and of the adoption of the Code in a newspaper of general circulation in the Borough. The enactment and application of this ordinance, coupled with the publication of the notices of introduction and adoption, as required by law, and the availability of copies of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

**§ 1-13. Altering or tampering with Code; penalties for violation.**

It shall be unlawful for anyone to improperly change or amend, by additions or deletions, or to alter or tamper with the Code or any part or portion thereof, in any manner whatsoever, which will cause the law of the Borough to be misrepresented thereby. Anyone violating this section of this ordinance shall, upon conviction thereof, be punished by a fine not exceeding \$600, plus costs of prosecution, and, in default of payment thereof, by imprisonment for a term not exceeding 30 days.

**§ 1-14. Severability.**

The provisions of this ordinance and of the Code adopted hereby are severable, and if any clause, sentence, subsection, section, article, chapter or part thereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation and application to the clause, sentence, subsection, section, article, chapter or part thereof rendered. It is hereby declared to be the intent of the Borough Council that this ordinance and the Code would have been adopted if such illegal, invalid or unconstitutional clause, sentence, subsection, section, article, chapter or part thereof had not been included therein.

**§ 1-15. Effective date.**

All provisions of this ordinance and of the Code shall be in force and effect on and after February 4, 2002.

**ARTICLE II: Enforcement; Penalties**

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. XI, Art. 1, of the 1981 Code]

**§ 1-16. Prosecution of ordinance violators; disposition of fines, penalties and costs.** [Amended 2-4-2002 by Ord. No. 2002-1]

Any violation or failure to comply with any provision of any Borough ordinance shall constitute a summary offense, and prosecution for every such offense shall be according to the practice in the case of summary convictions. All fines, penalties and costs imposed when collected shall forthwith be payable to the Treasurer of the Borough. <sup>2</sup>

**§ 1-17. Commitments pending hearings.**

Any person arrested for the violation of a Borough ordinance may be committed to a lockup specified by the Borough Council, pending a hearing or trial, but in case there is no suitable lockup in which to detain prisoners, the person arrested may be committed to the county jail.

**§ 1-18. Commitments after hearing.**

Upon judgment against any person by summary conviction, or by proceedings by summons, on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to a suitable lockup for a period not exceeding 10 days or to the county jail or workhouse for a period not exceeding 30 days.

**§ 1-19. General penalty.** [Amended 2-4-2002 by Ord. No. 2002-1]

If the fine or penalty for violation of a Borough ordinance is not specified in the ordinance or by the laws of the commonwealth, then, upon conviction, the fine shall be a maximum fine of \$1,000 for violation of a building, housing, property maintenance, health, fire or public safety code or ordinance and for water, air and noise pollution violations and a maximum fine of \$600 for violation of any other Borough ordinance, plus costs of prosecution, and, in default of payment of such fine and costs, imprisonment for a term not exceeding 30 days.

**§ 1-20. Collection of penalties.**

In case the defendant has goods or property of any kind whatsoever, out of which the judgment and costs can be collected by execution or other process, the Borough may elect to collect the judgment and costs of such proceedings.

**§ 1-21. Payment of costs by Borough.** [Amended 2-4-2002 by Ord. No. 2002-1]

When a prisoner shall be committed to any county jail or workhouse, either for the nonpayment of a fine or penalty imposed for the violation of any Borough ordinance or while awaiting a hearing upon any charge for the violation of any Borough ordinance, the expense of maintaining such prisoner during his confinement shall be paid by the Borough and the county shall not be liable for any such maintenance.

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2. Editor's Note: Original Sections 102 through 105 regarding arrest procedures, which immediately followed this section, were deleted 2-4-2002 by Ord. No. 2002-1.

## Chapter 17: FUNDS, USE OF

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 4-1-1985 by Ord. No. 85-2. Amendments noted where applicable.]

### GENERAL REFERENCES

Police Pension Fund — See Ch. 37.

#### § 17-1. Transfer of funds to Police Pension Fund.

Any state funds previously paid to and not expended or any funds payable to the Borough of Penbrook, the payment of which has been withheld or prevented by action of the Auditor General of Pennsylvania pursuant to Section 1.2 of the Act of May 12, 1943 (P.L. 259, No. 120),<sup>3</sup> referred to as the "Foreign Casualty Insurance Premium Tax Allocation Law," taken since January 1, 1982, will be transferred to the Police Pension Fund and are irrevocably committed to be expended only in accordance with the Foreign Casualty Insurance Premium Tax Allocation Law.

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3. Editor's Note: See 72 P.S. § 2263.3.

## Chapter 23: LOCAL GOVERNMENT INVESTMENT TRUST

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 7-6-1981 by Ord. No. 81-7. Amendments noted where applicable.]

### § 23-1. Participation authorized.

This municipality shall join with other municipalities in accordance with the Pennsylvania Intergovernmental Cooperation Act<sup>4</sup> by becoming a settlor of the Pennsylvania Local Government Investment Trust (the "Trust") and entering into the Declaration of Trust, which is adopted by reference with the same effect as if it had been set out verbatim in this section and a copy of which shall be filed with the minutes of the meeting at which this chapter was adopted.<sup>5</sup>

### § 23-2. Authority to purchase or redeem shares.

This municipality is authorized to purchase shares in the Trust from time to time with available municipal funds and to redeem some or all of those shares from time to time as funds are needed for municipal purposes. These actions are to be taken by the officers designated for this purpose, pursuant to general or specific instructions by the governing body adopting this chapter.

### § 23-3. Custody of funds.

The Trustees of the Trust are designated as having official custody of this municipality's funds which are invested by the purchase of shares in the Trust.

### § 23-4. Findings and determination.

As required by the Intergovernmental Cooperation Act,<sup>6</sup> the following matters are specifically found and determined:

- A. The conditions of the agreement are set forth in the Declaration of Trust referred to in § 23-1.
- B. This municipality's participation in the Trust shall be terminable at any time by ordinance.
- C. The Declaration of Trust and the purchase of its shares are for the purpose of investing this municipality's funds in obligations which are otherwise legal investments as part of a pooled arrangement with other governmental units, thereby achieving economic and other advantages of pooled investments.
- D. It is not necessary to finance the agreement authorized herein from municipal funds except through the purchase of shares in the Trust.
- E. The Trust shall be managed by a Board of Trustees as set forth in the Declaration of

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4. Editor's Note: See 53 Pa.C.S.A. § 2301 et seq.

5. Editor's Note: Said Declaration of Trust is on file in the borough offices.

6. Editor's Note: See 53 Pa.C.S.A. § 2301 et seq.

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Trust and the bylaws provided for therein.

- F. Shares may be purchased and redeemed from time to time as this municipality may determine to be necessary or appropriate to meet its cash investment requirements.

## Chapter 27: MANAGER, BOROUGH

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. I, § 206, of the 1981 Code. Amendments noted where applicable.]

### § 27-1. Creation of office.

The office of the Borough Manager is hereby created by the Borough of Penbrook.

### § 27-2. Appointment and removal.

The Manager shall be appointed for an indefinite term by a majority of all members of the Council. The Manager shall serve at the pleasure of the Council, and he may be removed at any time by a majority vote of all its members. At least 30 days before such removal is to become effective, the Council shall furnish the Manager with a written statement setting forth its intention to remove him.

### § 27-3. Qualifications.

The Manager shall be chosen solely on the basis of his executive and administrative abilities, with special reference to the duties of his office as herein outlined. The Manager need not be a resident of the borough or of the Commonwealth of Pennsylvania at the time of his appointment, but during the tenure of his office he may reside outside the borough only with the approval of the Council.

### § 27-4. Bond.

Before entering upon his duties, the Manager shall give a bond to the borough with a bonding company as surety, to be approved by the Council, in the sum of \$25,000, conditioned upon the faithful performance of his duties, the premium for said bond to be paid by the borough.

### § 27-5. Manager's compensation.

The salary of the Borough Manager shall be fixed from time to time by the Council.

### § 27-6. Powers and duties.

- A. The Manager shall be the Chief Administrative Officer of the borough, and he shall be responsible to the Council as a whole for the proper and efficient administration of the affairs of the borough. The powers and duties of administration of all borough business shall be vested in the Manager, unless expressly imposed or conferred by statute upon other borough officers.
- B. Subject to recall by ordinance of the Council, the powers and duties of the Borough Manager shall include the following:
  - (1) He shall supervise and be responsible for the activities of all municipal departments, excepting the Police Department.
  - (2) He shall, with the approval of the Borough Council, hire and, when necessary for the good of the service, shall suspend or discharge any employee under his supervision, provided that persons covered by the civil service provisions



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of the Borough Code shall be hired, suspended or discharged in accordance with such provisions, and provided further that the Manager shall report, at the next meeting thereafter of the Council, any action taken by authority of this subsection.

- (3) He shall have the power to fix wages and salaries of all personnel under his supervision, within a range previously determined by the Council.
- (4) He shall prepare and submit to the Council, before the close of each fiscal year, a budget for the next fiscal year and an explanatory budget message. He shall then be responsible for the administration of the budget after its adoption by the Council.
- (5) He shall, in conjunction with the preparation of the yearly budget, develop long-range fiscal plans for the municipality, such plans to be presented annually to the Council for its review and adoption.
- (6) He shall hold such other appointed municipal offices and head such municipal departments as the Council may from time to time direct.
- (7) He shall attend all meetings of the Council and its committees with the right to take part in the discussions, and he shall receive notice of all special meetings of the Council and its committees.
- (8) He shall prepare the agenda for each meeting of the Council and supply facts pertinent thereto.
- (9) He shall keep the Council informed as to the conduct of borough affairs; submit periodic reports on the condition of the borough finances and such other reports as the Council requests: and make such recommendations to the Council as he deems advisable.
- (10) He shall submit to the Council, as soon as possible after the close of the fiscal year, a complete report on the finances and the administrative activities of the borough for the preceding year.
- (11) He shall see that the provisions of all franchises, leases, permits and privileges granted by the borough are observed.
- (12) He may employ, by and with the approval of the Council, experts and consultants to perform work and to advise in connection with any of the functions of the borough.
- (13) He shall attend to the letting of contracts in due form of law, and he shall supervise the performance and faithful execution of the same except insofar as such duties are expressly imposed by statute upon some other borough officer.
- (14) He shall see that all money owed the borough is promptly paid and that proper proceedings are taken for the security and collection of all the borough's claims.

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- (15) He shall be the purchasing officer of the borough, and he shall purchase in accordance with the provisions of the Borough Code all supplies and equipment for the agencies, boards, departments and other offices of the borough. He shall keep an account of all purchases and shall, from time to time or when directed by the Council, make a full written report thereof. He shall also issue rules and regulations, subject to the approval of the Council, governing the procurement of all municipal supplies and equipment.
- (16) All complaints regarding borough services shall be referred to the Office of the Manager. He, or an officer designated by him, shall investigate and dispose of such complaints, and the Manager shall report thereon to the Council.

### **§ 27-7. Delegation of Mayor's powers and duties.**

The Mayor is hereby authorized to delegate to the Borough Manager, subject to revocation by written notification at any time, any of his nonlegislative and nonjudicial powers and duties.

### **§ 27-8. Procedural limitations on Council.**

Except for the purpose of inquiry, the Borough Council, its committees and its members shall deal with the administrative service solely through the Borough Manager, and neither the Council nor any of its committees nor any of its members shall give orders, publicly or privately, to any subordinate of the Manager.

### **§ 27-9. Disability or absence of the Manager.**

If the Manager becomes ill or needs to be absent from the borough, he shall designate one qualified member of his staff to perform the duties of the Manager during his absence of disability. The person so designated shall not perform these duties for a period longer than two weeks without the approval of the Council.

### **§ 27-10. Transfer of Secretary's duties.**

All obligations and duties assigned to the Secretary by ordinance are transferred to the Manager.

## Chapter 31: MUTUAL AID

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]

### ARTICLE I: Emergency Assistance

[Adopted 3-1-1993 by Ord. No. 93-2]

#### § 31-1. Mutual Aid Agreement.

The Borough Council of the Borough of Penbrook hereby enters into the Mutual Aid Agreement attached hereto as Exhibit A, <sup>7</sup> which agreement sets forth the conditions of the agreement; the term of the agreement; the purpose and objectives of the agreement, including the powers and scope of authority delegated in the agreement; the manner and extent of financing of the agreement; the organizational structure necessary to implement the agreement; and the manner in which property, real or personal, shall be acquired, managed, licensed or disposed of, all in relation to the provision of reciprocal emergency assistance by and between the political subdivisions named therein.

#### § 31-2. Purpose and intent.

The purpose and intent of the Mutual Aid Agreement is to formalize the agreements and arrangements relative to reciprocal emergency assistance by and between the political subdivisions in Dauphin County in an effort to effectuate increased cooperation and coordination in the provision of emergency services to the benefit of the citizens of the Borough of Penbrook and the other political subdivisions named in the agreement.

#### § 31-3. Execution of agreement.

The proper officials of the borough are hereby authorized to execute the Mutual Aid Agreement (Exhibit A) <sup>8</sup> on behalf of the Borough of Penbrook.

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7. Editor's Note: Said agreement is on file with the Borough of Penbrook Emergency Management Agency.

8. Editor's Note: Said agreement is on file with the Borough of Penbrook Emergency Management Agency.

## **Chapter 32: INTERGOVERNMENTAL AGREEMENTS**

### **ARTICLE I: Intergovernmental Agreement between Penbrook Borough and the Pennsylvania Municipal Health Insurance Cooperative.**

**[HISTORY: Adopted by the Borough Council of the Borough of Penbrook on December 26, 2007 as Ordinance 2007-14]**

#### **§32-1 Preamble**

A number of political subdivisions within central Pennsylvania, have investigated whether it would be mutually beneficial to cooperate with each other in obtaining employee benefit insurance.

A plan has been presented to establish the Pennsylvania Municipal Health Insurance Cooperative (the "PMHIC") for the purpose of collectively purchasing employee benefits insurance.

The PMHIC will be established pursuant to an intergovernmental cooperation agreement entitled the Pennsylvania Municipal Health Insurance Cooperative Agreement ("the Agreement").

Pursuant to the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S.A. Section 481 et seq., a municipality may enter into an intergovernmental cooperation agreement upon the passage of an ordinance by its governing body.

#### **§ 32-2 Agreement**

The caption and Preamble of this Ordinance set forth above are incorporated herein by reference.

This Political Subdivision hereby approves entering into the Agreement, a copy of which is attached hereto and incorporated herein by reference (and which shall be filed with the minutes of the meeting at which this Ordinance was enacted), with the intent and effect that this Political Subdivision shall be bound by the Agreement.

The President or Vice-President of the Governing Body, acting alone or together with the Secretary or Assistant Secretary, are hereby authorized and directed on behalf of the Political Subdivision, (i) to execute and deliver the Agreement, and (ii) to execute and deliver such additional instruments, and to take such further actions, as may be necessary or appropriate to carry forth the Agreement and the transactions to be effected under the Agreement,

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including payment to the PMHIC of such amounts as are due by the Political Subdivision pursuant to the Agreement.

All actions of any officer, agent or other representative of this Political Subdivision heretofore taken in the pursuit of the establishment of the PMHIC and/or the Political Subdivision's participation therein, are hereby ratified and approved in all respects.

The Governing Body of the Political Subdivision is hereby authorized to take such other action as may be necessary or appropriate to carry out the purposes of this Ordinance and of the Agreement.

As required by the Pennsylvania Intergovernmental Cooperation Act, the following matters are specifically found and determined:

The conditions of the Agreement are set forth in the Agreement.

This Political Subdivision shall participate in the PMHIC for an initial term of three (3) years from the date that they first elected to purchase benefits through PMHIC. Thereafter, termination of the Agreement shall be as further set forth therein.

The purpose and objectives of the Agreement are as set forth in the Preamble of this Ordinance and in the Agreement.

The manner and extent of financing the Agreement are that (i) no borrowing will be required by the Political Subdivision, (ii) funds to implement the Political Subdivision's obligations under the Agreement shall come from normal and usual budgeted amounts for such matters, and (iii) other provisions governing the manner and extent of the financing of the PMHIC shall be as set forth in the Agreement;

The PMHIC shall be managed by its Board of Directors pursuant to the terms of the Agreement.

All property, real or personal, of the PMHIC, shall be acquired, managed, licensed or disposed of by the PMHIC in accordance with the terms of the Agreement.

The PMHIC created by the Agreement shall be empowered to enter into contracts for policies of group insurance and employee benefits pursuant to the terms of the Agreement.

The provisions of this Ordinance are severable and if any section, sentence, clause or part or provision hereof shall be held to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect the remaining sections, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Political Subdivision that such Ordinance would have been enacted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

Nothing contained in this Ordinance shall be construed to affect any suit or proceeding in any court, or any rights acquired or liability incurred, or any cause of action existing prior to the enactment of this Ordinance.

**ARTICLE II: Intergovernmental Agreement between Penbrook Borough and the Borough of Paxtang**

**[HISTORY: Adopted by the Borough Council of the Borough of Penbrook on November 5, 2007 as Ordinance 2007-10]**

**§ 32-3 Agreement**

**SECTION 1.** WHEREAS, this Ordinance is enacted and entered into by and between the municipalities of the Borough of Paxtang (hereafter “Paxtang”), with its principal offices located at Derry and Elm Streets, Harrisburg, Pennsylvania, and the Borough of Penbrook (hereafter “Penbrook”) with its principal offices located at 150 South 28th Street, Penbrook, Pennsylvania, each municipality being formed and properly existing under the Borough Code, 53 P.S. § 45101 et seq.; and

WHEREAS, Paxtang and Penbrook each desire, on behalf of their respective citizens to purchase certain equipment to be utilized in the course of municipal operations, that equipment being a Sewer Flusher, with the capacity and as being more particularly being described in Exhibit “A” attached hereto, and made a part hereof (hereafter “Equipment”); and

WHEREAS, each Borough acknowledges and agrees that it can properly utilize the Equipment on behalf of its citizens, residents, taxpayers and property owners; and

WHEREAS, each of the municipalities acknowledges and agrees to contribute resources in order to acquire, use and maintain such Equipment; and

WHEREAS, each Borough recognizes the acquisition and use of such Equipment shall be in furtherance of the public health, safety and welfare; and

WHEREAS, pursuant to Act 177 of 1966, Section 2304, The Inter-Governmental-Cooperation Law, “a municipality . . . may . . . cooperate or agree in the exercise of any function, power, or responsibility with . . . one or more . . . municipalities . . .”; and

WHEREAS, each municipality has agreed to the acquisition of the Equipment upon the terms and conditions as more specifically set forth in the attached “Mutual Purchase of Sewer Flusher and Cooperation Agreement” marked as Exhibit “B” and incorporated herein by reference.

**SECTION 2.** The Borough of Paxtang in consideration of the covenants and agreements contained in the Agreement for Mutual Purchase of Sewer Flusher and Cooperation

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Agreement, hereby accepts and ratifies this Agreement and shall have caused it to be executed by its duly-authorized representative, intending to be legally bound.

**SECTION 3.** The provisions of this Ordinance are severable and the invalidity of any phrase, clause or part of this Ordinance shall not affect the validity or effectiveness of the remainder of the Ordinance.

**SECTION 4.** All ordinances or parts of ordinances in conflict therewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**SECTION 5.** It is the intention of Council and it is ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Borough of Penbrook, Pennsylvania, and the Sections of this Ordinance may be renumbered to accomplish that intention.

**SECTION 6.** This Ordinance shall be effective immediately upon the adoption and execution of the attached Mutual Purchase of Sewer Flusher and Cooperation Agreement between the Borough of Paxtang and the Borough of Penbrook.

## Chapter 37: PENSIONS

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]

### GENERAL REFERENCES

Transfer of funds to pension plan — See Ch. 17.

### ARTICLE I: Police Pension Plan

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. I, § 201, of the 1981 Code]

#### § 37-1. Election to join.

The Borough of Penbrook hereby elects to join the Pennsylvania Municipal Retirement System, established by the Pennsylvania Municipal Retirement Law, under Article IV of Act 15 of 1974, as amended,<sup>9</sup> and does hereby agree to be bound by all the requirements and provisions of said Pennsylvania Municipal Retirement Law and the amendments thereto and to assume all obligations, financial and otherwise, placed upon member municipalities by said Pennsylvania Municipal Retirement Law and the amendments thereto.

#### § 37-2. Mandatory membership.

Membership in the Pennsylvania Municipal Retirement System shall be mandatory for any policeman holding a full-time position.

#### § 37-3. Prior service.

Credit for prior service toward the municipal annuity of each original member shall be for all years of service to the Penbrook Borough Police. The Borough of Penbrook does hereby assume the liability for payment of 100% of the original member's contributions for all years of service towards the original member's annuity for the prior service of each original member.

#### § 37-4. Payment.

Payment for the prior service as set forth in § 37-3 hereof shall be made by the Borough of Penbrook in accordance with said Pennsylvania Municipal Retirement Law and may be spread over a period of 30 years if the Borough of Penbrook so elects and with the approval of the Pennsylvania Municipal Retirement Board.

#### § 37-5. Benefits.

As part of this article, the Borough of Penbrook agrees to the outline of benefits set forth in a contract with the Retirement Board, dated June 26, 1978, plus service of spouse's benefit. The passage and adoption of this article by the Penbrook Borough Council is an official acceptance of said benefits.

#### § 37-6. Filing of copies; effective date of membership.

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9. Editor's Note: See 53 P.S. § 881.101 et seq.



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A duly certified copy of this article shall be filed with the Pennsylvania Municipal Retirement Board of the Commonwealth of Pennsylvania, and membership under Article IV <sup>10</sup> for the Penbrook Borough police in the Pennsylvania Municipal Retirement System shall be effective the first day of January 1979.

### **ARTICLE II: Non-Uniform Pension Plan**

#### **§ 37-7. Restated plan Adoption.**

The Borough hereby establishes, adopts, and restates the retirement plan for the non-uniform employees of Borough, through the adoption of the Non-Uniform Pension Plan document on file in the Borough Office.

#### **§ 37-8. Amendments.**

The Non-Uniform Pension Plan may be revised, supplemented, restated, or otherwise amended by either resolution or ordinance of the Borough as it deems appropriate from time to time. <sup>11</sup>

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<sup>10</sup> Editor's Note: "Article IV" refers to Article IV of Act 15 of 1974, the Pennsylvania Municipal Retirement Law.

<sup>11</sup> Amended ordinance 2019-7, Adopted Dec 2 2019, Added Article II and added sections 37-7 and 37-8

## Chapter 41: PLANNING COMMISSION

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. I, § 304, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Subdivision and land development — See Ch. 233.

Zoning — See Ch. 266.

#### § 41-1. Establishment. <sup>12</sup>

The Council of the Borough of Penbrook, Dauphin County, Pennsylvania, does hereby create a Planning Commission under the provisions of the Pennsylvania Municipalities Planning Code, Act 247 of July 31, 1968, as amended and reenacted. <sup>13</sup>

#### § 41-2. Membership; term; vacancies.

- A. The Planning Commission shall consist of five members, all of whom shall be citizens of the Borough of Penbrook of Dauphin County. <sup>14</sup>
- B. The term of office of the members shall be four years or until a successor is appointed, except that the terms of the members first appointed shall be so fixed that no more than two shall be reappointed during any future calendar year. In the event of vacancies, the governing body shall appoint a member to fill the unexpired term. Members whose terms have expired shall hold office until their successors have been appointed.

#### § 41-3. Powers.

- A. The Planning Commission shall at the request of the governing body have the power and shall be required to:
  - (1) Prepare the Comprehensive Plan for the development of the municipality as set forth in the Pennsylvania Municipalities Planning Code <sup>15</sup> and present it for the consideration of the governing body.
  - (2) Maintain and keep on file records of its actions. All records and files of the Planning Commission shall be in the possession of the governing body.
- B. The Planning Commission at the request of the governing body may:
  - (1) Make recommendations to the governing body concerning the adoption or amendment of an Official Map.
  - (2) Prepare and present to the governing body of the municipality a zoning ordinance and make recommendations to the governing body on proposed

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12. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

13. Editor's Note: See 53 P.S. § 10101 et seq.

14. Amended Ordinance 2023-06 on Dec 18 2023

15. Editor's Note: See 53 P.S. § 10101 et seq.

- amendments to it as set forth in the Municipalities Planning Code. <sup>16</sup>
- (3) Prepare, recommend and administer subdivision and land development and planned residential development regulations, as set forth in the Municipalities Planning Code. <sup>17</sup>
  - (4) Prepare and present to the governing body of the municipality a building code and a housing code and make recommendations concerning proposed amendments thereto.
  - (5) Do such other act or make such studies as may be necessary to fulfill the duties and obligations imposed by the Municipalities Planning Code. <sup>18</sup>
  - (6) Prepare and present to the governing body of the municipality an environmental study.
  - (7) Submit to the appointing authority of a municipality a recommended capital improvements program.
  - (8) Promote public interest in and understanding of the Comprehensive Plan and planning.
  - (9) Make recommendations to governmental, civic and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals.
  - (10) Hold public hearings and meetings.
  - (11) Present testimony before any board. <sup>19</sup>
  - (12) Require from other departments and agencies of the municipality such available information as relates to the work of the planning agency.
  - (13) In the performance of its functions, enter upon any land to make examinations and land surveys with the consent of the owner.
  - (14) Prepare and present to the governing body a study regarding the feasibility and practicability of using renewable energy sources in specific areas within the municipality. <sup>20</sup>
  - (15) Review the Zoning Ordinance, Official Map, provisions for planned residential development and such other ordinances and regulations governing the development of land no less frequently than it reviews the Comprehensive Plan. <sup>21</sup>

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16. Editor's Note: See 53 P.S. § 10101 et seq.

17. Editor's Note: See 53 P.S. § 10101 et seq.

18. Editor's Note: See 53 P.S. § 10101 et seq.

19. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

20. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

21. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

**§ 41-4. Acceptance of assistance.**

The Planning Commission may, with the consent of the governing body, accept and utilize any funds, personnel or other assistance made available by the county, the commonwealth or the federal government or any of their agencies or from private sources. The governing body may enter into agreements or contracts regarding the acceptance or utilization of the funds or assistance in accordance with the governmental procedures of the municipality.

## Chapter 45: POLICE DEPARTMENT

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. I, § 204, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Emergency assistance — See Ch. 31, Art. I.

Police Pension — See Ch. 37, Art. I.

#### § 45-1. Purpose.

The purpose of this chapter is to assist in providing for fully adequate police protection in the borough and to provide a means for ensuring that tax moneys allocated by the Borough Council are wisely and efficiently utilized. Nothing herein shall be deemed to conflict with the provisions of the Pennsylvania Borough Code <sup>22</sup> pertaining to the organization of the police force or to the authority conferred on the Mayor in case of emergency.

#### § 45-2. Department established.

A Police Department is hereby created and established in and for the Borough of Penbrook.

#### § 45-3. Mission and responsibilities.

The mission of the Police Department shall be to preserve and protect the public safety, security and tranquility of the borough and to firmly and fairly enforce the laws of the United States of America and the Commonwealth of Pennsylvania and the ordinances of Penbrook Borough. The Department shall engage in a broad range of public services as prescribed from time to time by the Mayor of the borough, but shall give foremost priority to the deterrence, where possible, of criminal activity in the borough and the investigation and prosecution of criminal activity in the borough and the investigation and prosecution of those criminal offenses which do occur in Penbrook.

#### § 45-4. Governance of the Department.

The Mayor shall have responsibility for the direction of the Department in accordance with the Pennsylvania Borough Code;<sup>23</sup> provided, however, that the Mayor shall execute his responsibilities by providing policy direction and guidance to the Department. The Chief of Police shall serve as the chief executive officer of the Department and shall be fully responsible for the day-to-day direction and supervision of the Department and its complement of police officers.

#### § 45-5. Reports.

- A. The Mayor and the Chief of Police shall regularly, at not less than quarterly intervals, report publicly and in writing to the Borough Council regarding the activities and performance of the Department. Such reports shall specifically include, but not be limited to, information regarding:

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22. Editor's Note: See 53 P.S. § 45101 et seq.

23. Editor's Note: See 53 P.S. § 45101 et seq.

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- (1) The frequency with which citizens of the borough summon police assistance, and the performance of the Department in terms of the time required to respond to such requests.
  - (2) The incidence of serious crime in the borough, and the performance of the Department in solving this crime.
  - (3) The number of motor vehicle accidents occurring, and the number of moving and parking violation citations issued by the Department.
  - (4) The ultimate disposition of all arrests made and citations issued by the Department, whether judicial or administrative action.
  - (5) Major personnel actions, to include changes in personnel, training courses completed, disciplinary actions taken and the like.
  - (6) Extraordinary problems encountered by the Department, and special needs for assistance which the Council may address by fiscal or other actions.
- B. The Mayor and the Chief of Police shall respond, at the time such reports are rendered, to any questions regarding Department affairs which may be posed by members of the Borough Council.

### § 45-6. Officers.

- A. The following classification of officers is hereby established for said Police Department:
- (1) Chief of Police.
  - (2) Lieutenant.
  - (3) Sergeant.
  - (4) Police officer.
  - (5) Part-time police officer. <sup>24</sup>
- B. The Council shall, subject to the civil service provisions of the Borough Code, <sup>25</sup> designate and appoint by proper resolution the individuals assigned to each such office. The chain of command among the various classifications shall be in the order above listed.

### § 45-7. Duties.

The following duties are prescribed for performance by the various classifications of officers.

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<sup>24</sup> Amended Ordinance 2010-3, adopted Oct 4 2010. Added Lieutenant, removed special school police

<sup>25</sup> Editor's Note: See 53 P.S. § 45101 et seq.

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- A. Chief of Police. The Chief of Police shall supervise the Department and shall have active charge of any police office or station maintained by the Department.
- (1) Administrative duties. It shall be the responsibility of the Chief of Police to:
    - (a) Supervise subordinate officers.
    - (b) Answer to the public and the press any question about the Police Department's functions or activities.
    - (c) Coordinate the activities of his Department with those of other officers and officials of the borough and other police agencies, local, county and state.
    - (d) Report all charges preferred against any officer, be present at their investigation and keep a record of the charge, evidence presented and defense offered.
    - (e) Be responsible for all property belonging to the Department and distribute the same as needed, taking a receipt therefor from the officer to whom entrusted.
    - (f) Nominate such persons to the Borough Council who have completed a course of training as may be prescribed for part-time police officers.
    - (g) Release any or all part-time police officers who are no longer needed for active duty who have failed to or refused to perform duties lawfully assigned to them by said Chief.
  - (2) Supervisory duties. In the performance of his supervisory duties, he shall:
    - (a) Confer frequently with the Mayor, securing policy guidance from the Mayor and translating this information into operating procedures and deployment plans for the Department.
    - (b) Detail such orders to the members of the police force as may be necessary to carry out the instructions of the Mayor as to the time, place and manner of the performance of their duties.
    - (c) Inspect all members of the police force from time to time, supervise their general conduct and observe and evaluate their performance of duty.
    - (d) Prepare or cause to be prepared and post work schedules for all subordinate officers of the Department, if not posted by Mayor.
    - (e) Investigate or cause to be investigated any and all crimes reportedly committed within the borough, personally report whenever available to the scene of any alleged felonies and investigate the same, report promptly whenever available to all serious catastrophes within the borough and assume command of the police officers there present and

restore and maintain order. <sup>26</sup>

- (f) Detail orders to members of the auxiliary police and part-time police (after they have been summoned to active duty by the Mayor) during any period of distress, disaster or emergency.
  - (g) Detail orders to such of the auxiliary police or part-time police of adjoining municipalities as may be assigned to the Borough of Penbrook by the Commissioner of the Pennsylvania State Police to meet with any disaster or emergency.
  - (h) Carry out all duties imposed upon him, by law, and by direction of lawfully constituted authority.
- (3) At all other times he shall perform the duties of a police officer.
- B. Lieutenant. The Lieutenant is hereby constituted to be the second officer in command of the Police Department. His duties shall consist of the following:
- (1) In the absence of the Chief of Police by reason of vacation, illness, suspension, vacancy or any other cause deemed appropriate by the Borough Council, or when the Chief of Police shall designate the Lieutenant to act in his place according to the regulations of the department and shall report directly to the Mayor when designated to act in place of the Chief of Police
  - (2) At all other times, he shall perform the duties of a police officer hereinafter provided.
- C. Sergeant. The Sergeant is hereby constituted to be the third officer in command of the Police Department. His duties shall consist of the following:
- (1) In the absence of the Chief of Police or Lieutenant by reason of vacation, illness, suspension, vacancy or any other cause deemed appropriate by the Borough Council shall be responsible to perform the duties of the Chief of Police or Lieutenant, at the Chief's discretion and concurrence of Council if the absence is prolonged.
  - (2) At all other times, he shall perform the duties of a police officer hereinafter provided. <sup>27</sup>
- E. Police officer (full-time and part-time). It shall be the duty of every regular police

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<sup>26</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>27</sup> Amended Ordinance 2010-3, adopted Oct 4 2010. Added Lieutenant, edited Sergeant, removed special school police



officer to:

- (1) Faithfully serve and protect the citizens of the borough, uphold his oath of office and enforce all appropriate laws and ordinances.
- (2) Report on duty in approved uniform at the police station or at such other place as may be specially ordered by the Chief of Police at such reasonable times as may be specified by regular posted schedules.
- (3) Promptly and obediently observe and carry out his assigned duties as may be detailed by the Chief, and he shall perform his duty as to manner, time and place in strict compliance with the directions of the Mayor or special orders and bulletins issued by the Chief of Police.
- (4) Familiarize himself with the provisions of this chapter, all other borough ordinances and Acts of Assembly regulating police or requiring police attention.
- (5) Report to the Chief of Police or, in his absence, the next police officer in command, as soon as reasonably it may be done, the commission of any felony or major misdemeanor within the Borough of Penbrook that has been brought to his attention.
- (6) Make daily entry upon the police blotter of all information and fact of which he may have knowledge concerning the commission of any crime, the occurrence of any fire, disturbance or accident or the existence of any condition which may affect the health, safety or welfare of the public or citizens of said borough of adjoining communities.
- (7) Make report by police radio and take appropriate action in case of any crime or summary violation of the law, fire, disturbance or other matter requiring police action that should occur during his assigned tour of duty.
- (8) Attend such course of training at any training school for police officers as may be designated by the Council or required by law.

**§ 45-8. General regulations.**

- A. The following regulations shall apply to every member of the Police Department.
  - (1) The Mayor and the Chief of Police shall create and maintain on a current basis comprehensive rules and regulations to guide and instruct all members of the Department. Copies of such rules and regulations shall be made available for the information of the Borough Council. <sup>28</sup>
  - (2) Every regular full-time police officer shall be held to be on duty at all times and, consequently, must be prepared to act immediately upon receipt of notice from his immediate superior that his services are required or upon receipt of information requiring his attention.

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**28. Editor's Note: The Police Department Rules and Regulations are on file in the borough offices.**

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- (3) Security. No member of the Department shall communicate any information to any nonmember concerning any order or information of a departmental or confidential nature unless said order or information concerns that nonmember or is disclosed by permission or direction of his superior.
  - (4) Professional discipline shall be maintained by all members of the Department.
- B. Communication within the Department shall be affected solely through the immediate superior, and no member shall publicly speak critically or in a derogatory manner regarding any rule and regulation, order or bulletin of the Department. In the event that any member feels that he has just reason to believe that any rules or regulations, orders or instructions are inconsistent, unfair or unjust, he may request his immediate superior to bring this matter to the attention of the Civil Service Commission of the Borough of Penbrook, whose decision related through the immediate superior shall be final.

## Chapter 51: SALARIES AND COMPENSATION

**[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. I, Art. 1, of the 1981 Code. Amendments noted where applicable.]**

**§ 51-1. Salary of Mayor.** [Amended 1-6-2003 by Ord. No. 2002-12; 12-6-2004 by Ord. No. 2004-7]

The salary of the Mayor of the Borough of Penbrook is hereby fixed at \$1,200 per annum, payable in equal monthly amounts.

**§ 51-2. Salary of Councilmen.** [Amended 1-6-2003 by Ord. No. 2002-13]

The salary of each Councilman of the Borough of Penbrook is hereby fixed at \$1,200 per annum, payable in equal monthly amounts.

## **Chapter 55: SECRETARY AND TREASURER, BOROUGH**

**[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. I, § 205, of the 1981 Code. Amendments noted where applicable.]**

### **§ 55-1. Secretary and Treasurer.**

The offices of Borough Secretary and Borough Treasurer may be held by the same person.

## Chapter 63: SHADE TREE COMMISSION

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. I, § 301, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Trees — See Ch. 246.

#### § 63-1. Establishment; duties of Commission.

- A. There is hereby created a three-man commission to be known as the "Shade Tree Commission."
- B. The duties and responsibilities of the Commission shall be as set forth in the Borough Code,<sup>29</sup> its amendments or other laws of the Commonwealth of Pennsylvania.
- C. This chapter shall become effective June 1, 1973, upon proper advertisement.

#### § 63-2. Duties and responsibilities of owners.

- A. The owners or occupiers of premises abutting a borough street or highway shall, in regard to trees growing in or extending over such right-of-way:
  - (1) Maintain such trees in a healthy and presentable condition.
  - (2) Maintain a clearance over sidewalks or walkways of eight feet, a clearance over the curb line of 12 feet and a clearance over the center line of the street of 15 feet.
  - (3) Apply to the borough for written approval to plant or remove any tree within said area in compliance with Chapter 246, Trees.<sup>30</sup>
  - (4) Comply with any written orders of the Shade Tree Commission or the borough regarding such shade trees.<sup>31</sup>
- B. The Shade Tree Commission shall, in regard to trees growing or extending over such rights-of-way:
  - (1) Enforce compliance with the provisions of the Borough Code<sup>32</sup> or any ordinance of the Borough of Penbrook regarding shade trees in the borough by written order directed to the owner of the premises and also the occupier of the premises, if other than the owner, outlining the violation, the corrective action necessary and the time in which said action shall be taken. A copy of said notice shall be filed in the borough office.
  - (2) Make recommendations to Borough Council regarding planting or removal

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29. Editor's Note: See 53 P.S. § 45101 et seq.

30. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

31. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

32. Editor's Note: See 53 P.S. § 45101 et seq.

of trees along borough streets or highways.

- (3) Conduct hearings as prescribed in the Borough Code. <sup>33</sup>

**§ 63-3. Hearing.**

Any person aggrieved by any order of the Shade Tree Commission may request a hearing before the Council, which shall make an independent determination of the questions so raised.

**§ 63-4. Violations and penalties. <sup>34</sup>**

Any person who violates any of the provisions of this chapter or any order of the Shade Tree Commission or Borough Council shall be punishable by the penalties set forth in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

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<sup>33</sup>. Editor's Note: See 53 P.S. § 45101 et seq.

<sup>34</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

## Chapter 73: WARDS

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. I, Art. 4, of the 1981 Code. Amendments noted where applicable.]

### § 73-1. Establishment of boundaries.

A. The areas hereafter described shall constitute the respective wards of the Borough of Penbrook, Dauphin County, Pennsylvania.

B. All such boundary lines shall be in the center of streets where such streets are indicated as the boundary.

C. **The First Ward of the Borough of Penbrook is described as follows:**

Beginning at the intersection of Books Street and the northern borough boundary line; thence in a southerly direction on Books Street to Herr Street; thence in a westerly direction on Herr Street to North 25th St.; thence in a southerly direction on North 25th St. to Canby Street; thence in an easterly direction on Canby Street to Walnut Street to South 24th St.; thence in a southeasterly direction on South 24th Street to Elm Street; thence in a southwesterly direction on Elm Street to Hoffer Street; thence in an easterly direction on Hoffer Street to South 26th Street; thence in a southerly direction on South 26th Street to Parkway Boulevard; thence following the borough boundary lines clockwise in a generally westerly, northerly and then easterly direction to the place of beginning.

D. **The Second Ward of the Borough of Penbrook is described as follows:**

Beginning at the intersection of North 27th St. and Herr Street; thence in a southerly direction on 27th St. to Canby Street; thence in an easterly direction on Canby Street to Elm Street; then in a southwesterly direction on Elm Street to S. 27th St.; thence in a southerly direction on S.27th St. to Hoffer Street; thence in an easterly direction on Hoffer Street to Market Street Road; thence southerly to the borough line; thence westerly to Parkway Boulevard; thence westerly following the borough line to South 26th Street; thence following the line of the First Ward north on 26th Street to Hoffer Street; west on Hoffer Street to Elm Street; north on Elm Street to S. 24th St.; northwest on S. 24th Street to Walnut Street; northeast on Walnut Street to Canby Street; west on Canby St. to N. 25th St.; north on N. 25th St. to Herr Street; and east on Herr Street to N. 27th St., the place of beginning.

E. **The Third Ward of the Borough of Penbrook is described as follows:**

Beginning at the intersection of Books Street and the northern borough line; thence following the borough line in a clockwise direction generally eastwardly and southerly to Canby Street; thence in a westerly direction on Canby Street to S. 27th St.; thence northerly on 27th St. to Herr Street; thence eastwardly on Herr Street to

Books St.; thence northwardly on Books St. to the borough line, the place a beginning.

**F. The Fourth Ward of the Borough of Penbrook is described as follows:**

Beginning at the intersection of Hoffer Street and S. 27th St.; thence in a northerly direction on S. 27th. to Elm Street; thence in a northeasterly direction on Elm Street to Canby Street; thence in an easterly direction on Canby Street to the eastern boundary line; thence following the borough boundary line in a clockwise direction southwardly and westwardly to Charles Street; thence, following the Borough boundary line southerly and westwardly to Market Street Road; thence southerly on Market Street Road to Hoffer Street; thence following Hoffer Street to S. 27<sup>th</sup> Street, the place of beginning.<sup>35</sup>

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<sup>35</sup> Amended Ordinance 2012-2 on July 2, 2012: Changed Ward Boundaries



## **Chapter 84: ADULT ENTERTAINMENT**

**[The legislation covering adult bookstores (Ch. V, Art. 6, of the 1981 Code) and other adult uses for the Borough of Penbrook is currently under review by the Borough Council. When such review is completed, the legislation, with any amendments thereto, will be included here as Chapter 84 of the Code of the Borough of Penbrook. See also Chapter 266, Zoning, for regulations concerning adult uses and entertainment.]**

## Chapter 88: ALCOHOLIC BEVERAGES

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 2-6-1992 by Ord. No. 92-3. Amendments noted where applicable.]

### ARTICLE I: B.Y.O.B. Clubs

[Adopted 2-6-1992 by Ord. No. 92-3]

#### § 88-1. Purpose.

The purpose of this article is to regulate and license the operation of any B.Y.O.B. club in order to protect the health and safety of its patrons and to maintain the quiet enjoyment of surrounding neighborhoods.

#### § 88-2. Title; term defined.

This article shall be known as the "B.Y.O.B. Club Ordinance," and the term "B.Y.O.B. club" shall be as defined in Article II of the Zoning Ordinance (Chapter 266 of the Code of the Borough of Penbrook).

#### § 88-3. Permit requirements.

- A. Any person or persons or any entity desiring to operate or continue to operate a B.Y.O.B. club shall file an application for a B.Y.O.B. club permit with the Borough Manager. The application shall include the following:
- (1) The name and address of the B.Y.O.B. club.
  - (2) The nature of the ownership of the B.Y.O.B. club, i.e., corporation, partnership, joint venture, association, sole proprietorship or other entity.
  - (3) The names and addresses, as applicable, of the officers, agents, shareholders, partners and any and all persons who possess an ownership and/or financial interest in the B.Y.O.B. club.
  - (4) A statement whether the business premises is leased or owned by the B.Y.O.B. club, and, if leased, the name and address of the lessor of the premises and a copy of the lease.
  - (5) A notarized statement that the B.Y.O.B. club complies with the requirements set forth in § 88-4 below of this article.
- B. The Borough Manager shall determine whether the B.Y.O.B. club fully and completely complies with the provisions and requirements of this article within 10 days following the date of receipt of the application. If the Borough Manager determines that the applicant fully and completely complies with the provisions of this article, then he or she shall issue the B.Y.O.B. club permit. If the Borough Manager determines that the applicant does not fully and completely comply with the provisions of this article, then he or she shall deny the issuance of the B.Y.O.B. club permit and indicate the reasons for the denial.
- C. The B.Y.O.B. club permit shall be effective for a period of one year following the

date of issuance, provided that in the event that the B.Y.O.B. club fails to fully and completely comply with the provisions hereof or is convicted of any violations under this article, the Borough Manager shall have the authority to revoke the B.Y.O.B. club permit due to the B.Y.O.B. club's lack of compliance. The B.Y.O.B. club permit must be renewed each year, and the B.Y.O.B. club shall be required to submit an application each year. No B.Y.O.B. club shall continue to operate after the expiration of its B.Y.O.B. club permit until its permit has been renewed.

**§ 88-4. B.Y.O.B. club requirements.**

All B.Y.O.B. clubs shall comply with the following requirements:

- A. Obtain and carry broad form general liability coverage, \$1,000,000 single limit per occurrence, proof of which shall be filed with the Borough Manager.
- B. Possess a valid certificate of occupancy issued by the Pennsylvania Department of Labor and Industry and the Borough of Penbrook and prominently display said certificates as required.
- C. Obtain a valid business privilege license from the Borough of Penbrook and prominently display said license as required.
- D. Obtain a zoning permit pursuant to the Zoning Ordinance of the Borough of Penbrook <sup>36</sup> and prominently display said permit as required.
- E. If food is to be served, obtain a food license pursuant to the Pennsylvania Department of Health and any license required by the ordinances of the Borough of Penbrook and prominently display said license as required.
- F. Obtain a valid B.Y.O.B. club permit pursuant to this article and prominently display said permit as required.
- G. Conspicuously post the hours of operation at the business premises such that patrons are sufficiently apprised of the same.
- H. Obtain any other licenses or permits required by the Commonwealth of Pennsylvania, Borough of Penbrook or any other political subdivision necessary to conduct the business of the B.Y.O.B. club.

**§ 88-5. Permit fee.**

The B.Y.O.B. club shall pay an annual fee of \$100 for a B.Y.O.B. club permit and each renewal thereof.

**§ 88-6. Inspections.**

The Borough Manager, Borough Police Department, Zoning Officer or other duly authorized officer of the Borough of Penbrook is authorized to make periodic inspections of all B.Y.O.B. clubs for the purpose of determining compliance with this article and other ordinances of the Borough of Penbrook.

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**36. Editor's Note: See Ch. 266, Zoning.**

**§ 88-7. Liability; violations and penalties.**

- A. In the event that any violation of this article is committed by or in the name of a corporation, partnership, joint venture, trust, firm, association or other legal entity, in addition to the entity's liability, the officers, partners, principals or agents of said legal entity shall be deemed to be in violation of this article, as well as the person or persons who committed the violation.
- B. Any person, firm, partnership or corporation or other legal entity who or which shall violate any of the provisions of this article shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. Each violation and each day of violation shall constitute a separate offense.

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## Chapter 92: ANIMALS

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]

### ARTICLE I: Livestock

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. IV, Art. 2, of the 1981 Code]

§ 92-1. **Definitions.** The following words and phrases shall have the particular meaning assigned by this section in the appropriate sections of this chapter:

**Domestic Pets** shall mean the keeping of animals that are kept for companionship and enjoyment rather than for economic reasons. Domestic Pets include cats, dogs, fish, ferrets, domesticated mice, rats, guinea pigs, hamsters, gerbils, snakes and similar animals. Domestic Pets shall not include Livestock, chickens (male and female), other poultry, fowl, waterfowl, or any animal or bird for which a permit is required under the Pennsylvania Game and Wildlife Code, 34 Pa.C.S.A. § 101 et seq., or the regulations of the Pennsylvania Game Commission.

**Livestock** shall mean any domestic farm animal such as, but not limited to, cattle, donkeys, horses, mules, burros, sheep, swine, goats, poultry, emus, llamas, rabbits, birds, exotic wildlife (when permitted by the Pennsylvania Game Commission or other appropriate regulatory agency), maintained for personal use, agricultural use or commercial purposes. Livestock shall include the raising of fur-bearing animals and fish farming. Domestic Pets and Chickens (as defined in § 92-19 of this article) shall not be considered Livestock.

**Person** shall mean an individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility, or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.<sup>38</sup>

#### § 92-2. Unlawful acts.

- A. It shall be unlawful for any Person to pasture, herd, or permit to run at large any Livestock within the limits of the Borough of Penbrook.
- B. It shall be unlawful for any Person to raise, keep, or house any Livestock, poultry or other animals, with the exception of Domestic Pets, unless such animals are permitted and kept pursuant to the regulations found elsewhere in this Chapter 92.<sup>39</sup>

#### § 92-3. Duty of Police Department.

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<sup>38</sup> Amended Ordinance 2024-02 on July 1, 2024

<sup>39</sup> Amended Ordinance 2024-02 on July 1, 2024

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It shall be the duty of the Police Department of the borough to seize and hold all Livestock, that shall be found running at large in the borough, as referred to in § 92-2 of this article.<sup>40</sup>

### § 92-4. Violations and penalties. <sup>41</sup>

The penalties for violation of this article shall be as set forth in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

## ARTICLE II: Dogs

[Adopted 4-1-1985 by Section I of Ord. No. 85-1 as Ch. IV, Art. 14, of the 1981 Code]

### § 92-5. Running at large prohibited.

No owner, custodian or keeper of any dog shall suffer or permit such dog to run at large in the Borough of Penbrook, either upon the public streets and highways of the borough or upon the property of another. All owners, custodians or keepers of any dog shall ensure that the dog is adequately under their control by using a leash firmly in their control and attached to the collar or harness on the animal at all times when the animal is off the property of the owner, custodian or keeper. Any person, custodian or keeper permitting a dog to run at large within the Borough of Penbrook, without having in their possession and using a leash to control the dog, shall be guilty of a summary offense as described in Chapter 1, the General Provisions of this Code.<sup>42</sup>

### § 92-6. Borough park property.

Dogs are not permitted on any borough park or recreational property. No owner, custodian or keeper of any dog shall suffer or permit such dog to enter or remain on any borough park or recreational property.

### § 92-7. Disturbances.

No owner, custodian or keeper of any dog shall suffer or permit such dog to make any unreasonably loud or harsh noise or unreasonable disturbance which shall interfere with or deprive the peace, quiet, rest or sleep of neighbors or persons nearby.

Unreasonable noise or disturbance may include, but not be limited to, continual barking of any dog or dogs for continuing period of 30 seconds or more on 3 or more occasions during any 30minute period without justification. Justification can be a defense if there are reasonable grounds to establish the dog was provoked by trespass, taunting or other unusual occurrences likely to prompt the animal to bark.

Leaving a dog or dogs outside while the owner or custodian is not present at the property or otherwise not available after reasonable attempts to contact the owner or custodian and, the

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<sup>40</sup> Amended Ordinance 2024-02 on July 1 , 2024

<sup>41</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>42</sup> Amended Ordinance 2015-3 on June 1, 2015: Updated section 92-5

dog is barking in violation of this section, shall be deemed to have committed an aggravating element of the offense, and the fine shall be no less than fifty dollars (\$50.00).<sup>43</sup>

It is not a defense to this section that the owner or custodian was unaware the dog was interfering with the peace, quiet, rest or sleep of neighbors or persons nearby.

**§ 92-8. Desecration.**

- A. As further provided for in this Chapter under Section 92-18, Animal Waste Removal, no owner, custodian or keeper of any dog shall suffer or permit such dog to defile, befoul, corrupt or otherwise desecrate any sidewalk, walkway or other property of another.<sup>44</sup>

**§ 92-9. Inoculations required.**

- A. No owner, custodian or keeper of any dog shall permit such dog to enter or remain in the Borough of Penbrook unless such dog has been inoculated with canine distemper and rabies shots.
- B. Proof of such inoculation shall be presented to any police officer or Borough Health Officer upon demand. No person shall be convicted of violation of this section if he or she produces proof that the dog was inoculated, at the time of the demand, to the office of the borough or the issuing authority within five days after the demand.

**§ 92-10. Violations and penalties.**<sup>45</sup>

Any person who shall violate any of the provisions of this article shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

**ARTICLE III: Cats**

[Adopted 4-1-1985 by Section II of Ord. No. 85-1 as Ch. IV, Art. 18, of the 1981 Code]

**§ 92-11. Running at large prohibited.**

No owner, custodian or keeper of any cat shall suffer or permit such cat to run at large in the Borough of Penbrook, either upon the public streets and highways of the borough or upon the property of another.

**§ 92-12. Borough park property.**

Cats are not permitted on any borough park or recreational property. No owner, custodian or keeper of any cat shall suffer or permit such cat to enter or remain on any borough park or recreational property.

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<sup>43</sup> Amended Ordinance 2016-2 on Feb 1, 2016: Updated section 92-7

<sup>44</sup> Amended Ordinance 2022-03 on Aug 1, 2022

<sup>45</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

**§ 92-13. Disturbances.**

No owner, custodian or keeper of any cat shall suffer or permit such cat to make any loud or harsh noise or disturbance which shall interfere with or deprive the peace, quiet, rest or sleep of any person.

**§ 92-14. Desecration.**

- A. As further provided for in this Chapter under Section 92-18, Animal Waste Removal, no owner, custodian or keeper of any cat shall suffer or permit such cat to defile, be foul, corrupt or otherwise desecrate any sidewalk, walkway or other property of another.<sup>46</sup>

**§ 92-15. Inoculations required.**

- A. No owner, custodian or keeper of any cat shall permit such cat to enter or remain in the Borough of Penbrook unless such cat has been inoculated with feline distemper and rabies shots.
- B. Proof of such inoculation shall be presented to any police officer or Borough Health Officer upon demand. No person shall be convicted of violation of this section if he or she produces proof that the cat was inoculated, at the time of the demand, to the office of the borough or the issuing authority within five days after the demand.

**§ 92-16. Violations and penalties.**<sup>47</sup>

Any person who shall violate any of the provisions of this article shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

**§92-17 Feral Cats**<sup>48</sup>

Definitions:

**Animal Welfare Organization** – An organization appointed by the Borough for the care and management of Feral Cats. Only Animal Welfare Organizations may be considered as Trap Neuter and Release, hereinafter defined, program sponsors.

**Caretaker** - A person lawfully responsible for the care and management of Feral Cats, who is a member of an Animal Welfare Organization.

**Feral Cat** - Any cat in the Borough of Penbrook which does not have an owner and a regular home, and which is seen to be living without a regular source of food and water supplied by a person. A stray cat.

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<sup>46</sup> Amended Ordinance 2022-03 on Aug 1, 2022

<sup>47</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>48</sup> Amended Ordinance 2022-1 on Feb 2 2022 Add Section 92-17



**Nuisance** - The permitting of a Feral Cat to urinate or defecate on any property in the Borough other than the property designated by the Animal Welfare Organization to be its home, or the destruction of private property or the creation of noise in violation of the noise ordinance by any Feral Cat being maintained by an Animal Welfare Organization.

**Trap Neuter and Release (TNR)** - A program approved by the Borough and executed by an Animal Welfare Organization to trap, spay or neuter and return Feral Cats to a place where they were trapped.

**§92-17.1 Procedures: Feeding**

- A. It shall be unlawful for any person to feed or provide water to any stray or Feral Cat, where such action causes a Nuisance to neighbors or creates a violation of the health, safety and/or welfare laws and regulations of the community, unless that person participates as a Caretaker in a recognized TNR program managed by the Borough or an approved Animal Welfare Organization.
- B. The Caretaker must take responsible measures to keep the Feral Cats on the subject property; all food and water, must remain at all times, on the subject property.
- C. Feeding of Feral Cats at TNR approved properties shall occur on a fixed schedule (e.g., early morning and then again in the evening). Food shall not be left out all day. Feeding shall be done during daylight hours only, to discourage the attraction of other wild animals.

**§92-17.2 Responsibilities of the TNR Program Sponsors**

Animal Welfare Organizations may make application to the Borough to serve as sponsors of a TNR program. Sponsors, appointed by the Borough, shall have the following responsibilities:

- A. Register with the Borough on forms provided by the Borough.
- B. Identify and locate each Feral Cat colony that the organization is managing within the Borough. This information shall be promptly submitted to the Borough and shall include the number of cats in the colony, and the number of spayed or neutered animals. The report shall also include the number of Caretakers who are permitted to service the colony, including their names and addresses,
- C. Record and report to the Borough, at a public meeting of the Borough Council in January of each year, the total number of non-sterilized cats and the number of sterilized cats in each Feral Cat colony within the Borough for which the organization has implemented a TNR program. This report shall also include the number of Caretakers responsible for each colony.

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- D. Provide a list of Caretakers who are permitted to maintain food and water at the Feral Cat colonies in the Borough.
- E. Notify the Borough immediately upon cessation of services to any Feral Cat colony.
- F. Report to the Borough, at a public meeting of the Borough Council in January of each year, the number of kittens born into each colony of Feral Cats within the Borough for which the Animal Welfare Organization has implemented a TNR program.
- G. Promptly address all complaints received by the Borough regarding either a Feral Cat, Feral Cat colony or the actions of a Caretaker and act as intermediary between the Borough and the complainant to address problems and remedy behavior or public Nuisance within a reasonable time as determined by the Borough.
- H. Advise the Borough on methods used to trap and neuter Feral Cats, feeding methods and times, and any other information requested by Borough Council.

### **ARTICLE IV: Animal Waste Removal**

#### **§ 92-18. Animal Waste Removal**

Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Animal** - A dog, cat or other animal kept for amusement or companionship.

**Immediately** - At once, without delay.

**Owner or Custodian** - Any person who harbors, feeds, boards, possesses, keeps or has custody of an Animal.

**Soil or Defile** - To make unclean from excrement.

**Waste** - Solid matter expelled from the bowels of the Animal; excrement.

- A. No Owner or Custodian of any Animal shall cause or allow such Animal to Soil, Defile or defecate Waste on the property of another person, any public property or upon any street, sidewalk, public way, play area owned by Penbrook Borough unless such Owner or Custodian Immediately removes and disposes of all Waste deposited by such Animal in a sanitary manner.

- B. It shall be unlawful for any Owner or Custodian to cause or permit an Animal to be on any property owned by Penbrook Borough or the property of another person, without having in their immediate possession a device for the removal of Waste and depository for the transmission of Waste to a proper receptacle located on the property owned or possessed by the Owner or Custodian.
- C. It shall be unlawful for any Owner or Custodian in control of, causing or permitting any Animal to be on any property owned by Penbrook Borough or the property of another person, to fail to remove Waste left by such Animal and dispose of it properly as described in subsection (D).
- D. Proper disposal of Animal Waste shall be limited to burial where lawfully permitted, flushing in the toilet, bagging for disposal in the Owner or Custodian 's waste receptacle, and bagging for disposal in a waste receptacle in a public park or park area.
- E. Disposal of Animal Waste in storm drains shall be prohibited.
- F. Disposal of Animal Waste in public compost shall be prohibited.
- G. The provisions of this section shall not apply to the ownership or use of any properly identified service animals, animals when used for police activities, or tracking animals when used by or with the permission of the appropriate authorities.
- H. The penalties for violation of this section shall be as set forth in Chapter 1, General Provisions, Article II, Enforcement; Penalties of the Code.<sup>49</sup>

## ARTICLE V: Chickens<sup>50</sup>

### § 92-19. Short Title and Definitions

This article shall be known and referred to as the “Borough of Penbrook Chicken Ordinance.”

The following words and phrases shall have the particular meaning assigned by this section in the appropriate sections of this chapter:

**Chicken** shall mean domestic, egg-laying hens of the species Gallus Gallus Domesticus. Chickens shall not include roosters of the species Gallus Gallus Domesticus or other species of poultry or fowl.

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<sup>49</sup> Amended Ordinance 2022-03 on Aug 1, 2022 : added section 92-18

<sup>50</sup> Amended ordinance 2024-02 on July 1, 2024 : added Article V

**Manure** shall mean the fecal and urinary excrement of Chickens, often containing some spilled feed, bedding or litter.

**Section 92-20. Number and Gender of Chickens Allowed.**

- A. Upon the application for and issuance of a permit under § 92-21 of this article, property owners or permittees shall be permitted no more than six (6) Chickens per parcel, or multiple contiguous parcels in common ownership, regardless of the number of dwelling units on such parcel.
- B. No roosters are permitted. Only hens are allowed.

**Section 92-21. Permit and Application.**

- A. Permit. No Person shall raise, harbor or keep Chickens within the Borough of Penbrook without having first obtained a valid permit to do so from the Borough. Such Chicken permit shall be valid for one (1) year from the date of issue and must be renewed on an annual basis to allow the Person to continue to raise, harbor or keep Chickens.
- B. Application. In order to obtain a permit, an applicant shall submit an application on the forms provided by the Borough office. The application must also include a:
  - i. Site plan indicating all existing buildings, the location (including distances from buildings and setback lines) of any and all required proposed coops, enclosures and fenced areas for the Chickens; and
  - ii. Documented Manure management and disposal plan, which shall detail:
    - (a) the size and location of the structure or watertight container which the Manure will be stored for future personal use or disposal; and
    - (b) the applicant's plan for storage and disposal of the Manure to ensure all requirements of this article relating to Manure will be met.
- C. Fees. An applicant for a permit shall pay, in full, a fee for such permit, which fee shall be set by resolution of Borough Council from time to time.
- D. Permit requirements. In order for a permit to be issued (or renewed), all of the following requirements must be met:
  - i. All requirements of this article shall be met.

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- ii. All fees related to issuance or renewal of a permit shall have been paid in full.
  - iii. If the applicant is not the property owner, then the applicant must provide written approval from the property owner.
  - iv. All other requirements of the Code shall be met, including the submission and approval of any and all Zoning Permits or Building Permits, as determined to be necessary by the Codes and Zoning Officer.
- E. Issuance of permit. The Borough shall issue a permit within 30 days of receipt of the application and all requirements having been met. A Borough representative, such as the Zoning Officer or other designee, shall have the authority to inspect the subject property prior to issuance or renewal of a permit.
- F. Denial, suspension, revocation or nonrenewal. The Borough may deny, suspend, revoke or decline to renew any permit issued hereunder for any of the following reasons:
  - i. Any false statements on any application or other information required to be given by the applicant or permit holder.
  - ii. Failure to pay any fee or penalty required by this article or resolution of Borough Council.
  - iii. Failure to correct deficiencies noted in violation notices within the time specified in such notice.
  - iv. Failure to comply with any provision of this article.
- G. Notification. A decision to revoke, suspend, deny or not renew a permit shall be in writing, delivered by ordinary mail or in person to the address indicated on the application. Such notice shall state the reasons for the action.
- H. Effect of revocation. When a permit is revoked, an applicant may not reapply for a new or reissued permit for a period of six (6) months from the date of revocation.
- I. Appeals. The revocation, suspension, denial or decision not to renew a permit may be appealed in writing to the Borough Council within 30 days of such action. The appeal shall be heard at the next regularly scheduled meeting of Borough Council following receipt of the written appeal. The written appeal shall set forth the basis for such appeal. A written decision of Borough Council shall be issued within 30 days of hearing the appeal and such decision shall be deemed final and binding.

### **Section 92-22. Where Permitted.**

This Ordinance regulates and permits Chickens within all zones of the Borough of Penbrook.

**Section 92-23. Noncommercial Purposes.**

Chickens kept under this Ordinance shall be kept for personal use and consumption only and permittees or property owners shall not engage in any commercial sales, breeding or other endeavor with regard to the Chickens permitted hereunder.

Property owners or permittees having and keeping Chickens shall be prohibited from engaging in any of the following:

- i. Breeding of Chickens;
- ii. Sale of Chickens whether alive or not and whether in whole or in part;
- iii. Sale of eggs or egg products; and
- iv. Sale or distribution of fertilizer.

**Section 92-24. Chicken Coops, Enclosures or Fenced Areas.**

A. Chickens must be kept in a coop, enclosure and fully fenced area at all times. No Chickens shall be permitted to roam or range outside of the coop, enclosure or fully fenced area on the permittee's property.

B. All chicken coops, enclosures, or fully fenced areas containing the Chickens shall be (in their entirety) placed:

i. In the rear yard behind the principal building (i.e., the dwelling) on the property.

ii. No closer to either side yard setback than the principal building itself, which shall in no instance be less than five (5) feet from any dwelling other than the property dwelling.

iii. Within one-half the distance between the principal building on the parcel and the applicable rear setback line within that zoning district, which shall in no instances be less than five (5) feet from any dwelling other than the property dwelling.

iv. No chicken coops, enclosures or fenced areas shall be permitted in the front or side yards of any property.

C. All enclosures whether commercially designed or designed and/or build by the property owner shall comply with the following:

- i. Enclosures shall provide 3 square feet to 4 square feet of accessible area per Chicken.
  - ii. Enclosures shall be constructed in such a way as to prevent Chicken(s) from roaming free and to keep all predators from accessing the enclosure.
  - iii. Enclosures shall be accessible by Chickens from the coop when they are not in the coop.
- D. Coops, enclosures and fenced areas shall be kept in a clean, dry, odor-free, neat and sanitary condition at all times.
- E. Coops and enclosures shall have a solid roof designed to protect the Chickens, provide adequate ventilation and adequate sun/shade and must be reasonably impermeable to rodents, wild birds and predators, including dogs, cats, raccoons, etc.
- F. Coops shall have a minimum of 2 ½ to 3 square feet of space per Chicken inhabiting the coop.
- G. Chicken coops, fenced areas or enclosures shall be removed if they are not in use for the keeping of Chickens for a period of 12 consecutive months.

**Section 92-25. Control and Safety of Chickens.**

- A. The control and safety of Chickens at all times shall be the responsibility of the property owners or permittee.
- B. Chickens shall be provided with access to feed and clean water at all times. Feed and water shall be stored and provided in a manner that it is unavailable to rodents, wild birds and predators. Chicken feed shall be stored in a container with a tight-fitting lid.
- C. Manure shall be stored in a fully enclosed structure, meaning a structure that is enclosed so that its interior is not visible to persons who are outside the structure, or watertight container. No more than three cubic feet of Manure may be stored on or within any permitted parcel, fully enclosed structure, or watertight container. However, Manure may be composted and used as personal use fertilizer by the property owner or permittee. Any Manure not used as fertilizer or in excess of the amount permitted to be stored shall be removed from the property in compliance with the Code. The coop, enclosure, fenced area and surrounding area shall be kept free of trash and accumulated Manure. At a minimum the coop, enclosure, fenced

area and/or surrounding area shall be cleaned out, removing all Manure or debris, at least once in every seventy-two-hour period.

- D. No Chickens may be kept on any parcel in the borough that causes a public nuisance in the form of noise, odor, attraction of predators or insects to any neighbor.
- E. Chickens shall not be permitted to roam off of the property owner's or permittee's parcel.
- F. The property owner or permittee shall take action necessary to reduce the attraction of rodents and predators and the potential infestation of insects and parasites. The property owner or permittee shall remove or have treated any Chickens found to be infested with parasites, insects, or disease, especially bird flu. In the case of suspected bird flu, the Chickens shall be examined by a registered veterinarian and upon the direction of a veterinarian or the Pennsylvania Department of Agriculture shall be immediately euthanized and disposed of in a way to preclude spreading the disease.
- G. The slaughtering of Chickens must be done in a humane manner and in a completely enclosed area. The remains thereof shall be disposed of properly in compliance with the Code.
- H. Dead Chickens shall be removed and disposed of in accordance with Borough ordinances immediately upon discovery.
- I. No dog, cat or other Domestic Pet which kills a Chicken off the property owner's or permittee's parcel of land shall, for that reason alone, be considered a dangerous or aggressive animal.

**Section 92-26. Violations and Penalties.**

- A. The following acts shall be deemed to be violations of this Ordinance:
  - i. The keeping of Chickens in violation of any provision of this Ordinance.
  - ii. Permitting any owner, renter, lessee or other occupant of a property to allow Chickens to be kept on a property in violation of this Ordinance.
  - iii. Keeping of Chickens inside of any dwelling unit.
- B. Any person who shall violate the provisions of this Ordinance shall be subject to a summary criminal proceeding before the magisterial district justice as provided by the Pennsylvania Rules of Criminal Procedure, as may be amended from time to time. Upon a finding of a violation, a fine not to exceed \$1,000, plus court costs and



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reasonable attorney's fees incurred the Borough in prosecution of the violation, shall be imposed. In the event such fines and costs are unpaid, such person may be subject to imprisonment of up to 15 days. Each day that such violation continues shall constitute a separate violation of this Ordinance.

Additionally, the Borough may institute appropriate actions or proceedings at law or in equity to prevent or restrain violations of this Ordinance. The Borough shall be entitled to recover court costs and reasonable attorney's fees incurred.

## Chapter 96: BICYCLES

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. IV, Art. 10, of the 1981 Code. Amendments noted where applicable.]

### § 96-1. License required.

No person who resides within the Borough of Penbrook shall ride or use a bicycle upon any public street or public place in the Borough of Penbrook unless the same shall be licensed as herein provided.

### § 96-2. Registration required.

Upon the effective date of this chapter, every owner of a bicycle shall register the same with the Police Department upon a form furnished by the Department, which form shall include the name and address of the owner, the name of the manufacturer of the bicycle, the frame number or other identification number, if any, style and general description. If the owner of a bicycle is a minor under the age of 18 years, then a parent, guardian or person having custody of such minor or with whom such minor resides shall register such bicycle on behalf of such minor owner.

### § 96-3. Issuance of registration card and tag.

The Police Department shall issue a registration card and a metallic registration tag of corresponding number to each registration, which tags shall be suitable for attachment to the frame or seat of a bicycle and which tags shall be attached by the owner to the bicycle for which registration has been made. Registration tags shall remain attached to the bicycle for which issued during the period for which said registration shall be effective. The registration card and tag shall be permanent and need not be renewed or reissued from year to year, except the Chief of Police, not more frequently than annually, may declare a date upon which all then-current registrations will expire and require registration upon expiration of the then-existing registrations. The Police Department shall keep a record of all registrations herein provided for.

### § 96-4. Proof of registration.

It shall be the duty of the operator of any bicycle to display his owner's registration card or produce satisfactory proof that the owner has such a registration card, upon the demand of any police officer or park policeman.

### § 96-5. Transfer of ownership.

It shall be the duty of every person who sells or transfers ownership of any bicycle to report such sale or transfer to the Police Department within 48 hours of sale or transfer, and if such person has had such bicycle theretofore registered, he shall also return to the Police Department the registration card and tag issued to him, together with the name and address of the purchaser thereof. It shall be the duty of the purchaser of such bicycle to immediately apply for registration of the same in his name.

### § 96-6. Discontinuance of ownership.

It shall be the duty of every person who dismantles, reduces to junk or takes out of operation any bicycle, whether or not the same is registered, to report the same to the Police Department and furnish such information concerning the same as may be required.

**§ 96-7. Alteration of registration card.**

It shall be unlawful for any person to willfully or maliciously remove, destroy, mutilate or alter the identification number of any bicycle or to remove, destroy, mutilate or alter any registration card or registration tag issued pursuant hereto during the period the same are effective.

**§ 96-8. Duplicate registration card.**

In the case of loss or destruction of a registration card or registration tag, a duplicate registration card and tag shall be issued to the registered owner upon satisfactory proof of such loss or destruction.

**§ 96-9. Proof of ownership.**

Any bicycle being ridden or used upon the public streets or public places of the Borough of Penbrook or found within the Borough of Penbrook without a registration tag or with an altered or mutilated serial number shall, prima facie, be considered as being not properly registered and may be immediately taken and impounded by the Police Department until the person claiming ownership thereof shall establish the right of ownership. The Police Department shall require such bicycle to be properly registered before releasing the same to the owner.

**§ 96-10. Equipment required. <sup>51</sup>**

Every bicycle shall be equipped as required by 75 Pa.C.S.A. § 3507.

**§ 96-11. Duty of Police Department.**

It shall be the duty of the Police Department, prior to issuing registration for any bicycles, to inspect the manufacturer's serial number of such bicycle for the purpose of ascertaining that the number is not obliterated, omitted nor defaced, to inspect such bicycle's mechanism and equipment and to provide that such bicycle is capable of being operated in a safe manner.

**§ 96-12. Impoundment.**

The Police Department shall have the authority to impound, for a period of not less than three days nor more than five days, the bicycle of any person found operating said vehicle in a reckless and unsafe manner.

**§ 96-13. Violations and penalties. <sup>52</sup>**

The penalties for violation of this chapter shall be as set forth in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

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51. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

52. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

## Chapter 104: BUILDING CONSTRUCTION

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]

### GENERAL REFERENCES

Demolition of buildings — See Ch. 108.  
Electrical contractors — See Ch. 133.  
Heating appliances, fireplaces and chimneys — See Ch. 154.  
Plumbing — See Ch. 188.  
Property maintenance — See Ch. 200.  
Sewers — See Ch. 210.  
Smoke detectors — See Ch. 214.

### ARTICLE I: Building Code

[Adopted 2-4-2002 by Ord. No. 2004-2]

#### § 104-1. Adoption of standards.

A certain document, one copy of which is on file in the office of the Borough of Penbrook, being marked as the International Building Code, as published by the International Code Council, Inc., be and is hereby adopted as the Building Code of the Borough of Penbrook, in the Commonwealth of Pennsylvania, for the control of buildings and structures as herein provided; and each of the regulations, provisions, penalties, conditions and terms of said Building Code are hereby referred to, adopted and made a part hereof as if fully set out in this article, with the additions, insertions, deletions and changes, if any, prescribed in § 104-2 of this article.

#### § 104-2. Modifications to standards.

The following sections are hereby revised:

- A. Section 101.1, insert: "Borough of Penbrook."
- B. Section 1612.3, insert: " Borough of Penbrook July 31, 1978"
- C. Section 1612.3, insert: " Borough of Penbrook July 31, 1978."
- D. Section 3410.2, insert: "July 1, 2004."<sup>53</sup>

### ARTICLE II: Uniform Construction Code

[Adopted 6-7-2004 by Ord. No. 2004-2]

#### § 104-3. Election to administer and enforce.

The Borough hereby elects to administer and enforce the provisions of the Pennsylvania

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<sup>53</sup> Amended Ordinance 2019-4 on Oct 7 2019, updated section D

Construction Code Act, Act 45 of 1999, 35 P.S. §§ 7210.101 through 7210.1103, as amended from time to time, and its regulations.

**§ 104-4. Adoption and incorporation; amendments.**

The Uniform Construction Code, contained in 34 Pa. Code, Chapters 401 through 405, as amended from time to time, is hereby adopted and incorporated herein by reference as the municipal building code of the Borough, provided, however, that Section 403.620(8), which excepts from the requirement to obtain a building permit the installation of an uncovered deck where the floor of the deck is not more than 30 inches above grade, is hereby deleted. In addition, the following codes are hereby amended as indicated:

A. Current International Plumbing Code.

- (1) Section 903.1: Insert "12" as the number.

B. Current International Existing Building Code.

- (1) Section 1401.2: Insert "July 1, 2004" as the date. <sup>54</sup>

**§ 104-5. Methods of administration and enforcement.**

Administration and enforcement of the Code within the Borough shall be undertaken in any of the following ways as determined by the Borough Council of the Borough from time to time by resolution:

- A. By the designation of an employee of the Borough to serve as the municipal code official to act on behalf of the Borough.
- B. By the retention of one or more construction code officials or third-party agencies to act on behalf of the Borough.
- C. By agreement with one or more other municipalities for the joint administration and enforcement of this Act through an intermunicipal agreement.
- D. By entering into a contract with another municipality for the administration and enforcement of this Act on behalf of the Borough.
- E. By entering into an agreement with the Pennsylvania Department of Labor and Industry for plan review, inspections and enforcement of structures other than one-family or two-family dwelling units and utility and miscellaneous use structures.

**§ 104-6. Board of Appeals.**

A Board of Appeals is hereby established by the Council of the Borough of Penbrook in conformity with the requirements of the relevant provisions of the Code, as amended from

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<sup>54</sup> Amended Ordinance 2019-4 on Oct 7 2019, updated section 104-4

time to time, and for the purposes set forth therein. The Council shall appoint members to the board, as required, by resolution. <sup>55</sup>

**§ 104-7. Effect on other ordinances.**

- A. All building code ordinances or portions of ordinances which were adopted by the Borough on or before July 1, 1999, and which equal or exceed the requirements of this Code shall continue in full force and effect until such time as such provisions fail to equal or exceed the minimum requirements of the Code, as amended from time to time.
- B. All building code ordinances or portions of ordinances which are in effect as of the effective date of this article whose requirements as less than the minimum requirements of the Code are hereby amended to conform with the comparable provisions of the Code.
- C. All relevant ordinances, regulations and policies of the Borough not governed by the Code shall remain in full force and effect.

**§ 104-8. Fees.**

Fees assessable by the Borough for the administration and enforcement undertaken pursuant to this article and the Code shall be established by the Borough Council by resolution from time to time.

**§ 104-9. Modifications of Standard.**

In addition to all types of construction, placement of structures, repairs and alterations for which the Uniform Construction Code requires a permit, all persons, corporations and partnerships shall be required to obtain a permit under the Penbrook Building Code for the following:

The construction, erection, or placement of any accessory structure, which is equal to or greater than 200 square feet, whether or not such structure is connected to any utility.

The construction, erection or placement of any accessory structure, which is less than 200 square feet if such accessory structure is provided with any utility service. The applicant shall obtain a permit only for the purpose of inspection for the utility or utilities being installed or provided to the accessory structure.

The construction, enlargement, alteration, repair, movement, demolition or change of occupancy of a residential building or structure constructed prior to April 9, 2004 , or the erection, installation, enlargement, alteration, repair, removal, conversion or replacement of any electrical, gas, mechanical or plumbing system, of a residential building or structure constructed prior to April 9, 2004.

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<sup>55</sup> Amended Ordinance 2012-3 on Sep 5 2012, updated section 104-6

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The following types of alterations and repairs to residential buildings shall not be required to obtain a permit:

Replacement of windows or doors when there is no change in the size of the existing opening.

Re-roofing which does not require structural alteration or repair.

Addition or replacement of siding on the exterior of any residential structure.

Repair or replacement of any non-structural portion of a deck or porch.

Replacement of an appliance switch or receptacle with a switch or receptacle which has the same or similar rating.

The repair or replacement of any non-structural member.

The repair or replacement of any sink, toilet, tub, shower or similar plumbing fixture without relocation of the drain <sup>56</sup>

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<sup>56</sup> Amended Ordinance 2019-4 on Oct 7 2019, updated section 104-9

## Chapter 108: BUILDINGS, DEMOLITION OF

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. IX, Art. 3, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Building construction — See Ch. 104.  
Outdoor burning — See Ch. 112.  
Property maintenance — See Ch. 200.  
Real estate registry — See Ch. 204.

#### § 108-1. Unlawful action.

It shall be unlawful to wreck or demolish any building or structure in the Borough of Penbrook without complying with the provisions herein contained.

#### § 108-2. Notice of demolition; permit required.

The owner of the premises involved, or his agent, shall notify the Code Official in writing, at least 50 days prior to any demolition, that he intends to wreck or demolish a building or a structure within the borough, setting forth the location and the approximate time the demolition will be performed, and shall make application for a demolition permit.

#### § 108-3. Inspection of premises.

Prior to any demolition, the Code Official or his agent shall inspect the premises in question and ascertain that adequate provisions have been made for the following:

- A. Public liability insurance to protect the surrounding property owners or members of the public.
- B. Protection of any utility lines and services.
- C. Prevention of injury or damage to adjoining or surrounding property owners and the general public by such things as dust, falling objects, obstructions or depressions below ground level.

#### § 108-4. Issuance of demolition permit.

The Code Official or his agent, upon being satisfied that the demolition can be performed with safety, shall issue a demolition permit containing the necessary conditions to be complied with on the demolition site.

#### § 108-5. Fee. <sup>57</sup>

Each applicant shall pay a fee of \$5 for each \$1,000 estimated cost of the entire demolition project.

#### § 108-6. Compliance with regulations required.

Every owner or his agent shall observe all instructions or regulations issued to him by the

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<sup>57</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).



Code Official or his agent regarding such proposed wrecking or demolition work.

**§ 108-7. Regulations.**

All work of such wrecking or demolition shall be performed in a workmanlike manner and with the least amount of noise and annoyance possible. Care shall be taken to protect adjoining structures with adequate shoring and whatever else is needed to protect such structures. Sufficient signs and barricades shall be erected to protect persons and vehicles passing and to prevent children or others from entering upon such premises. All utility lines shall be properly disconnected and sealed and the property shall be backfilled, leveled and cleared of all debris. No solid mass measuring more than 1 1/2 feet on any side shall be permitted to remain or be used as fill nor shall any combustible material be used as fill.

**§ 108-8. Supervision of work.**

The Code Official or his agent shall supervise such wrecking or demolition to ascertain that the same is being done in conformity to his prior instructions.

**§ 108-9. Violations and penalties. 58**

The penalties for violation of this chapter shall be as set forth in Chapter 1, General Provisions, Article II, Enforcement; Penalties. Each day of violation hereof shall constitute a separate offense hereunder.

## Chapter 112: BURNING, OUTDOOR

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. IV, Art. 15, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Brush, grass and weeds — See Ch. 200.  
Building construction — See Ch. 104.  
Disorderly conduct — See Ch. 126.  
Junk and junkyards — See Ch. 160.  
Property maintenance — See Ch. 200.

#### § 112-1. Policy.

Whereas pollution of the air is detrimental to the health, comfort, living conditions, welfare and safety of the citizens of Penbrook, it is hereby declared to be the policy of the Borough of Penbrook to safeguard the citizens of the Borough of Penbrook from air pollution.

#### § 112-2. Prohibited acts.

No person, firm, partnership or corporation, landlord or tenant shall set or maintain an open fire in the Borough of Penbrook. The term "Open Fire" shall include but not be limited to bonfires, the burning of leaves, brush, wood, coal, refuse or other fuel in an open area, a container such as a 55 gallon drum or any other arrangement, the purpose of which is to dispose of the items being burned. No mechanism that is used to heat a dwelling unit but which is outside the structure containing the dwelling, such as an outdoor furnace, or any fire not completely contained in an approved container such as a barbecue shall be used. Small devices such as freestanding fire pits, chiminea, hibachi, and other small fire containing vessels used primarily for cooking or entertainment shall be permitted provided they are not situated wholly or partially under a building or overhang. All fires shall be constantly attended by an adult and shall have an adequately sized working fire extinguisher, of the appropriate type, within 25 feet of the fire. <sup>59</sup>

#### § 112-3. Barbecues.

Family-size outdoor barbecue fires usually of the charcoal type are specifically excepted from the terms of this chapter.

#### § 112-4. Special exceptions.

Special exceptions for recreational or other similar purposes may be granted by the Mayor or Police Department upon application.

#### § 112-5. Violations and penalties. <sup>60</sup>

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<sup>59</sup> Amended Ordinance 2015-4 on June 1 2015, Updated section 112-2

<sup>60</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

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Any person, firm, partnership or corporation who or which shall violate or fail to conform to any of the provisions of this chapter shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

## Chapter 113: BUYER NOTIFICATION CERTIFICATES

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 5-6-2002 by Ord. No. 2002-8. This ordinance also provided for the repeal of Ord. No. 2002-3, which pertained to buyer notification certificates. Amendments noted where applicable.]

### GENERAL REFERENCES

Building construction — See Ch. 104.  
Heating appliances, fireplaces and chimneys — See Ch. 154.  
Plumbing — See Ch. 188.  
Property maintenance — See Ch. 200.  
Real estate registry — See Ch. 204.  
Subdivision and land development — See Ch. 233.  
Zoning — See Ch. 266.

### § 113-1. Intent and purpose.

- A. The Borough Council (the "Council") of the Borough of Penbrook (the "Borough") finds that some owners of properties in the Borough are using such properties in violation of the Zoning Ordinance <sup>61</sup> of the Borough, and are maintaining such properties in violation of housing, building, safety, plumbing, electrical, property maintenance and fire prevention ordinances, and are offering such properties for sale, lease or rental without disclosing such illegal use or the receipt of notice of existing housing, building, safety, plumbing, electrical, property maintenance and fire prevention violations. Many innocent purchasers and tenants of such properties are not aware of the illegal use or the existence or nature of violations until they have entered into agreements of sale or lease or have consummated the purchase or lease.
- B. In order to prevent undue hardships and losses imposed on such purchasers and tenants by owners who have failed to disclose the illegal use or condition of the property being conveyed, or who have made misrepresentations in that regard, the Borough Council finds that it is in the best interest of the citizens of the Borough of Penbrook to declare that all owners of nonresidential property offering such property for sale, lease or rental, and all owners of residential property offering such property for lease or rental shall be required to advise the purchaser or tenant of the legal use and condition of such property and to deliver to the purchaser or tenant, as applicable, prior to the execution of the agreement of sale or lease for such property, a certificate obtained from the Code Enforcement Officer showing the legal use and zoning classification for such property and the existence of any and all housing, building, safety, plumbing, electrical, property maintenance and fire prevention violations. In addition, all owners of residential property offering such property for sale shall obtain a certificate from the Code Enforcement Officer showing the legal use and zoning classification for such property and the existence of any and all housing, building, safety, plumbing, electrical, property maintenance and fire prevention violations.

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61. Editor's Note: See Ch. 266, Zoning.

**§ 113-2. Definitions.**

When used in this chapter, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise:

**AGREEMENT OF SALE** - Any agreement or written instrument which provides that title to a property shall thereafter be transferred from one owner to another, and, shall acquire title thereto after the payment of a stipulated number of regular payments or after a stipulated period of time.

**BUILDING CODE OFFICIAL** - Pursuant to Chapter 401.1 of the Pennsylvania Uniform Construction Code, a Building Code Official is "A construction code official, or the Building Code Official's designee, who manages, supervises and administers building code enforcement activities under §401.7(a)(18) (relating to certification category specifications) of the Pennsylvania Uniform Construction Code (UCC) 35 P.S. §§7210.101 to 7210.1103, as amended. Duties include, but are not limited to management of building code enforcement activities, supervision of building inspectors or plan examiners, authorizing issuance of certificates of occupancy, issuance of building permits, violation notices and orders to vacate; and the initiation of prosecutions."

**CERTIFICATE, CERTIFICATE OF OCCUPANCY** - A certificate issued by a Building Code Official allowing occupancy of a building or structure under the Uniform Construction Code.

**CODE ENFORCEMENT OFFICER** - A code administrator or municipal code official, construction code official or third-party agency certified with the Department of Labor and Industry under the PA Uniform Construction Code (UCC). The term includes any individual certified in a category established under the UCC to perform a plan review of construction documents or administer and enforce codes and regulations in that category under the Act or related acts.

**DISTRICT** - Any jurisdictional area of a zone as set forth in the Borough Zoning Ordinance.

**INSPECTION** - An examination of a property by a Code Enforcement Officer to determine if the property complies with the (UCC), and if not, which portions of the property are not in compliance with the code.

**NONRESIDENTIAL** - Any property that is not residential as defined herein.

**OWNER** - Any person, general partnership, limited partnership, limited-liability partnership, limited-liability company, corporation, association, trust or fiduciary having a legal or equitable title or any interest in any property. Whenever used in any section prescribing or imposing a penalty, the term "owner" shall also include any partners, members, director, officers and shareholders of any entity which is an owner of a property.

**PROPERTY** - Any building or structure situated in the Borough.

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REGULATIONS - Includes those promulgated by the Pennsylvania Department of Labor and Industry under the Pennsylvania Fire and Panic Act, 35 P.S. § 1221 et seq.

RESIDENTIAL - Any property that is used primarily as single-family or multifamily dwelling.

### § 113-3. Buyer Notification inspections.

A. Prior to entering into an agreement of sale or exchange of any property, or prior to the transfer of property when no agreement of sale is utilized, the owner shall obtain from the Building Code Official the certificate set forth in Section 113-5 subject to the following provisions. Where such properties are intended to be demolished and a valid demolition permit has been issued by the Borough, the certificate shall not be required.

Where such properties are sold at a foreclosure sale or pursuant to the Real Estate Tax Sale Act of 1947, as amended, or other judicial sale pursuant to state or federal statutes, the certificate shall not be required.

B. The certificate shall be valid for a period not to exceed three years from the date of issue. In the event a property requires a new certificate within one (1) year after the date of issue of a previous certificate, the Borough shall search its records to determine if any violations of the building, plumbing, electrical or fire protection codes exist for the property. If none exist, the Building Code Official, in his sole discretion, may waive the inspection requirement as set forth in Section 113-5 and issue a new certificate for the remaining portion of the period.

C. The purchaser of a property shall be required to have all violations found at the time of inspection corrected within ninety (90) days after completion of the sale or transfer of title, whichever is earlier.

### § 113-4 Rental Inspections

Prior to entering into a lease agreement leasing or renting any property, or prior to a tenant occupying property when no lease agreement is used and the unit has not been inspected in the previous three years, the owner shall first have the property inspected and obtain from the Building Code Official the certificate set forth in Section 113-5. Any owner of a building containing two or more rental units shall arrange to have all units and all common areas inspected at one time during the triennial inspection. No landlord shall permit a tenant or other person to occupy any rental unit unless all violations, found at the time of inspection by the Code Enforcement Officer, shall have been corrected and a Certificate of Occupancy issued by the Building Code Official prior to occupancy of the unit.

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All owners of rental property shall be required to have a property inspected every three years commencing with the date of enactment of this ordinance. No property which has not been inspected and has not received a Certificate of Occupancy from the Building Code Official may be rented or leased, or if no rental agreement or lease is used, may be occupied by a tenant until the owner has first had the property inspected and received the certificate described in Section 113-5. Accessory buildings which are being rented for the purpose of storing personal belongings such as cars and household goods and which are not used for any commercial purpose by the renter or lessor shall be exempt from the requirement to obtain an inspection.

The certificate shall be valid for a period of three years. In the event that a property requires a new certificate before the end of the three-year period, the Borough shall search its records to determine if any violations of the building, plumbing, electrical or fire protection codes exist for the property. If none exist, the Building Code official, in his sole discretion, may waive the inspection requirement as set forth in Section 113-5 and issue a new certificate for the remaining portion of the period.

In the event an owner refuses to have the rental property inspected, then pursuant to Section 403.84 of the PA. UCC, the Building Code Official may declare a building "unsafe", revoke any existing certificate and require it to be vacated until such time as the owner again receives a valid Certificate of Occupancy

### **§ 113-5 Application Fee and Contents of Certificate of Occupancy.**

Upon application by the owner and payment to the Borough of a fee, the Code Enforcement Officer or his designee shall review the pertinent borough records and inspect the property in question. The fee for the record review and inspection, and issuance of the Certificate of Occupancy shall be set by Borough Council from time to time by resolution.

Upon completion of the review and inspection the Building Code Official shall execute and deliver a certificate to the owner which shall contain the following information:

The name and address of the owner and in the case of a rental property, the name of the occupants.

The street address or other appropriate description of the subject property.

A statement of the district classification applicable to the property in question, together with an extract of the applicable ordinances showing the permitted uses within that district.

A statement of the variances and use permits, if any, granted to the property, together with the conditions and restrictions of such permits.

A statement as to whether any building, electrical or plumbing permits have been issued for work not yet completed on the property.

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A statement as to whether there appears to be any nonconformity or illegality in the structures on the property or the uses being made thereof. This statement shall also indicate whether or not the property has been approved or designated as a pre-existing nonconforming use.

A statement of any and all violations of the housing, building, plumbing, electrical, safety and fire prevention ordinances and regulations.

Certificate of Occupancy number

A description of the portion of the residential building which was inspected for compliance with the Uniform Construction Code if the certificate applies only to a portion of the property.

The name, date and signature of the Building Code Official who issued the Certificate of Occupancy and the name and date of the Code Enforcement Officer who inspected the property.

The edition of the construction code used in the inspection and applicable to the permit or certificate.

Any special stipulations and conditions relating to the building permit.

### **In addition to the above, the following shall be added for every nonresidential Certificate of Occupancy:**

The use and occupancy classification under Chapter 3 of the "International Building Code", when designated.

The type of construction defined in Chapter 6 of the "International Building Code" when designated period.

Any special stipulations and conditions relating to the permit and Board of appeal decisions and variances for accessibility requirements granted by the Secretary of the Pennsylvania Department of Labor and Industry.

The date of final inspection.

### **§ 113-6 Content of Agreement of Sale or Lease Agreement**

- A. Every owner of residential or non-residential property shall include the following provisions in every agreement of sale or lease agreement:
  - (1) A provision disclosing the district classification of the property and stating whether the present use of the property is in compliance with or in violation of the Borough Zoning Ordinance for the applicable district



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- (2) A provision disclosing whether there exists any notice of an uncorrected violation of the housing, building, plumbing, electrical, safety or fire prevention ordinance or regulations; and.
  - (3) A provision disclosing any outstanding liens or assessments against the property for public improvements.
- B. If any owner fails to comply with the applicable requirements of Subsection A of this section, then in any action at law or in equity, instituted by a purchaser or tenant against an owner, it shall be conclusively presumed that the owner at the time of the execution of the agreement of sale or lease agreement represented and warranted to the purchaser or tenant that such property was being used in compliance with the then existing Borough Zoning Ordinance for the applicable district; that there were no uncorrected violations of the housing, building, plumbing, electrical, safety or fire prevention ordinances or regulations; and that there were no outstanding liens or assessments against the property for public improvements

### **§ 113-7 Disclaimer; Waiver.**

Notwithstanding any other law or ordinance, the provisions of this chapter may not be waived or disclaimed by any oral or written agreement executed by any owner, purchaser or tenant.

### **§ 113-8 Delivery of Certificate; Receipt.**

No owner of nonresidential property shall sell, lease or rent any nonresidential property located in the Borough, or any interest therein, nor shall any owner of residential property sale, lease or rent any residential property located in the Borough unless the owner first delivers to the purchaser or tenant prior to the execution of an agreement of sale or lease agreement, or if no agreement of sale or lease agreement is utilized, prior to the transfer of title to the property, or prior to a tenant occupying the property, the certificate described in Section 113-5.

The purchaser or tenant to whom the certificate is delivered, if required in Subsection A of this section, shall execute a receipt for the certificate, as furnished by the Borough, and such receipt shall be delivered by the owner to the Building Code Official within seven business days of execution, as evidence of compliance with this chapter.

### **§ 113-9 Liability of Borough**

The Certificate described in Section 113-5 shall be compiled from the records of the Borough and from an inspection of the property. The issuance of the certificate is not a representation by the borough that the property or its present use is or is not in compliance with the law. Neither shall the enactment of this chapter for the preparation and delivery of any certificate required hereunder impose any liability upon the borough for any error or omission

contained in such certificate nor shall the Borough bear any liability not otherwise imposed by law.

**§ 113-10 Filing of Appeal**

Appeals from the findings set forth in the certificate must be filed with the Borough within 15 days after issuance of the certificate or 30 days after the date of the letter denying issuance of a certificate\_ The Borough shall refer the appeal to the appropriate body, as follows:

The Uniform Construction Code Board of Appeals for all matters regarding inspections and issuance or denial of a Certificate of Occupancy, excluding matters on accessibility of commercial buildings.

The Property Maintenance Code Board of Appeals with regard to all other findings set forth in the certificate which are not under the jurisdiction of the Uniform Construction Code Board of Appeals and not regarding the accessibility of commercial buildings.

All matters regarding accessibility shall be referred to the Accessibility Advisory Board as required under Section 403.142 of the Pennsylvania Uniform Construction Code for commercial buildings.

**§ 113-11 Violations and Penalties.**

Any person who shall violate any provisions of this chapter shall be guilty of a summary offense and on conviction thereof, shall be sentenced to pay a fine of not more than \$1000 plus the costs of prosecution for each and every offense, and in the default of payment thereof, shall be sentenced to imprisonment for not more than 30 days. Each violation and each day of violation shall constitute a separate offense.

**Severability:** The provisions of this Ordinance are severable and the invalidity of any phrase, clause or part of this Ordinance shall not affect the validity or effectiveness of the remainder of the Ordinance.

**Repealer:** All ordinances or parts of ordinances in conflict therewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**Renumbering:** It is the intention of Council and it is ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Borough of Penbrook, Pennsylvania, and the Sections of this Ordinance may be renumbered to accomplish that intention. <sup>62</sup>

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<sup>62</sup> Amended Ordinance 2008-1 on Feb 4 2008, Updated 113-2 thru 113-10, Added 113-11

## Chapter 114: CABLE RATES

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 10-6-2003 by Ord. No. 2003-2. Amendments noted where applicable.]

### § 114-1. Short title.

This chapter shall be known and may be cited as the "Penbrook Borough Cable Rate Regulation Ordinance."

### § 114-2. Legal authority.

This chapter is enacted pursuant to the federal Cable Television Consumer Protection and Competition Act of 1992 and the federal Telecommunications Act of 1996, both of which amended the federal Communications Act of 1934. Section 623 of the Communications Act, 47 U.S.C. § 543, states that "any franchising authority may regulate the rates for the provisions of cable services...but only to the extent provided under this section." This chapter is also enacted pursuant to the rate regulations adopted by the FCC contained in Subpart N entitled Cable Rate Regulation, 47 U.S.C. § 76.900 et seq.

### § 114-3. Definitions.

The following terms used in this chapter shall have the following meanings:

**ASSOCIATED EQUIPMENT** — All equipment in a subscriber's home, provided and maintained by the operator, that is used to receive the basic service tier, regardless of whether such equipment is additionally used to receive other tiers of regulated programming service and/or unregulated service. Such equipment shall include, but is not limited to, converter boxes, remote control units and inside wiring.

**BASIC SERVICE** — At a minimum, all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite regardless of how such signal is ultimately received by the cable system), any public, educational and governmental programming required by the franchise to be carried on the basic tier and any additional video programming signals or service added to the basic tier by the cable operator.

**BOROUGH COUNCIL** — The governing body of Penbrook Borough.

**CABLE OPERATOR** or **OPERATOR** — Any person or group of persons that provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

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

**CABLE SYSTEM** — A facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include a facility that serves only to

retransmit the television signals of one or more television broadcast stations; a facility that serves subscribers without using any public right-of-way; a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a cable system [other than for purposes of Section 621(c) of the Communications Act] to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of that use is solely to provide interactive on-demand services; an open video system that complies with Section 653 of the Communications Act; or any facilities of any electric utility used solely for operating its electric utility systems.

FCC — The Federal Communications Commission.

FRANCHISING AUTHORITY — A governmental or public entity that has filed a Form 328 with the FCC and is certified by the FCC to regulate basic service and associated equipment rates, oversee the operations of a cable operator and its compliance with a franchise agreement.

PERSON — An individual, partnership, association, joint-stock company, trust, corporation or governmental entity.

SUBSCRIBER — Any person or entity who contracts with a cable operator for, and lawfully receives, the video signals and applicable cable services distributed by the cable system.

**§ 114-4. Franchising authority.**

The Borough has submitted a completed FCC Form 328 with the FCC and is certified by the FCC as a franchising authority to regulate basic service and associated equipment rates in accordance with the applicable regulations of the FCC.

**§ 114-5. Adoption of regulations.**

In addition to the regulations contained in this chapter, the rate regulations of the FCC contained in Subpart N entitled "Cable Rate Regulation," 47 C.F.R. § 76.900 et seq., as may be amended, are hereby adopted for the review and determination of reasonable and lawful rates for basic service and associated equipment.

**§ 114-6. Presumption of no effective competition.**

Only the rates of cable systems that are not subject to effective competition may be regulated. In the absence of a demonstration by a cable operator to the contrary, a cable system is presumed not to be subject to effective competition.

**§ 114-7. Appointment and powers of Compliance Officer.**

- A. For the administration of this chapter, a Compliance Officer shall be appointed by the Borough Council who shall meet such qualifications as may be established by the Borough Council.
- B. The Compliance Officer shall administer this chapter in accordance with its literal terms.

**§ 114-8. Duties of Compliance Officer.**

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The Compliance Officer shall be responsible for:

- A. Taking such actions on behalf of the Borough as may from time to time be required to obtain or maintain the Borough's certification to regulate basic service and associated equipment rates.
- B. Notifying all cable operators serving the Borough when the Borough has become certified by the FCC to regulate basic service and associated equipment rates and has adopted this chapter.
- C. Receiving, filing in the public records of the Borough, reviewing for completeness, and, if appropriate, placing on the Borough Council agenda for consideration, rate regulatory forms and other filings by cable operators required to be submitted pursuant to applicable federal law and regulations.
- D. Enforcing the provisions of this chapter and all decisions of the Borough Council made hereunder to the fullest extent permitted by federal law and regulations, subject to the oversight and control of the Borough Council.
- E. Taking such other actions as may be necessary from time to time, subject to the oversight and control of the Borough Council, to protect the rights of the Borough to regulate basic service and associated equipment rates to the fullest extent permitted by federal law and regulations.

### **§ 114-9. Duties of cable operators.**

- A. A cable operator shall file its schedule of rates for the basic service tier and associated equipment within 30 days of receiving written notification from the Borough that it has been certified as a franchising authority to regulate rates. The cable operator shall include rate cards and channel line-ups with its filing and include an explanation of any discrepancy in the figures provided in these documents and its rate filing.
- B. A cable operator shall provide written notice to each subscriber of any increase in the rates to be charged for the basic service tier or associated equipment at least 30 days before any increase becomes effective.
- C. A cable operator shall submit to the Borough the rate regulatory forms required by the FCC, including, but not limited to, FCC Form 1240 and FCC Form 1205, on a periodic basis and in a timely fashion as required by applicable federal law and regulations. The deadlines for submission of such forms are dependent upon the cable operator's election to employ the annual rate adjustment method or the quarterly rate adjustment method. Should applicable federal law and/or regulations be amended to alter the rate adjustment methods, then the cable operator shall comply with such amendments.
- D. A cable operator shall comply with all requests for information, orders and decisions of the Borough. No cable operator shall, in any information submitted to the Borough in making a rate determination pursuant to an FCC rate regulatory form filing, make any misrepresentation or willful material omission bearing on any matter within the Borough's jurisdiction.

**§ 114-10. Review of basic service rates and associated equipment.**

- A. Upon receipt of FCC rate regulatory forms, including, but not limited to, FCC Form 1240 and FCC Form 1205, from a cable operator proposing any change in basic service and/or associated equipment rates, the Compliance Officer shall review the forms to determine whether the filing is complete. If the filing is incomplete, the Compliance Officer shall notify the cable operator within the applicable time period required by federal law and regulations and ask the cable operator to submit such additional information as is necessary to make the filing complete. The time period for review by the Borough shall be extended for the cable operator to complete the filing in accordance with applicable federal law and regulations.
- B. Upon receipt of completed FCC rate regulatory forms from a cable operator, the Compliance Officer shall make an initial determination as to whether the proposed rate adjustments are reasonable and lawful pursuant to applicable federal law and regulations. The Compliance Officer may engage the services of an expert in cable rate regulation to assist in making such initial determination.
- C. Should the Compliance Officer make an initial determination that the cable operator's proposed rates are unreasonable and unlawful, the Compliance Officer shall place the issue on the Borough Council's agenda for public consideration in the form of a rate-making proceeding. The Borough Council shall provide a reasonable opportunity for public comment and for consideration of the views of interested parties.
- D. Upon conclusion of the rate-making proceeding, the Borough Council shall render a decision on whether the cable operator's proposed rates are reasonable and lawful. The Borough Council shall issue a written decision if it disapproves an initial rate for basic service and/or associate equipment in whole or in part, disapproves a request for a rate increase in whole or in part, or approves a request for a rate increase in whole or in part over the objections of interested parties. Public notice shall be given regarding any written decision, including releasing the text of the written decision to the public.
- E. As part of the rate-making proceeding, the Borough may require the production of proprietary information to make a rate determination. The Borough shall state a justification for each item of information requested and, where related to an FCC form, indicate the question or section of the form to which the request specifically relates. Upon request by a cable operator, the parties to a rate proceeding shall have access to such information subject to the Borough's procedures governing nondisclosure by the parties. Public access to such proprietary information shall be governed by applicable state and local law.

**§ 114-11. Enforcement.**

In rendering its decisions, the Borough Council shall have the full authority to order a cable operator to take any and all enforcement actions permitted by applicable federal law and regulations, including, but not limited to, the following:

- A. Ordering a cable operator to implement a reduction in basic service or associated

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equipment rates where necessary to bring rates into compliance with the standards set forth in applicable federal law and regulations.

- B. Prescribing a reasonable rate for basic service or associated equipment after it determines that a proposed rate is unreasonable and unlawful.
- C. Ordering a cable operator to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted tier charge or above the actual cost of equipment, unless the operator has submitted a cost-of-service showing which justifies the rate charged as reasonable. Any such refund order shall be further subject to the limitations contained in applicable federal law and regulations.

### **§ 114-12. Violations and penalties.**

In the event that a cable operator does not comply with an order or decision made pursuant to this chapter and directed specifically toward the cable operator, the Borough may assess a fine against the cable operator of not more than \$500 per violation. Each day of continuous violation of any of the provisions of this chapter shall constitute a separate violation.

## Chapter 116: CEMETERIES

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. III, Art. 3, of the 1981 Code. Amendments noted where applicable.]

### § 116-1. Establishment of burial grounds prohibited.

The Borough Council of the Borough of Penbrook hereby ordains that no cemetery or burying grounds other than those already established prior to the passage of this chapter shall be laid out within the limits of the borough.

### § 116-2. Violations and penalties. <sup>63</sup>

The penalties for violation of this chapter shall be as set forth in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

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<sup>63</sup>. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).



## Chapter 122: CURFEW

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. V, Art. 3, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Disorderly conduct — See Ch. 126.  
Drug paraphernalia — See Ch. 130.  
Public playgrounds — See Ch. 184.

#### § 122-1. Definitions.

In this chapter, the following definitions shall apply unless a different meaning shall be clearly indicated within said chapter:

ESTABLISHMENT — Any privately owned place of business carried on for a profit or any place of amusement or entertainment to which the public is invited.

MINOR — Any person under the age of 18 years.

OFFICIAL BOROUGH TIME — Eastern standard time, except during those months when Eastern daylight-saving time is locally observed.

OPERATOR — Any individual, firm, association, partnership or corporation operating, managing or conducting any establishment; and whenever used in any clause prescribing a penalty, the term "operator," as applied to associations or partnerships, shall include the members or partners thereof and, as applied to corporations, shall include the officers thereof.

PARENT — Any natural parent of a minor, a guardian or any adult person, 21 years of age or over, responsible for the care and custody of a minor.

PUBLIC PLACE — Any public street, highway, road, alley, park, playground, wharf, dock, public building or vacant lot.

REMAIN — To loiter, idle, wander, stroll or play in or upon.

#### § 122-2. Curfew regulations; violations and penalties.

- A. No minor shall remain in or upon any public place or any establishment between the hours of 10:00 p.m. and 6:00 a.m. of the following day, official borough time, except that on Friday and Saturdays the hours shall be from 11:00 p.m. to 6:00 a.m. The provisions of this section shall not apply to any minor accompanied by a parent, or to a minor upon an errand or other legitimate business directed by such minor's parent or to any minor who is engaged in gainful lawful employment during the curfew hours.
- B. No parent shall knowingly permit any minor to remain in or upon any public place or any establishment between the hours of 10:00 p.m. and 6:00 a.m. of the following day, official borough time, except that on Fridays and Saturdays the hours shall be from 11:00 p.m. to 6:00 a.m. The provisions of this section shall not apply to any

parent who accompanies a minor or to a parent who directs a minor upon an errand or other legitimate business or to any parent of a minor engaged in gainful lawful employment during the curfew hours.

- C. No operator of an establishment or their agents or employees shall knowingly permit a minor to remain upon the premises of said establishment between the hours of 10:00 p.m. and 6:00 a.m. of the following day, official borough time, except that on Fridays and Saturdays the hours shall be from 11:00 p.m. to 6:00 a.m.
- D. Any police officer who finds a minor violating any provisions of Subsection A shall parent or parents. The minor shall thereupon be instructed to proceed to his home forthwith and a written notice shall be mailed to the parent or parents of the minor, advertising of the violation of this section, or the officer may take the juvenile into custody and transport to the office and notify parents or other responsible persons.
- E. Any parent who violates any provision of Subsection B, at the police officer's discretion, may have a written notice sent or may be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. <sup>64</sup>
- F. Any operator of an establishment and any agents or employees of any operator who shall violate the provisions of Subsection C shall be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. <sup>65</sup>
- G. Each violation of the provisions of this chapter shall constitute a separate offense.

**§ 122-3. Curfew during state of emergency.**

- A. When the Mayor shall proclaim that a state of emergency exists, he may also proclaim that a curfew is in effect during the hours that he shall determine.
- B. When such curfew is in effect, only those persons authorized shall be permitted on the streets of the borough or other public places.
- C. Any person found in violation of the provisions of this section shall be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. <sup>66</sup>

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<sup>64</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>65</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>66</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

## Chapter 126: DISORDERLY CONDUCT

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. V, Art. 2, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Outdoor burning — See Ch. 112.  
Curfew — See Ch. 122.  
Public playgrounds — See Ch. 184.

#### § 126-1. Unlawful acts.

It shall be unlawful for any person, firm or corporation, either directly or indirectly, or by its agents, to do, authorize, and/or abet any of the following described regulations or restrictions, intended to promote the general safety, comfort and convenience of the borough,

To shoot or throw any article on or unto the highway.

Having no legal privilege to do so, purposely or recklessly obstructs any highway, street, alley, thoroughfare, sidewalk or public ground of the Borough, whether alone or with others, except that no person shall be guilty of violating this subsection solely because of a gathering of persons to hear him speak or otherwise communicate, or solely because of being a member of such a gathering.

Appear in any public place manifestly under the influence of alcohol, narcotic or other drug, not therapeutically administered, to the degree that he may endanger himself or other persons or property or annoy persons in his vicinity.

Engages in fighting or threatening or in violent or tumultuous behavior.

Creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor,

Refuses to obey a reasonable official request or order to move or any other lawful order of a Police Officer or flees in an attempt to evade a Police officer where there is a reasonable suspicion that criminal activity is afoot. <sup>67</sup>

#### § 126-2. Violations and penalties. <sup>68</sup>

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<sup>67</sup> Amended ordinance 2018-1 on May 7 2018, Updated section 126-1

<sup>68</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

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Any person, firm or corporation who or which shall directly or indirectly or by its agents violate any of the provisions of this chapter shall, upon conviction, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

## Chapter 130: DRUG PARAPHERNALIA

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. IV, Art. 17, of the 1981 Code. Amendments noted where applicable.]

### § 130-1. Title.

This chapter shall be known as the "Penbrook Borough Paraphernalia Prohibition Ordinance."

### § 130-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**CONTROLLED SUBSTANCE** — A drug substance or immediate precursor, as defined in the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act. <sup>69</sup>

**DRUG PARAPHERNALIA** — Any objects, devices, instruments, apparatus or contrivance whose primary and traditionally exclusive use is involved with the illegal use or possession of any and all controlled substances, as defined by the laws of Pennsylvania.

**IMMEDIATE PRECURSOR** — A substance which under the regulations of the Pennsylvania Department of Health is a principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance.

**TRADITIONALLY EXCLUSIVE USE** — A use which is primary and inherent, as opposed to secondary and incidental, and is associated with certain knowledge or beliefs derived from statements or contemporary persons and handed down through a considerable period of time.

### § 130-3. Prohibited acts.

- A. No person shall possess, sell, lease, trade, give or display for sale any types of drug paraphernalia.
- B. No person shall advertise for the sale, lease, trade or gift of any type of drug paraphernalia.

### § 130-4. Violations and penalties. <sup>70</sup>

Any person who shall violate any of the terms of this chapter shall be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. Each day that a violation shall continue shall be deemed a separate offense and shall be punishable as such.

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<sup>69</sup>. Editor's Note: See 35 P.S. § 780-101 et seq.

<sup>70</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

## Chapter 133: ELECTRICAL CONTRACTORS, LICENSING OF

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 1-6-1997 by Ord. No. 97-02. Amendments noted where applicable.]

### GENERAL REFERENCES

Building construction — See Ch. 104.

Heating appliances, fireplaces and chimneys — See Ch. 154.

#### § 133-1. Adoption of electrical standards.

All electrical work done in the Borough of Penbrook from and after the date hereof shall be done or installed in accordance with the provisions of the National Fire Protection Association's National Electrical Code of 1996, as it may hereafter be amended or supplemented. When a new electrical service is installed in a residence, the structure must be made to conform with the minimum residential electrical requirements.

#### § 133-2. Permits.

Any and all electrical installations contracted in the Borough of Penbrook shall require a permit to be issued by the Borough Manager's office, with a fee schedule in keeping with all building permits.

#### § 133-3. License and registration required.

It shall not be lawful for any persons to carry on or work at the business of electrical installation in the Borough of Penbrook until a certificate or license to engage in or work at said business shall have been granted said persons by the Borough Manager's office of the Borough of Penbrook nor until they have registered as such in the office of the Borough Manager as hereinafter provided.

#### § 133-4. Application for and issuance of license.

All and every person, or persons, with proof of license in another municipality of Pennsylvania or proof of employment as an electrical contractor within the past five years and proof of insurance in the amounts of \$300,000 for bodily injury/death and \$100,000 for damages shall apply to the Borough Manager's office for such certificate or license, and if after review by the Borough Manager's office such person or persons are found competent, the Borough Manager or his or her designee shall thereupon issue a certificate or license to such person or persons which shall, for the period of one calendar year or fractional part thereof next ensuing the date of such application, entitle him or them to engage in or work at the business of electrical installation.

#### § 133-5. Change of address; retirement.

Every registered electrician, electrical contractor, firm or corporation shall give immediate notice of any change in his, their or its place of business and upon his, their or its retirement from business shall surrender his, their or its certificate of registry to the Borough Manager's office. Every person, firm or corporation, in registering, shall give the full name or names of the person, firm or officers' names of the corporation for which he or they shall register.

**§ 133-6. Registration fee.**

Every person, firm or corporation who shall desire to be licensed in the Borough of Penbrook as a registered electrical contractor shall, after having been approved for such licensure by the Borough Manager's office, pay to the Treasurer of the Borough of Penbrook a fee of \$15, and thereupon, said person, firm or corporation shall be immediately issued a license as a registered electrical contractor in the Borough of Penbrook.

**§ 133-7. Term and renewal of license.**

At the expiration of each calendar year, said certificate or license shall be null and void. A licensed electrical contractor desiring to continue in or work at the business of electrical installation for the ensuing year shall reregister his, their or its name or names and business or home address upon such form or forms as may, from time to time, be furnished by the Borough Manager's office.

**§ 133-8. Minimum electrical requirements.**

When a new electrical service is installed, the structure must be brought into minimal compliance with borough codes as follows:

- A. Two separate twenty-ampere branch appliance circuits shall be installed to each kitchen.
- B. Enough general lighting circuits shall be installed to provide a minimum of three watts per square foot of floor space.
- C. Each habitable room shall have a minimum of one switch-operated light fixture and one duplex receptacle; or two duplex receptacles, one to be switch operated, with the switch at the entrance of the room.
- D. One separate twenty-ampere branch circuit shall be installed to the laundry area.
- E. All grounding-type receptacles shall be properly grounded.
- F. In all bathrooms:
  - (1) If there are no existing duplex outlets, install new duplex outlets with GFI.
  - (2) If grounded duplex outlets exist, they must be properly grounded.
  - (3) If non-grounded duplex outlets exist, all exposed metal parts must be removed or the outlet must be changed to the grounded type.
- G. Floor-mounted receptacles must be moved to the baseboard or wall.
- H. One additional receptacle is to be installed in the basement other than the laundry circuit.
- I. All wiring methods must comply with the most current NFPA National Electrical Code.

**§ 133-9. Violations and penalties. 71**

Any person, firm or corporation who or which shall violate any of the provisions of this chapter shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. At the discretion of the Borough Manager, said license as an electrical contractor may be revoked.

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**71. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**



## Chapter 135: FEES

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]

### ARTICLE I: Attorney's Fees for Collection of Delinquent Accounts

[Adopted 4-1-2002 by Ord. No. 2002-5]

#### § 135-1. Schedule of fees.

The Borough of Penbrook shall establish, by resolution, which resolution may be amended from time to time by the Borough Council, a schedule of attorneys' fees for use by attorneys working on the Borough of Penbrook's behalf to recover payments due and owing to the Borough of Penbrook which may in the future or already have become municipal claims in accordance with the Municipal Claims and Tax Lien Law and in accordance with any and all appropriate Borough of Penbrook ordinances. Such fees shall be reasonable, fair and necessary in order to allow the Borough of Penbrook to collect such sums due to it. For every delinquent claim, charge, tax, assessment, levy or obligation owed to the Borough of Penbrook, there shall be added to such claim, charge, tax, assessment, levy or obligation such attorney's fees, charges, and expenses incurred in the collection process subsequent to proper notification to property owners of the intent to impose attorney's fees on delinquent obligations. Such additional charges shall be collected in addition to such interest and penalties as are allowed by law. They shall further be collected in the same manner and with the full authority as other municipal claims of any nature and shall be deemed to be a municipal claim and collectable and lienable as such. Any person or entity empowered to collect sums on behalf of the Borough of Penbrook is directed to add such fees as are incurred to the extent allowed and set forth on the fee resolution. Such sums collected pursuant to this Section shall be in addition to any tax, penalty, interest, costs or fees already part of the delinquent account or assessment. Attorney fees incurred to the extent set forth on the fee resolution shall be added to all unpaid claims of any nature which become delinquent or are re-determined to be delinquent. Prior to the time when such fees are added to {02262096/1} any underlying claim, the collector shall first give the resident such notice as required by law. The collector shall so notify the resident by sending such notice to the resident's last known address by mailing notices in the manner prescribed by the Act of the Pennsylvania General Assembly, known as Act 20 of 2003.<sup>72</sup>

#### § 135-2. Collection procedures.

The following collection procedures are hereby established in accordance with Act No. 1:

- A. At least 30 days prior to assessing or imposing attorney fees in connection with the collection an account, the Borough shall mail or cause to be mailed, by certified mail,

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<sup>72</sup> Amended Ordinance 2023-02 on May 1 2023

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return receipt requested, a notice of such intention to the rate payer or other entity liable for the account (the "account debtor").

- B. If within 30 days after mailing the notice in accordance with Subsection A, the certified mail to any account debtor is refused or unclaimed or the return receipt is not received, then at least 10 days prior to the assessing or imposing such attorney fees, the Borough shall mail or cause to be mailed, by first class mail, a second notice to such account debtor.
- C. All notices required by this article shall be mailed to the account debtor's last known post office address as recorded in the records or other information of the Borough, or such other address as it may be able to obtain from the County Office of Assessment and Revision of Taxes.
- D. Each notice as described above shall include the following:
  - (1) The type of tax or other charge, the date it became due and the amount owed, including penalty and interest;
  - (2) A statement of the Borough's intent to impose or assess attorney fees within 30 days after the mailing of the first notice, or within 10 days after the mailing of the second notice;
  - (3) The manner in which the assessment or imposition of attorney fees may be avoided by payment of the account; and
  - (4) The place of payment for accounts and the name and telephone number of the Borough official designated as responsible for collection matter.

### **§ 135-3. Related action.**

The proper officials of the Borough are hereby authorized and empowered to take such additional action as they may deem necessary or appropriate to implement this article.

## Chapter 136: FIREARMS AND FIREWORKS

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. IV, Art. 13, of the 1981 Code. Amendments noted where applicable.]

### § 136-1. Prohibited acts.

On and after the passage of this chapter, no person shall fire any cannon, gun, revolver, pistol, rifle or firearms of any kind. This chapter shall not prohibit the use of firing ranges within private homes, if such activity does not constitute an annoyance to the other persons.

### § 136-2.

#### A. Definitions.

For purposes of this Chapter, the definitions of “Fireworks Law” shall mean Act 74 of 2022, House Bill 2157, P.N. 3332 was adopted by the General Assembly on July 6, 2022, was signed by the Governor on July 11, 2022, which amended Title 3 Pa.C.S. Chapter 11, and “Consumer Fireworks” and “Display Fireworks” shall be that set forth in Section 1 of the Fireworks Law. As set forth therein, the term “Consumer Fireworks” shall not include devices such as “ground and hand-held sparkling devices,” “novelties,” or “toy caps.”

#### B. Display Fireworks.

Except as provided hereinafter, it shall be unlawful for any person to use or explode any Display Fireworks.

The ignition of Display Fireworks shall be conducted by a competent operator, currently registered with the Attorney General of Pennsylvania, approved by Borough Council, or its designee, and shall be of such a character and so located, discharged, or fired as in the opinion of the Borough, after proper inspection, shall not be hazardous to property or endanger any person.

The Borough may suspend any permit issued under this Chapter due to drought, dry conditions, high winds, or any other factor reasonably related to the public safety. The Borough may, at its discretion, dispatch fire company members and/or equipment to the scene of any permitted display. Where any such deployment occurs, the permittee will be subject to a fee, which may be amended from time to time by resolution of Borough Council.

In accordance with the Fireworks Law, a permit is required before any use of Display Fireworks within the Borough limits. Permit application forms are available from the Borough Office during normal business hours. The application must include facts sufficient to establish that the Display Fireworks will not be ignited within 300 feet of sales locations for Consumer Fireworks and that the Display Fireworks will be handled by a competent operator at least 21 years of age who demonstrates evidence of fireworks handling and safety

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training, all in accordance with Sections 1102 and 1107 of the Fireworks Law. The application must include the approval of the chief of the fire department or other appropriate official as may be designated by the Borough Council and that the Display Fireworks will not be located, discharged or fired in such a manner as to be hazardous to property or an endangerment to any person. The application shall be accompanied by a certificate of insurance in accordance with Subsection 1102(d) of the Law. The applicant must acknowledge acceptance of the requirements otherwise established by state and federal law. Permit extensions shall be permitted in accordance with Subsection 1102(e) of the Law provided the extension sought receives a renewed approval by the designated official that the extended use would not be hazardous to property or an endangerment to any person.

Sales, possession and use of Display Fireworks for the purpose stated in the permit shall be lawful for that purpose only.

Applications for use of Display Fireworks shall be submitted at least thirty (30) days prior to the date of proposed use. Permits for the use of Display Fireworks may be granted by the Borough Council or by such official or officials as are so designated by Borough Council, upon approval of the application and payment of a fee as may be designated from time to time by the Borough pursuant to its Fee Resolution.

No permit shall be issued to a Person under 21 years of age. No more than three (3) permits per calendar year may be issued for fireworks displays to the same permittee. No more than three (3) permits per calendar year may be issued for fireworks displays on a single property.

All Display Fireworks shall be finished by 11:00 p.m. on Fridays and Saturdays and by 10:00 p.m. Sundays through Thursdays.

### C. Consumer Fireworks.

A person who is at least 18 years of age and meets the requirements of this Chapter and all applicable laws and regulations may purchase, possess, and use Consumer Fireworks. A person or entity using Consumer Fireworks pursuant to this Chapter shall also comply with all applicable federal and state laws.

It shall be unlawful for any person to intentionally use or explode Consumer Fireworks in the following manners and/or locations:

1. On public or private property, including, but not limited to, streets, parking lots, sidewalks and parks, without the express written permission of the owner or entity that controls the property;
  2. Within, directed at or directed from a vehicle or building;
  3. Directed at another person;
  4. While the person is under the influence of alcohol, a controlled substance, or another drug;
- or

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5. Within 150 feet of any building or vehicle, whether or not the building or vehicle is owned by the user of the Consumer Fireworks.

No person may use Consumer Fireworks within 150 feet of an animal housing facility or a fenced area designed to confine livestock owned or managed by another person. If a person uses Consumer Fireworks at a distance of 150 to 300 feet from an animal housing facility or fenced area designed to confine livestock owned or managed by another person, the user of Consumer Fireworks shall notify, in writing, the owner or manager of the livestock at least 72 hours in advance of the use that Consumer Fireworks will be used in the area.

Restrictions on Use. Consumer Fireworks shall not be used between the hours of 10:00 p.m. and 10:00 a.m. except:

1. On July 2, 3, and 4 and December 31, when Consumer Fireworks may be used until 1:00 a.m. the following day; and

2. When July 4 falls on a Tuesday, Wednesday, or Thursday, Consumer Fireworks may be used until 1:00 a.m. on the immediately preceding and following Friday and Saturday. {02262265/1}

Pursuant to Subsection 1106 (b) of the Fireworks Law, the hours of use of Consumer Fireworks may not be restricted on the Monday of Memorial Day and the immediately preceding Saturday and Sunday, and the Monday of Labor Day and the immediately preceding Saturday and Sunday.

Suspension. The Borough has the discretion to suspend the use of Consumer Fireworks if the Borough deems such a suspension to be in the best interests of the Borough or its residents, including, but not limited to, circumstances of adverse or unfavorable weather conditions, such as high winds or a drought.

No permission is or shall be granted by the Borough to any person to ignite or discharge Consumer Fireworks on the streets or sidewalks in the Borough, or on any property owned or occupied by the Borough or other governmental entity, including without limitation, all of the Borough's parks and buildings.

### D. Sale of Consumer Fireworks.

Nothing in this Ordinance governs the sale of Consumer Fireworks for the period of one year from the effective date of the Fireworks Law in accordance with Section 1106(a)(2) of the Fireworks Law.

E. Use on Borough Property. The use of any fireworks, including Consumer Fireworks and Display Fireworks, on any Borough property, including, but not limited to, the streets and sidewalks of the Borough, and real property owned by the Borough for public parks, utility purposes, and/or for public buildings, unless a permit is obtained in accordance with this chapter, is prohibited.”

**§ 136-3. Violations and penalties.** <sup>73</sup>

A. Enforcement.

This Chapter may be enforced by any Borough Police Officer or other appropriate official as may be designated by the Borough Council.

B. Penalties.

Any person violating any of the provisions of this Chapter shall, upon conviction, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties or as specifically provided for herein pursuant to the penalties provided for in the Fireworks Law.

In accordance with the provisions of Section 1114(1) of the Fireworks Law, any person using Consumer Fireworks in violation of the provisions of this Chapter, for the first offense commits a summary offense, and upon conviction shall, in addition or any other penalty authorized by law, be punishable by a fine of not more than Five Hundred (\$500.00) Dollars. A subsequent offense under this Chapter committed within three years of a prior conviction shall constitute a summary offense, and upon conviction shall, in addition to any other penalty authorized by law, be punishable of a fine of not more than One Thousand (\$1,000.00) Dollars.

Any person selling Consumer Firework in violation of the Fireworks Law is punishable in accordance with Section 1114(2) be punishable by a fine of not less than \$10,000.

Any person selling or using Display Fireworks in violation of the Fireworks Law is punishable in accordance with Section 1114(3) by a fine of not less than \$10,000. <sup>74</sup>

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**73. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

<sup>74</sup> Chapter 136 Replace in its entirety Ordinance 2023-01 on May 1 2023

## Chapter 150: HAZARDOUS WASTES

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]

### ARTICLE I: Cleanup Costs

[Adopted 4-1-2002 by Ord. No. 2002-7]

#### § 150-1. Authority to recover costs.

The Borough of Penbrook, by and through its authority and relationship with the Penbrook Fire Company, hereby recognizes the authority of and authorizes the Penbrook Fire Company to recover the reasonable costs of fire-fighting materials, equipment, personnel hours and hazardous abatement materials involving any hazardous materials incident, environmental incident or fire and rescue incident or operation, including vehicular incidents.

#### § 150-2. Authority to use third-party billing services for collection.

The reasonable costs as set forth and authorized in § 150-1 hereof may be recovered directly by the Penbrook Fire Company through the Borough of Penbrook with the consent of the Borough Council or a third-party billing service.

#### § 150-3. Authority to collect interest.

In addition to the reasonable costs as set forth in §§ 150-1 and 150-2 hereof, the Penbrook Fire Company, for itself or through the Borough of Penbrook or a third-party billing service, shall be authorized to collect reasonable interest, as well as a reasonable administrative fees for collection of any and all additional fees as may be authorized by the Hazardous Material and Emergency Planning and Response Act or any other statute, rule, regulation or common law.

## Chapter 154: HEATING APPLIANCES, FIREPLACES AND CHIMNEYS

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. IX, Art. 6, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Building construction — See Ch. 104.

Outdoor burning — See Ch. 112.

National Fire Protection Association's National Electrical Code of 1996 — See Ch. 133.

#### § 154-1. General requirements.

- A. No person, either owner, agent or tenant of a property, shall install a solid-fuel-heating appliance or construct a chimney or fireplace without first obtaining a permit for the work involved.
- B. All solid-fuel-heating appliances installed must be approved for such use by a nationally recognized testing or inspection agency, or as approved by the Code Official.
- C. All work shall be conducted, installed and completed in a workmanlike and acceptable manner so as to secure the results intended by this chapter.
- D. It shall be unlawful to connect more than one heating appliance to any flue.
- E. It shall be unlawful to connect any solid-fuel-heating appliance to an existing chimney not possessing a fire clay flue liner or other approved material.
- F. No burning of trash or refuse in a solid-fuel-heating appliance or fireplace shall be permitted.

#### § 154-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**FACTORY BUILT CHIMNEY** — A chimney that is factory made and listed by a nationally recognized testing or inspection agency for venting solid fuel appliances.

**SOLID FUEL** — Seasoned firewood or coal.

**SOLID-FUEL-HEATING APPLIANCE** — A device or apparatus, including any attachments or apparatus designed to be attached, manufactured and designed to use solid fuel as a fuel for heating.

**STOVE** — A solid-fuel-heating appliance.

#### § 154-3. Installation.

- A. All solid-fuel-heating appliances not equipped with circulating devices shall be placed at least 36 inches from any combustible materials. Should it be determined that the minimal clearance cannot be achieved, the following fire protection



requirements must be met.

- (1) Where clearance is less than 36 inches but more than 18 inches, the combustible surface shall be protected by one-fourth-inch-thick asbestos millboard spaced one inch or more from the combustible surface using noncombustible spacers, so as to provide space for air circulation.
  - (2) Should the clearance be less than 18 inches but more than 12 inches, the combustible wall shall be protected with a four-inch-thick masonry veneer extending two feet above and two feet beyond each side of the solid-fuel-heating appliance.
- B. All solid-fuel-heating appliances equipped with circulating devices shall be placed a minimum of 24 inches from any combustible surface. Should it be determined that minimal clearance cannot be achieved, the following fire protection requirements must be met.
- (1) Where the clearance of a circulating solid-fuel-heating appliance is less than 24 inches but more than 12 inches from a combustible surface, the surface shall be protected by a one-fourth-inch-thick asbestos millboard spaced one inch or more from the combustible surface using noncombustible spacers, so as to provide space for air circulation.
  - (2) Where the clearance of a circulating solid-fuel-heating appliance is less than 12 inches but more than eight inches from a noncombustible surface, the surface shall be protected by one-fourth-inch-thick asbestos millboard, covered with 28-gauge sheet metal spaced one inch or more from the combustible surface.
- C. Where the solid-fuel-heating appliance is placed on combustible flooring, noncombustible material of a type approved by the Code Official shall be placed beneath said appliance and extend a minimum of 18 inches beyond the appliance in all directions except the rear, which shall project a minimum of six inches beyond said appliance.
- (1) Where the legs or supportive members of a solid-fuel-heating appliance elevate said appliance at least 18 inches above a combustible floor surface, a protective covering of 24-gauge metal shall be placed under the appliance as specified in Subsection C.
  - (2) Where the legs are designed to elevate the appliance a distance of between six inches and 18 inches above a combustible floor surface, a protective covering of 24-gauge sheet metal clad over one-fourth-inch-thick asbestos millboard shall be placed under the appliance as specified in Subsection C.
  - (3) Where the legs are designed to elevate the appliance six inches or less above a combustible floor surface, a four-inch-thick hollow concrete masonry pad shall be placed or an approved noncombustible assembly of two-inch thickness placed in accordance with the requirements of Subsection C.

- D. Where a listed appliance specifies clearances different from those set forth in this chapter, the listed clearance shall apply.

**§ 154-4. Chimney connection.**

All installation of connector pipe shall conform to the following:

- A. All connector pipe shall be of a minimum of 24-gauge black pipe.
- B. All connector pipe shall be equal to or larger than the appliance flue connector.
- C. All connector pipe shall slope towards the appliance from the chimney a minimum of one-fourth-inch per foot.
- D. The crimped end of all chimney connector pipe must point toward the appliance. Adapters may be used to achieve this result.
- E. The maximum length of connector pipe permitted between the solid-fuel-heating appliance and the chimney shall be 10 feet.
- F. Single wall connector pipe shall not pass through any wall or floor assembly of combustible construction. However, when it is deemed necessary to do so by the Code Official, a connector may pass through a partition other than a fire rated or noncombustible partition under the following conditions:
  - (1) Where a ventilated metal thimble having a diameter 12 inches larger than the diameter of the connector pipe is used.
  - (2) Where a metal or burned fire clay thimble is used and the thimble is surrounded on all sides by not less than eight inches of brickwork or equivalent fireproofing material.
  - (3) When all combustible material is removed for a sufficient distance to provide not less than 18 inches clearance on all sides of the connector pipe. Any materials used as close in this opening must be noncombustible insulating material.
- G. When the section of the connector pipe passing through combustible material is replaced by a properly installed section of a factory-built chimney, a minimum distance between this section and combustible material of two inches shall be maintained.
- H. All connector pipe shall be a minimum of 18 inches from a combustible surface.
- I. Should the connector pipe be placed 12 inches to 18 inches from a combustible surface, the surface shall be covered with one-fourth-inch-thick asbestos millboard spaced one inch from the surface using noncombustible spacers.
- J. Where the connector pipe is nine to 12 inches from a combustible surface, the surface shall be covered with one-fourth-inch-thick asbestos millboard clad with 28-gauge sheet metal spaced one inch from combustible material using noncombustible spacers.

**§ 154-5. Chimneys.**

- A. All chimneys hereafter erected, altered or rebuilt shall be constructed of brick, stone, approved concrete masonry units or reinforced concrete.
- B. Factory built chimneys of a type approved to vent solid-fuel-heating appliances may be used. Said chimney shall be installed in accordance with the manufacturer's instructions.
- C. All chimneys shall project at least three feet above the point of contact with a flat roof and two feet above the peak of a pitched roof or any raised part of a roof within 10 feet.
- D. No chimney constructed shall have walls less than four inches thick. All chimneys shall be lined on the inside with fire clay chimney tile set in portland cement. The liner shall be continuous from the bottom of the flue to a point at least four inches above the chimney.
- E. Portland cement mortar may be used in the construction of masonry chimneys, provided that the mortar does not contain more than 10% by volume of hydrated lime.
- F. No masonry chimney shall be corbeled out more than six inches from a brick wall. Said corbeling shall consist of not fewer than five courses of brick. Where the design of the chimney requires special construction methods, said design must be approved by the Code Official. In no case shall any specially constructed chimney be permitted to be corbeled out to such an extent that the center of gravity would be so located as to endanger the structure.
- G. All concrete or masonry chimneys shall be placed on concrete footings or foundation walls of adequate design to safely carry the loads imposed thereon.
- H. No wood construction shall be placed within two inches of a masonry or concrete chimney except that exterior wood siding may be placed within one inch of the outside face of the chimney.
- I. Clearance from combustible construction to factory-built chimneys shall be in accordance with the specifications of the approving agency.
- J. All connector pipes shall enter the chimney through an approved flue thimble or its equivalent in such a manner that the installation shall make a fire tight joint with the chimney fire clay flue liner.
- K. All flue holes when not in use shall be closed with tight-fitting metal covers.
- L. Whenever a new chimney is completed or an existing chimney is altered, it shall be cleaned and left smooth on the inside. Cleanouts or other approved devices shall be provided at the base of the chimney to enable passageways to be maintained and cleaned.

**§ 154-6. Fireplaces.**

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- A. Structural walls of fireplaces shall be at least eight inches thick. Where a lining of low-duty refractory brick, or the equivalent, at least two inches thick, laid in fire clay mortar or other approved lining, is provided, the total thickness of back and sides, including the lining, shall not be less than eight inches. Where such lining is not provided, the thickness of back and sides shall be not less than 12 inches. The fire box shall be 20 inches in depth.
- B. The fire clay flue liner shall extend from the throat of the fireplace to a point at least four inches above the top of the chimney.
- C. The distance between the fireplace and combustible materials shall be at least four inches. Wood facings or trim shall be furred out from the fireplace wall at least four inches and attached to noncombustible furring strips. The edges of such facings or trim shall be covered with a noncombustible material. Where the walls of the fireplace are 12 inches thick, the woodwork may be directly attached.
- D. Metal hoods used as part of a fireplace shall be of 18-gauge galvanized steel, with all seams and connections of smoke-proof construction. The hood shall be sloped at an angle of 45° or less from the vertical and shall extend horizontally at least six inches beyond the fire box.
- E. Approved metal heat circulators may be installed, provided that the thickness of the fireplace is not reduced.
- F. All walls of the smoke chamber shall be at least eight inches thick.
- G. Masonry over the fireplace opening shall be supported by a noncombustible lintel.
- H. Every fireplace shall be constructed with a hearth of noncombustible material. For fireplace openings of less than six square feet, the hearth shall extend not less than 16 inches in front and eight inches on each side of the opening. For fireplaces having openings of more than six square feet, the hearth shall extend not less than 20 inches in front and 12 inches on each side. Hearths shall be supported on trimmer arches of brick, stone, concrete or tile, not less than four inches thick.
- I. Screens or other acceptable protection devices shall be provided for all fireplace openings.
- J. Fireplaces shall be supported on foundations adequately designed to safely carry the loads imposed thereon and as approved by the Code Official.
- K. Other fireplaces not conforming to the requirements of this chapter shall be subject to the approval of the Code Official prior to construction.
- L. Factory built fireplaces approved by a nationally recognized testing or inspection agency may be installed and shall conform to the applicable sections of this chapter.

### **§ 154-7. Storage of firewood.**

- A. There shall be no more than one full cord (four feet by four feet by eight feet) of firewood stored within a structure or upon an open porch or patio unless otherwise approved by the Code Official. Larger amounts shall be stored as far as possible from

any structure as physical limits of the property will permit.

- B. No wood pile shall be stacked higher than five feet unless properly contained to prevent collapse and as approved by the Code Official.
- C. Any storage of firewood must be elevated above the ground in a manner approved by the Code Official. The clear space beneath the wood pile shall be kept free and clear of all weeds and debris. The clear space shall be not less than 12 inches from the ground. [Amended 5-2-1983 by Ord. No. 83-5]

**§ 154-8. Violations and penalties. 75**

Any person who shall violate any of the provisions of this chapter or fail to comply therewith shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

## Chapter 160: JUNK AND JUNKYARDS

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. IV, Art. 8, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Property maintenance — See Ch. 200.  
Zoning — See Ch. 266.

#### § 160-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**JUNK** — Scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, iron, steel and other old or scrap ferrous or nonferrous material, including wrecked, scrapped, ruined, dismantled or junked motor vehicles or parts thereof.

**JUNKYARD** — A lot, land, or structure, or part thereof, used primarily for the collecting, storage, and sale of waste paper, rags, scrap metal, or discarded material, or for the collection, dismantling, storage, and salvaging of machinery or vehicles not in running condition, and for the sale of parts thereof. <sup>76</sup>

#### § 160-2. Junkyards prohibited. <sup>77</sup>

No person shall establish or maintain any junkyard.

#### § 160-3. Violations and penalties. <sup>78</sup>

Any person violating any provisions of this chapter shall, upon conviction, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. Each day of violation shall constitute a separate offense.

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76. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

77. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

78. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

## Chapter 174: NOISE

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 12-4-2000 by Ord. No. 2000-4. Amendments noted where applicable.]

### GENERAL REFERENCES

Building construction — See Ch. 104.

Snow and ice removal — See Ch. See Ch. 230, Art. I.

#### § 174-1. Intent and purpose.

The Borough Council (the "Council") of the Borough of Penbrook (the "Borough") finds that excessive levels of sound are detrimental to the physical, mental and social well-being of persons in the Borough as well as their comfort, living conditions, general welfare and safety and therefore constitute a public health and welfare hazard. Accordingly, the Council declares that it is necessary to provide for greater control and more effective regulation of excessive sound and the sources thereof within the Borough.

#### § 174-2. Loud, disturbing and unnecessary noise prohibited.

It is unlawful for any person to make, continue to make, cause to be made or permitting to be made within the Borough any loud or unnecessary noise which may reasonably be anticipated to annoy, disturb, injure or endanger the comfort, repose, peace, health or safety of others, whether due to volume or duration, or both.

#### § 174-3. Specific conduct prohibited.

Without limitation as to the types of noise-producing activities, which are in violation of this chapter, noise produced by the following activities are per se loud, disturbing and unnecessary noise in violation of this chapter:

- A. Radios, stereos and other amplified music or sound. Use, operation or permitting the use or operation of any radio, compact disc player, tape player, stereo, television, musical instrument or other equipment or device which produces or reproduces sound in such a manner as to disturb the peace, quiet or repose of persons in any neighboring residence, office or commercial building or any persons in the vicinity at any time, with a volume louder than is necessary for convenient hearing by the person or persons who are in the room, vehicle or other area in which such equipment or device is operating or being operated, is prohibited. The operation of such equipment or device in such a manner that the sound therefrom is plainly audible at a distance of 50 feet from the source or outside of the boundaries of the property on which the source is located, whichever is less, shall be prima facie evidence of a violation of this section.
- B. Loudspeakers and/or amplifiers on public streets. Use, operation or permitting the use or operation of any radio, compact disc player, tape player, stereo, television, musical instrument or other equipment or device which produces or reproduces sound which is audible by any persons on the public streets of the Borough is prohibited.

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- C. Lawn care equipment. Use, operation or permitting the use or operation of leaf blowers, powered lawn mowers, chain saws or other powered landscape maintenance equipment, with the exception of snow removal equipment, on any day between the hours of 10:00 p.m. and 6:30 a.m. prevailing time is prohibited. This section shall not apply to the operation of any powered landscape maintenance equipment operated by or on behalf of the Borough or any other governmental entity.
- D. Construction or repair activities.
  - (1) The performance or permitting the performance of any construction or repair work of any kind upon or excavating for any building or structure which produces sound plainly audible beyond the boundaries of the property on which the construction, repair work or excavation is being performed on any day between the hours of 10:00 p.m. and 6:30 a.m. prevailing time is prohibited. This section shall not apply to any person who performs any construction, repair or excavation on behalf of the Borough or any other governmental entity, any person who performs repair work to a building or structure as a result of an emergency or any person who obtains the express written permission of the Borough Manager.
  - (2) Upon receipt of an application in writing therefor, stating the reasons for the request and the circumstances upon which such reasons are based, the Borough Manager may grant such permission, provided that the activity is not otherwise prohibited by the Borough Ordinances or other statutes or regulations and the Borough Manager determines that:
    - (a) The work to be done is in the interest of the public; or
    - (b) Hardship, injustice or unreasonable delay would result from the interruption of work during the hours set forth above; or
    - (c) The building or structure involved is devoted or intended to be devoted to a use immediately incidental to the public defense.
  - (3) Any person dissatisfied with the decision of the Borough Manager may appeal to the Council by filing a written request for consideration by the Council within seven calendar days of the Borough Manager's decision.

### § 174-4. Exemptions.

The following are exempted from the provisions of this chapter:

- A. Amplified announcements at athletic events that are open to the public.
- B. Concerts, band concerts, block parties, carnivals, parades and other performances or similar activities publicly or privately sponsored and presented in any public or private space outdoors, provided that such activities do not occur on any day between the hours of 10:00 p.m. and 7:00 a.m. prevailing time and the Council has granted prior approval for the event.
- C. Sounds caused by the ordinary and accepted use of emergency apparatus necessary



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for the preservation of life and property.

- D. Sounds resulting from persons performing any construction, repair, excavation, maintenance or restoration on public streets, public rights-of-way, public utility rights-of-way or publicly owned or occupied areas and are acting on behalf of the Borough, any other governmental entity or any public utility.
- E. Sounds, not amplified, that result from organized school related programs and activities, organized religious activities located at established places of worship, athletic events, entertainment and similar events conducted by any public or private elementary or secondary school lawfully operating in the Borough.
- F. Fireworks exhibits held pursuant to a permit that is issued by the Borough.

### **§ 174-5. Preemption.**

The provisions of this chapter are intended to supplement the provisions of the ordinances of the Borough and shall not be deemed to preempt or preclude the application of any other provision of the Code of Ordinances.

### **§ 174-6. Civil remedies.**

Violation of any of the provisions of this chapter shall constitute a nuisance and may be abated by the Borough through civil process by means of a restraining order, preliminary or permanent injunction or in any other manner provided by law for the abatement of nuisances.

### **§ 174-7. Violations and penalties.**

Any person who shall violate any provisions of this chapter shall be guilty of a summary offense and, upon conviction therefor, shall be sentenced to pay a fine of not more than \$1,000, plus costs of prosecution for each and every offense, and in the default of payment thereof, shall be sentenced to imprisonment for not more than 30 days. Each violation and each day of violation shall constitute a separate offense.

## **Chapter 180: PEDDLERS, SOLICITORS AND TRANSIENT RETAIL DEALERS**

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. III, Art. 5, of the 1981 Code. Amendments noted where applicable.]

### **§ 180-1. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**PEDDLER** — One who sells tangible commodities from house to house, store to store or on the streets or other public places and not from an established place on private premises within the borough.

**PERSON** — Includes any natural person, association, partnership, firm or corporation.

**SOLICITOR** — One who takes orders for future deliveries, intangible services or solicits subscriptions or donations from house to house or in public places and not from an established place on private premises within the borough.

**TRANSIENT RETAIL DEALER** — One who sells commodities or takes orders for future deliveries or services from private premises but remains at one place for such purpose for temporary periods only. A temporary period shall be construed as less than 100 days.

### **§ 180-2. License required; hours of operation.**

It is hereby declared unlawful for any person:

- A. To act as a peddler, solicitor or transient retail dealer in the Borough of Penbrook without first securing a license as hereinafter provided.
- B. To carry on such activity at any time other than weekdays between the hours of 9:00 a.m. and 7:00 p.m. and between 9:00 a.m. and 4:00 p.m. on Saturdays.

### **§ 180-3. Contents of application.**

Application for such licenses shall be made to the Borough Manager and shall state thereon the following information:

- A. The names and addresses of all persons so acting and the employer thereof.
- B. A description of the nature and type of business to be conducted, including a description of vehicles to be used in conjunction therewith.
- C. The length of time for which license is to be effective.
- D. Character of the applicant, including any prior criminal convictions.

### **§ 180-4. License fees.** [Amended 8-5-1991 by Ord. No. 91-1]

Fees for said licenses shall be as follows and shall be submitted to the borough with the application for such license:

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- A. Each peddler or solicitor: \$8 per day; \$15 per week; \$35 per month; and \$100 per year.
- B. Each transient retail dealer: \$30 per month.

### § 180-5. Issuance of license.

Upon making application therefor, the payment of the proper fee and upon the Borough Manager's being satisfied that the licensee is of good moral character and the business to be conducted is not prejudicial to the best interest of the borough, a license shall be issued to each such applicant, which license shall be carried on the person or such licensee when engaged in such activity and such activity shall be carried on under the terms and conditions stated in said license.

### § 180-6. Suspension or revocation of license.

The Borough Manager shall suspend or revoke any such license if he finds that licensee shall have:

- A. Given false or misleading information on his application.
- B. Made false or misleading representations in the conduct of his business.
- C. Violated any terms of this chapter or the license.
- D. Conducted its business in a manner which is detrimental to the public health, safety or morals of the borough.

### § 180-7. Exemptions from fees.

Persons engaged in the following activities are hereby exempt from the payment of license fees as provided herein:

- A. Farmers selling their own produce.
- B. Persons seeking donations or selling goods which have been donated by the owners thereof, the proceeds of which are to be applied to any charitable, religious or philanthropic purpose.
- C. The sale by any manufacturer or producer of bread and bakery products, meat and meat products or milk or milk products not including ice cream or other frozen desserts.

### § 180-8. Violations and penalties. [Amended 8-5-1991 by Ord. No. 91-1 <sup>79</sup>]

Any person who shall violate any of the provisions of this chapter shall, upon conviction, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. Each violation and each day of violation shall constitute a separate offense.

### § 180-9. Appeals.

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**79. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

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Any person who is refused a license or has his license suspended or revoked may appeal such action to the Borough Council, in writing, within 10 days after such refusal, suspension or revocation.

## Chapter 184: PLAYGROUNDS, PUBLIC

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. V, Art. 5, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Alcoholic beverages — See Ch. 88.  
Drug paraphernalia — See Ch. 130.

#### § 184-1. Hours of operation. <sup>80</sup>

The public playgrounds of the Borough of Penbrook, being known as "Little Valley," "Penbrook Community Park" and any others hereafter established, shall be open to public use daily between sunrise and sunset. No person shall be permitted on said playgrounds from sunset to sunrise the following day except upon prior permission of the Council or the Borough Manager.

#### § 184-2. Controlled substances.

No person shall possess or use any alcoholic beverage or illegal drugs on said premises at any time.

#### § 184-3. Prohibited acts.

No person shall commit or cause any damage to or removal of any property or equipment upon said playgrounds or parks. The use of park or playground equipment which in any way is inconsistent with its intended design or use is a violation of this ordinance. Any person found to be using a vehicle known as a skateboard or scooter or similar device propelled by the person in possession of the device within the confines of any Borough playground or park in a manner so as to interfere with any existing event including but not limited to a scheduled baseball game or event held subsequent to obtaining a lease from the Borough for a scheduled event, or damaging Borough property, shall be considered to be in violation of Chapter 1 of the General Provisions of the Borough Code. Any personal property left at the park or playground after closing shall be considered the property of the Borough and may be disposed of at the discretion of the Borough. <sup>81</sup>

#### § 184-4. Designated Tobacco-Free Areas. <sup>82</sup>

That the areas of the parks and playgrounds where children are present in the Borough of Penbrook be designated tobacco-free and the use of any tobacco product or electronic cigarette, in and form shall be prohibited hereafter. Appropriate signage will be posted delineating the tobacco-free areas. Tobacco product or electronic cigarette shall include, but is not limited to:

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<sup>80</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>81</sup> Amended Ordinance 2013-3 on October 7 2013, Updated section 184-3

<sup>82</sup> Updated 184-4 Ordinance 2022-06 December 5, 2022

(a) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and

(b) Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, cigar, pipe, or hookah.

**§ 184-5. Violations and penalties. 83**

Any person violating any provisions of this chapter shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

## Chapter 188: PLUMBING

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. IX, Art. 2, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Building construction — See Ch. 104.  
Sewers — See Ch. 210.

**§ 188-1. Adoption of standards.** [Amended 2-3-1986 by Ord. No. 86-1; 10-7-1991 by Ord. No. 91-3 <sup>84</sup>]

All plumbing work done in the Borough of Penbrook from and after the date hereof shall be done or installed in accordance with the provisions of the Building Officials and Code Administrators International, Inc. (BOCA), Plumbing Code of 1990, Eighth Edition, as it may hereafter be amended or supplemented, which is hereby adopted and incorporated by reference as authorized by 53 P.S. § 46202(24).

**§ 188-2. License required.** [Amended 10-7-1991 by Ord. No. 91-3]

It shall be unlawful for any persons to carry on or work at the business of plumbing or house or building drainage in Penbrook Borough until a certificate or license to engage in or work at said business shall have been granted said persons by the Borough Manager.

**§ 188-3. Application for license; term.** [Amended 10-7-1991 by Ord. No. 91-3]

All and every person or persons who either already hold a license as a registered master plumber issued by another municipality in the Commonwealth of Pennsylvania or have four years or more practical experience as a plumber shall be eligible to apply for the certificate or license to carry on or work at the business of plumbing or house or building drainage in the Borough of Penbrook. If the Borough Manager shall find such person or person so applying to be competent, the Borough Manager shall thereupon issue a certificate or license to such person or persons which shall, for the period of one calendar year or fractional part thereof, entitle that person or persons to engage in or work at the business of plumbing, house and building drainage.

**§ 188-4. Previous experience; competency.**

Any person, firm or corporation who or which for a period of at least one year previous to the passage of this chapter has been regularly engaged in the plumbing business in the Borough of Penbrook, Dauphin County, Pennsylvania, shall be deemed competent to hold a license or certificate, subject to the foregoing regulations; and all other persons, firm or corporations desiring to do any plumbing work shall exhibit such evidence of competency as the Plumbing Inspector and Borough Manager shall from time to time require.

**§ 188-5. Change of address; retirement.**

Every registered master plumber, firm or corporation shall give immediate notice of any change in his, their or its place of business and upon his, their or its retirement from business

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<sup>84</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

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shall surrender his, their or its certificate of registry to the Borough Manager. Every person, firm or corporation, in registering, shall give the full name or names of the person, firm or officers' names of the corporation for which he or they shall register.

**§ 188-6. License fee.** [Amended 10-7-1991 by Ord. No. 91-3; 12-30-1996 by Ord. No. 96-4]

There shall be an annual fee of \$15 for the issuance of a license or certificate.

**§ 188-7. Renewal of license.** [Amended 10-7-1991 by Ord. No. 91-3]

The certificate or license shall be null and void at the expiration of each calendar year. The licensed master plumber desiring to continue in or work at the business of plumbing, house and building drainage for the ensuing year shall, between the first and 31st day of December of each and every year, surrender said certificate or license to the Borough Manger and thereafter reregister his or her name and address upon such form or forms as may, from time to time, be furnished by the Borough Manager.

**§ 188-8. Inspection and fixture fees.** [Added 11-6-1985 by Ord. No. 85-9]

The inspection fee to be charged by the Plumbing Inspector, for the use of the borough, shall be \$5 for the inspection of plumbing and house drainage for each and every new building, and in the event that it is a remodeling, the fee will also be \$5. This fee will be charged for each and every visit to the site. In addition, thereto, the Plumbing Inspector shall be entitled to charge and receive the sum of \$3 for each additional fixture; a fixture that has a trap or electrical appliance which is connected to a trap.

**§ 188-9. Violations and penalties.** [Amended 10-7-1991 by Ord. No. 91-3 <sup>85</sup>]

Any person, firm or corporation who or which shall violate any of the provisions of this chapter shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. Each violation and each day of violation shall constitute a separate offense.

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**85. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**



## Chapter 196: POLICE REPORTS, FALSE

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 3-7-1983 by Ord. No. 83-4. Amendments noted where applicable.]

### GENERAL REFERENCES

Police Department — See Ch. 45.

#### § 196-1. Title.

This chapter shall be known as the "False Police Report Ordinance."

#### § 196-2. Conduct prohibited.

No person, firm, partnership, corporation or other organization shall report or cause to be reported any criminal offense or give any information relating to any alleged criminal offense to the Borough of Penbrook Police Department or any other law enforcement agency, or to any member thereof, which report or information is false and which such person, firm, partnership, corporation or other organization knows to be false.

#### § 196-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

FALSE and KNOWS TO BE FALSE — Includes any report accidentally transmitted to the Borough of Penbrook Police Department or any other law enforcement agency by electronic or other means through an alarm device owned, controlled, operated or leased by any person, firm, partnership, corporation or other organization and such person, firm, partnership, corporation or other organization fails within three minutes thereof to notify said Police Department of such accidental transmission.

#### § 196-4. Violations and penalties. <sup>86</sup>

Whoever violates any provision of this chapter shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

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<sup>86</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

## Chapter 200: PROPERTY MAINTENANCE

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-7-2004 by Ord. No. 2004-3. <sup>87</sup> Amendments noted where applicable.]

### GENERAL REFERENCES

Smoke detectors — See Ch. 214.  
Solid waste — See Ch. 218.  
Trees — See Ch. 246.

#### § 200-1. Adoption of standards.

A certain document, one copy of which is on file in the office of the Borough of Penbrook, being marked as the current International Property Maintenance Code, as published by the International Code Council, Inc., be and is hereby adopted as the Property Maintenance Code of the Borough of Penbrook, in the Commonwealth of Pennsylvania, for the control of buildings and structures as herein provided; and each of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code are hereby referred to, adopted and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions and changes, if any, prescribed in § 200-2 of this chapter.

#### § 200-2. Modification to standards.

The following sections are hereby revised:

- A. Section 101.1, insert: "Borough of Penbrook."
- B. Section 103.5, insert: "The schedule of fees shall be adopted and revised from time to time by resolution of the Borough Council of the Borough of Penbrook."
- C. Amend Section 302.4, to read as follows: "Premises and exterior property shall be maintained free from weeds or plant growth in excess of 8 inches in height. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens. Growth of hedges, trees or vegetation which obstruct passage or vision over the highways or walkways of the Borough or permitting insects or vermin to propagate on property in the Borough which causes annoyance or inconvenience to other persons therein shall be a violation of this section.

Upon Failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with Section 106.3 and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to entre upon the property in violation and cut and destroy the weeds growing thereon, and

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<sup>87</sup> Editor's Note: This ordinance also superseded former Ch. 200, Property Maintenance, adopted 4-1-2002 by Ord. No. 2002-4.

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the costs of such removal shall be paid by the owner or agent responsible for the property. No notice of violation shall be required to be given to the owner or occupant or person responsible if said owner, occupier or person now causing or maintaining the violation was served a notice of the same type of violation during the six-month period immediately preceding the current violation.

- D. Add Section 302.10. Obstruction of Vision. No walls, fences, signs or other structures shall be erected, altered or maintained and no hedges, trees or other plant material shall be planted or maintained which may cause danger to traffic on a street or road by obstructing the view. On corner lots no walls, fences, signs or other structures in excess of 3 feet in height shall be erected or altered and no hedge, or other plant material in excess of 3 feet in height shall be permitted within a clear sight triangle formed by any combination alleys, minor streets, and/or collector streets. A clear sight triangle shall include the area on each corner that is bounded by the lines of the intersecting street.

Exception: Existing walls, fences, signs and other structures which comply with the Building Code and other applicable ordinances in effect at the time of construction.

The clear sight triangle shall be determined by applying the dimensions as set forth in table 302.10:

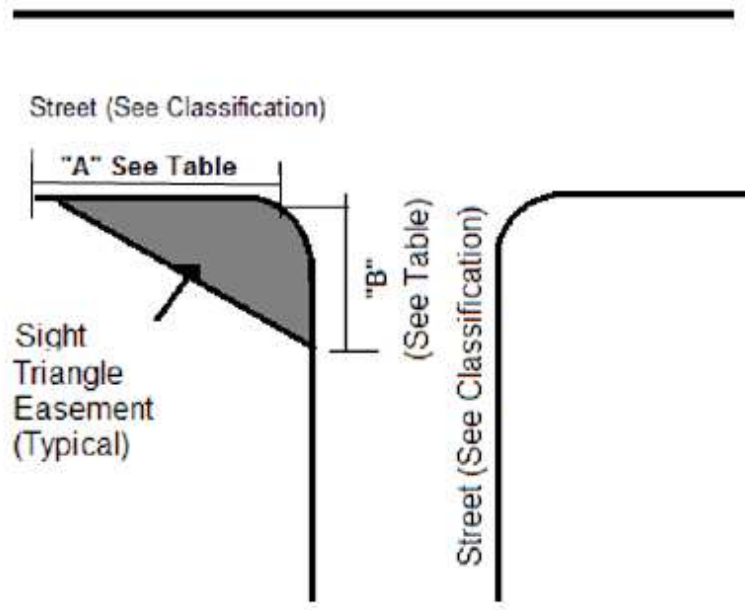
Table 302.10

Sight Triangle Easement

Street "A" Distance in Feet		Street "B" Distance in Feet		
		Alley	Minor Street	Collector Street
10 Ft	Alley	10 Ft	10 Ft	25 Ft
10 Ft	Minor Street	10 Ft	10 Ft	25 Ft
25 Ft	Collector Street	10 Ft	10 Ft	25 Ft

- E. The Code Official shall determine the type of streets involved by measuring the Right-of Way (R-O-W) of each and apply the table below when establishing the clear sight triangle easement.

Street Type	Width of R-O-W
Alley	20 Feet or less
Minor Street	20-40 Feet
Collector Street	40-100 Feet



- F. Section 303.14<sup>88</sup>. insert: "May 1 to November 1."
- G. Section 602.3. insert: "October 1 to April 30."
- H. Section 602.4, insert: "October 1 to April 30."<sup>89</sup>

<sup>88</sup> Citation should be corrected to read "Section 304.14 in codes dated 2015 and beyond."

<sup>89</sup> Amended Ordinance 2019-3 on June 3 2019, Update 200-2

## Chapter 201: STAGNANT WATER

[History: Adopted by the Borough Council of the Borough of Penbrook 10-3-2011 by Ordinance 2011-5. Amendments noted where applicable.]

### GENERAL REFERENCES

Brush, grass and weeds — See Ch. 200.  
Building construction — See Ch. 104.  
Junk and junkyards — See Ch. 160.  
Property Maintenance — See Ch. 200  
Sewers — See Ch. 210  
Stormwater Management — See Ch. 222

### § 201-1 Definitions

**Borough** – The Borough of Penbrook

**Enforcement Official** – The Penbrook Borough Property Maintenance Officer, or in his absence, the Borough Manager.

**Stagnant Water Pool** – Stagnant water in pools in which mosquitos, flies or other insects may multiply, including but not limited to, open containers, sewage, lagoons, ditches, roof gutters, wheelbarrows, tires, birdbaths, ornamental pools, swimming pools, vegetation weeds and grasses in excess of eight (8) inches in height, except as may be otherwise provided in Wetlands and Environmental Ordinances and statutes.

**Premises** - A lot, plot or parcel of land including any structures thereon.

**Structure** - That which is built or constructed or a portion thereof.

**Titled Owner** - Any person, firm, partnership or corporation having legal title or equitable interest in structure and/or premises as recorded in the official records of the state, county or Borough of Penbrook, or any guardian or the estate of any such person or the executor or administrator of the estate of such person if in possession of real property as a fiduciary or heir.

### § 201-2 Stagnant Water Pools as Public Nuisances

Any stagnant water pool:

is detrimental to the safety and welfare of the public;  
creates a public health risk/hazard in the light of West Nile Virus problems shall be deemed a public nuisance constituting a violation of this ordinance

### § 201-3 Violation

It shall be unlawful for any titled owner to permit or maintain a stagnant water pool upon the premises or structure as defined herein in the Borough of Penbrook and upon conviction for a violation thereof shall be subject to the penalties provided under this Ordinance.

### § 201-4 Enforcement

The Enforcement Officer shall enforce this ordinance.

**§ 201-5 Compliance Notice and Appeal**

Whenever a violation of this ordinance is found or believed to exist, the enforcement officer shall give written notice to the titled owner personally, or by mail addressed to his/her last known address or by posting said written notice thereof upon the premises involved.

Required notice shall identify the premises, specifically state the reason why notice is being issued with relevant section(s) of the ordinance, include a correction order allowing reasonable time to achieve compliance with the ordinance, and set forth that any appeal must be in writing to the Penbrook Borough Property Maintenance Code Board of Appeals within the time set forth for compliance. Failure to timely request an appeal in writing will be deemed a waiver of the appeal.

**§ 201-6 Work by Borough**

Upon failure, neglect or refusal of any titled owner to comply with any and all applicable sections of this ordinance, the enforcement official is authorized to prepare appropriate work orders for performance of work by authorized Borough employees or contracted workers to effect compliance and abatement of any nuisance on the subject premises, including entry onto private property. After said compliance work is completed, statements for work performed shall be prepared by the Borough Secretary. Said statements shall indicate the description of the premises, titled owner, the cost of the work performed, administrative charge, disposal costs, attorney's fees and all other costs, if any, shall be filed as a lien against the premises affected, and such lien shall continue in force until the full amount thereof, together with interest at the rate of six (6%) percent per annum, is paid in full.

**§ 201-7 Penalty**

In addition to the lien provided for herein, whoever violates or fails to comply with the provisions of this ordinance shall be, upon conviction thereof, sentenced to pay a fine of not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000.00), plus costs and restitution as determined for the work performed and charges assessed and/or paid by the Borough and in default of payment of said fine, costs, and restitution, to a term of imprisonment not to exceed thirty (30) days. All fines, restitution and Borough charges imposed and collected under the provisions of this ordinance shall be paid to the Borough. Each day that an offense/violation continues shall constitute a separate offense/violation.

## Chapter 202: Quality of Life Ordinance

[History: Adopted by the Borough Council of the Borough of Penbrook 04-01-2024 by Ordinance 2024-1

### Section 2: Purpose

The lack of maintenance of properties, littering, improper storage of trash and rubbish, storage of inoperable/nonregistered vehicles, and accumulation of snow and ice are costly problems that negatively impact the public health, safety, and general welfare of the Borough residents and their guests, and contribute to the deterioration of property values and general disorder in the Borough. These problems degrade the physical appearance of the Borough, which reduces business and tax revenue, inhibiting economic development. The quality of life and community pride of the citizens of the Borough are negatively impacted by the occurrences and existence of these activities. Recognizing these are community problems, the purpose of this Ordinance is to promote the health, safety and general welfare of the Borough by helping to create a clean environment for the citizens of Penbrook.

### Section 3: Scope

The provisions of this Ordinance shall apply to all existing and future properties and fixtures with the Borough.

### Section 4: Definitions

The following words, terms, and phrases when used in this Ordinance shall be defined as follows, unless the context clearly indicates otherwise:

ABANDONED MOTOR VEHICLE - Any motor vehicle that:

- (a) Is inoperable and is left unattended on public property for more than forty-eight (48) hours; or
- (b) Has remained illegally on public property for a period of more than forty-eight (48) hours; or
- (c) Is left unattended on or along a public highway without a valid registration plate or valid and current inspection; or
- (d) Has remained on private property without the consent of the owner or person in control of the property for more than forty-eight (48) hours.

ADDRESS — Any numerical sign, placard or any other display which identifies the street address of any dwelling unit or structure.

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**ADULT** — Any person 18 years of age or older.

**DEBRIS** — Any material upon the premises that is a residue of structural demolition, or any other material that is not neatly stored, stacked or piled in such a manner so as not to create a nuisance or become a harboring place or food supply for insects or rodents.

**DUMPING** — Includes, but is not limited to, depositing of litter, depositing durable goods (refrigerators, washers, dryers, televisions, air conditioning units, etc.), small appliances, furniture, carpets, tires, vehicles, vehicle parts and automotive products or other such municipal waste, hazardous waste, residual waste and construction or demolition debris on public or private property, except as authorized.

**DWELLING UNIT** — One or more rooms, including a kitchen or kitchenette and sanitary facilities in a dwelling structure, designed as a unit for occupancy.

**GARBAGE** — The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

**INDOOR FURNITURE** — Any and all pieces of furniture, which are made only for inside use, including, but not limited to, upholstered chairs, couches, sofas, etc.

**JUNK MOTOR VEHICLE** - Any motor vehicle which is either unable to move under its own power or does not have a valid registration plate and a valid and current inspection sticker, or has any of the following physical defects:

- (a) Broken windshields, mirrors or other glass;
- (b) One or more flat or open tires or tubes;
- (c) Missing doors, windows, hood, trunk, or other body parts;
- (d) Any body parts with sharp edges including holes resulting from rust;
- (e) Missing tires;
- (f) Disassembled chassis parts apart from the motor vehicle stored in a disorderly fashion or loose in or on the vehicle;
- (g) Broken vehicle frame suspended from the ground in an unstable manner;
- (h) Leaking or damaged oil pan or gas tank which could cause fire or explosion;
- (i) Exposed battery containing acid;
- (j) Open or damaged floor boards including trunk and firewall;
- (k) Damaged bumpers pulled away from the perimeter of the vehicle;
- (l) Broken grill with protruding edges;
- (m) Such other defects that could threaten the health, safety and welfare of the citizens of the Borough of Penbrook.

If a vehicle is tarped or covered and the owner or person responsible for said vehicle refuses to remove the tarp for the proper Borough official the vehicle shall be considered to be an abandoned or junk motor vehicle.

**LITTER** — Includes, but is not limited to, all waste material, garbage, trash, i.e. waste paper, tobacco products, wrappers, food or beverage containers, newspapers, etc., municipal waste, human waste, domestic animal waste, furniture or motor vehicle seats, vehicle parts, automotive products, shopping carts, construction or demolition material, recyclable



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material, dirt, mud and yard waste that has been abandoned or improperly discarded, deposited or disposed.

**NUISANCE** - Any activity, conduct or condition which causes injury, damage, hurt, inconvenience, annoyance or discomfort to the public as necessarily comes in contact with such activity, conduct, or condition, and which adversely affects the same's safety, health, morals, or general welfare, including aesthetics.

**OCCUPANT** — Any persons who lives in or has possession of, or holds an occupancy interest in a dwelling unit; or any person residing in or frequenting the premises of the dwelling unit with the actual or implied permission of the owner or lessee.

**PUBLIC OFFICER** — Any police officer, authorized inspector, or public official designated by Mayor or Council to enforce Borough Ordinances.

**RIGHT-OF-WAY** — The total width of any land used, reserved or dedicated as a street, alley, driveway, sidewalk or utility easement, including curb and gutter areas.

**RECYCLABLE MATERIAL** - Includes material which would otherwise become municipal waste, which can be collected, separated or processed, and returned to the economic mainstream in the form of raw materials or products. Such materials may include, but not be limited to, aluminum cans, ferrous and bimetal cans, glass containers, plastic bottles and containers, and paper.

**WASTE** — Any garbage, refuse, industrial, lunchroom or office waste, and other material, including solid, liquid, semisolid, or contained gaseous material resulting from operation of residential, municipal, commercial, or institutional establishments or from community activities and which is not classified as residual waste or hazardous waste as defined herein. The term does not include source-separated recyclable materials.

Any terms not defined herein shall have their ordinary meaning.

### **Section 5: Quality of Life Violation**

The following shall be considered a quality of life violation:

A. Accumulation of rubbish, garbage: junk or litter. It shall be unlawful for any person, business or entity to allow the accumulation of rubbish, debris or garbage upon their property or premises, including but not limited to the following:

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1. All exterior property and premises, and the interior of every structure, shall be kept free from any accumulation of waste, trash, rubbish, debris or garbage.
2. It is prohibited to store or place any/all appliances or furniture, including, but not limited to, ranges, refrigerators, air conditioners, ovens, washers, dryers, microwaves, TVs, computers or electronic components, dishwashers, mattresses, recliners, sofas, interior chairs or interior tables on the exterior of any property for the purpose of sale or any other reason, except for the temporary purposes of keeping the item on the exterior of the property for a period of less than twenty-four (24) hours for the purpose of maintaining the item or removing the item from the real property.
3. Refrigerators and similar equipment, including, but not limited to, washers, dryers, dishwashers and ranges not in operation shall not be discarded, stored or abandoned on any premises without first removing the doors.

B. Storing of hazardous material. It shall be unlawful for any person, business or entity to store combustible, flammable, explosive or other hazardous materials, including, but not limited to, paints, volatile oils and cleaning fluids or combustible rubbish, including, but not limited to, wastepaper, boxes or rags unless the storage of said materials is in compliance with the applicable fire and/or building codes, and at least 10 feet away from the public right-of-way.

C. Storing of recyclables. Storage of recyclables is only permitted in approved containers which must be kept clean and sanitary at all times.

D. Storage containers for waste or trash.

1. All containers that store waste or trash shall be in compliance with Borough of Penbrook Code.
2. All containers must be stored so that said containers are not visibly on the public-right-of-way..
3. Waste/trash containers may only be placed in front of any property after 5:00 pm the night before the day of the scheduled pickup day, and all containers must be returned to their storage area before 9:00 pm on the day of pickup.

E. Littering, scattering rubbish or dumping.

1. No person shall throw, dump, place, sweep or dispose of any litter, waste, trash, garbage, tobacco product or rubbish upon any public sidewalk, alley, street, bridge, public passageway, public parking area, right of way or on any public property.
2. The improper disposal of rubbish or garbage or dumping or disposing of rubbish or garbage on vacant, unoccupied, or other property is prohibited.

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3. Any violation of Borough of Penbrook Code shall be considered a violation of this part and may also be enforced and ticketed as such.

### F. Motor vehicles.

1. It shall be prohibited to keep a Nuisance vehicle or Junk Motor Vehicle as defined herein or within the Borough of Penbrook Code.
2. It shall be prohibited to maintain a motor vehicle Nuisance as defined herein or within the Borough of Penbrook Code, which is not otherwise permitted under said Code.
3. Any violation Borough of Penbrook Code shall be considered a violation of this part and may also be enforced and ticketed as such.

### G. Placement or littering by private advertising matter.

1. No person shall throw, place, sweep or dispose of litter or private advertising matter upon any public sidewalk, alley, street, bridge, public passageway, public parking area, right of way or any public property.
2. No person, group, organization or entity will hang, place or advertise on any public property in any manner.
3. No person, group, organization or entity will hang, place or advertise on any property that they do not have any ownership rights to without written approval of said owner.

### H. Animal maintenance and waste/feces cleanup. People owning, harboring, keeping or responsible for an animal within the Borough of Penbrook:

1. Shall not permit them to run at large or make unreasonable noise.
2. Shall not allow waste matter/feces from the animal to collect or remain on their property so as to cause or create an unhealthy, unsanitary, dangerous or offensive living condition and shall clean it up on a daily basis.
3. Shall clean up waste matter/feces from the animal deposited anywhere else in the Borough immediately.
4. Shall not be in violation of Chapter 92, Animals of the Borough of Penbrook Code, a violation thereof shall be a violation under this part and ticketed as such.

### I. Insects or vermin. Infestation of insects or vermin shall not be allowed to continue, and the owner or occupant of any infested property shall report same to the Code Department of the Borough and take appropriate steps to abate said infestation without unnecessary delay. Failing to do so is a violation.

### J. High weeds, grass, plant growth or standing water. All premises and exterior property shall be maintained free from weeds, or plant growth in excess of eight inches as defined herein, and water shall not be allowed to stand or accumulate in a manner that would attract insects or vermin. All such plant growth

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shall otherwise be in compliance with Borough of Penbrook Code and the provisions of the International Property Maintenance Code adopted therein and any violation thereof shall be considered a violation of this part and may also be enforced and ticketed as such.

K. Snow and ice removal from sidewalks. Every owner, tenant, occupant, lessee, property agent or any other person who is responsible for any property within the Borough, is required to remove any snow or ice from their sidewalk within 24 hours after the cessation of snowfall.

L. Swimming pools. Swimming pools shall be maintained in good repair at all times. They shall also be kept clean, safe, sanitary, and covered when not in regular use.

M. Property maintenance. Accessory structures. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound, in good repair, and in compliance with Borough of Penbrook Code and the provisions of the International Property Maintenance Code adopted therein. Any violation of the Borough's Code shall be considered a violation of this part and may also be enforced and ticketed as such.

N. Proper Identification of Properties. All persons owning or occupying structures located on property situated in the Borough of Penbrook shall maintain adequate numerical signs or other display apparatus, that signifies the structure's proper street address. The displays shall show the proper street number in its entirety. Numerical displays shall be positioned in a manner, affixed to the structure, to be visible from the public right-of-way. It shall be unlawful for persons owning or occupying a structure to fail to install and/or maintain displays as set forth above.

O. Outside Placement of Indoor Appliances/Furniture. It is prohibited to store or place any/all appliances or furniture including, but not limited to, ranges, refrigerators, air conditioners, ovens, washers, dryers, microwaves, dishwashers, mattresses, recliners, sofas, interior chairs, or interior tables on the exterior of any property for the purpose of sale or any other reason, except for the temporary purpose to perform maintenance on sold property. If maintenance is being performed, or if the items are actively being sold in a yard sale, the items shall not be left unattended.

P. Stagnant Water. It shall be unlawful for any titled owner to permit or maintain a stagnant water pool upon the premises or structure as defined in Chapter 20, Stagnant Water of the Borough of Penbrook Code, a violation thereof shall be a violation under this part and ticketed as such.

Q. Defacement of Property.

1. No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti.

2. It shall be unlawful for any property owner to fail restore any surface that exhibits any mutilation or defacement on any exterior surface on any structure they own located in the Borough of Penbrook.

**Section 6: Authority for Issuance of Violation Tickets and Citations**

Upon finding a quality of life violation, any public officer of the Borough of Penbrook, appointed by the Mayor and/or Borough Council of the Borough of Penbrook, may issue quality of life violation tickets and/or citations to the owner and/or occupant of the property at issue or to the individual known to have violated this Ordinance.

**Section 7: Service.**

A violation ticket may be served upon a violator by handing it to the violator or his/her agent, by handing it to an adult member of the household or other person in charge of the residence, by leaving or affixing the notice or violation ticket conspicuously to the property where the violation exists, by handing it at any office or usual place of business of the violator, or to the person for the time being in charge thereof, or by mailing the violation ticket to the violator's address of record.

**Section 8: Separate offense.**

Each day a violation continues or is permitted to continue may constitute a separate offense for which a separate violation ticket may be issued and fine imposed.

**Section 9: Regulations.**

Public officers are hereby authorized to promulgate rules and regulations to implement and supplement the provisions of this Ordinance.

**Section 10: Abatement of violation.**

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A. Any person or business violating this Ordinance is hereby directed to, upon issuance of a quality of life ticket, correct the violation in question. Public officers are authorized and empowered to cause a violation to be corrected.

B. The Borough of Penbrook reserves the right to abate the violation in question at the expense of the owner if the violation is not abated by the property owner within five (5) business days. Should the violation at the discretion of the appropriate officer(s) present imminent danger and/or pose a health hazard and/or risk, the Borough reserves the right to perform the abatement immediately. The Borough will perform this work at the rate as set forth in the Borough's Fee Resolution. The Borough reserves the right to charge an additional 20% on all material purchases to cover all miscellaneous expenses such as wear and tear on equipment. If the Borough has abated the violation, the cost thereof may be charged to the owner of the property, tenant or offending party. A bill/invoice will be generated to the violator for payment separate from the quality of life ticket which will also be paid separately.

C. Contractor cleanup. The Borough reserves the right to direct a contractor to perform the abatement of the violation once five (5) business days pass from the date of issuance of the quality of life ticket. Should the violation present imminent danger and/or pose a health hazard and/or risk, the Borough reserves the right to direct the contractor to perform the abatement immediately. The contractor will submit a bill for his work to the Borough of Penbrook, and the Borough will forward these costs to the violator. The Borough reserves the right to add a processing fee of \$ 10.00 in addition to the cost of the contractor.

### **Section 11: Fines and Penalties**

A. For the first instance of a violation of this Ordinance within a 12-month period, violation tickets shall be issued in the amount of \$25.00.

B. For the second violation of this Ordinance within a 12-month period, violations tickets shall be issued in the amount of \$50.00.

C. For the third violation of this Ordinance within a 12-month period, violations tickets shall be issued in the amount of \$100.00.

D. Upon issuance of three tickets under this Ordinance, the Borough reserves the right to issue a citation for each subsequent offense.

### **Section 12: Violation Ticket Penalties**

A. If the person, or entity in receipt of a \$25.00 violation, does not pay the fine or request a hearing within fourteen (14) calendar days, the person or entity will be subject to a \$10.00 penalty. Any person or entity who does not pay the fine within twenty (20) calendar days, will be subject to an additional \$20.00 penalty.

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- B. If the person, or entity in receipt of a \$50.00 violation, does not pay the fine or request a hearing within ten (10) calendar days, the person or entity will be subject to a \$20.00 penalty. Any person or entity who does not pay the fine within twenty (20) calendar days, will be subject to an additional \$40.00 penalty.
- C. If the person or entity in receipt of a \$100.00 does not pay the fine or request a hearing within (10) calendar days, the person or entity will be subject to a penalty of \$50.00. Any person or entity who does not pay the fine within twenty (20) calendar days, will be subject to an additional \$75.00 penalty.
- D. Failure of the person or entity to make payment within thirty (30) calendar days of a violation ticket in any amount, shall be issued a citation for failure to pay.

### **Section 13: Appeal**

A. A person in receipt of a violation ticket may appeal to the Borough Council by filing an appeal request in writing, on a form to be provided, within ten (10) calendar days of the date of the violation ticket, stating the reasons for appeal, and accompanied by the appropriate fine amount.

B. If abatement or other costs were associated with the violation, these will be posted, along with the appeal.

C. The appeal will be addressed by Borough Council at the next scheduled public meeting following the filing of the appeal. The violator may address the Borough Council at this public meeting prior to the Borough Council voting on the appeal. By majority vote of the Borough Council, the appeal may be upheld, denied, the violation ticket and/or any associated costs, fines or penalty amounts modified, or the appeal may be referred to the Property Maintenance Board of Appeals for a final decision. Borough Council will issue written notice of the decision, along with any refunds applicable.

### **Section 14: Citation Fines.**

Any person, firm or corporation who shall fail, neglect, or refuse to comply with any of the terms or provisions of this Ordinance, or of any regulation or requirement pursuant hereto and authorized hereby, shall, upon conviction before the Magisterial District Judge, be ordered to pay a fine of no less than \$300.00 and not more than \$1,000.00 on each offense.

### **Section 15. Restitution.**

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The Magisterial District Judge may order the violator to make restitution where appropriate, to pay the Borough's costs of collection/citation proceedings, and to pay the Borough's reasonable attorney's fees associated with the prosecution of the same.

### **Section 16. Collections and Liens**

At the discretion of the Borough, all tickets and costs of abatement for which payment is not received within forty-five (45) days of issuance may be turned over by the Borough to a collections agency for receipt. The Borough may place liens on properties wherein a nuisance was removed and abated, pursuant to 53 P.S. §7101, et seq.

### **Section 17. Nonexclusive Remedies.**

The penalty and collection provisions of this section shall be independent, non-mutually exclusive separate remedies, all of which shall be available to the Borough of Penbrook as may be deemed appropriate for carrying out the purposes of this Ordinance. The remedies and procedures provided in this Ordinance for violation hereof are not intended to supplant or replace to any degree, the remedies and procedures available to the Borough in the case of a violation of any Borough of Penbrook Ordinance, whether or not such other code or ordinance is referenced in this chapter and whether or not ongoing violation of such other code or ordinance is cited as the underlying ground for a finding of a violation of this Ordinance.

### **Section 18. Severability.**

If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such constitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance. It is hereby declared as the intent of the Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

### **SECTION 19: Repealer.**

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

### **SECTION 20: Effective Date.**

This Ordinance shall become effective sixty (60) days after the date of its enactment.



## Chapter 204: REAL ESTATE REGISTRY

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. III, Art. 4, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Real estate transfer tax — See Ch. 238, Art. IV.

Registration of tenants — See Ch. 242.

#### § 204-1. Authorization to secure information.

For the purpose of securing accurate information in reference to the ownership of real estate, the Borough Secretary shall cause to be made all necessary books, maps and plans as will show the situation and dimensions of each property thereon, which books, maps or plans shall be so prepared as to show the location and the name of the owner or owners thereof with blank space for the name of the owner of each lot and with provision for the names of future owners and the dates of future transfers of title.

#### § 204-2. Access to information.

For the purpose of establishing such registry, the Secretary shall have access without charge to any public records wherein the necessary information may be obtainable and may also cause a search to be made in other places for any monuments or evidence of title not reported to him as herein provided and requisite for the completion of such books, maps or plans, and in such work he shall have the assistance of the Borough Engineer.

#### § 204-3. Preservation of records.

Said books, maps and plans shall be carefully preserved and shall be so kept by additions from time to time, as to show the ownership of every lot or piece of real estate or subdivision thereof within the limits of the Borough of Penbrook, with the succeeding transmission of title from the time of the commencement of such plans, but nothing contained therein shall at any time invalidate any municipal or tax claim by reason of the fact that the same is not assessed or levied against the registered owner.

#### § 204-4. Duty of property owners.

It shall be the duty of all owners of real estate within the limits of the Borough of Penbrook within one month after the date of the enactment of this chapter establishing such registry, and of every subsequent purchaser, devisee or other owner within one month after acquiring title in any manner whatsoever to any real estate in the Borough of Penbrook, to furnish to the Secretary, at his office, descriptions of their respective properties upon blanks to be furnished by the Borough of Penbrook, and at the same time to present their conveyances to be stamped as evidence of the registry thereof.

#### § 204-5. Recording of deeds.

The Sheriff of Dauphin County shall present for registry the deeds of all properties within the Borough of Penbrook sold by him at judicial sales; and the Prothonotary and Recorder of Deeds of Dauphin County shall not admit for record any deed of any property in the

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Borough of Penbrook bearing dates subsequent to the enactment of this chapter for the establishment of such registry, unless the same is first duly stamped as herein provided.

## Chapter 210: SEWERS

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in part histories. Amendments noted where applicable.]

### GENERAL REFERENCES

Building construction — See Ch. 104.  
Plumbing standards — See Ch. 188.  
Stormwater management — See Ch. 226.  
Streets and sidewalks — See Ch. 230.  
Zoning — See Ch. 266.

### Part 1 Regulations

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. VIII, Art. 1, of the 1981 Code]

### ARTICLE I: Regulations and Fees

#### § 210-1. Rules, regulations and requirements.

All connections with the sanitary sewer system and plumbing, house and building drainage and water lines incident thereto shall be made in compliance with the following rules, regulations and requirements:

- A. Tappage shall be made at Y branches as shown on the borough sewer plan.
- B. No street shall be opened and no connection shall be made to the sewer system and no fixtures installed unless and until a written permit is granted for that purpose, signed and issued by the Borough Secretary, written application for such purpose to be made on form prescribed.
- C. No permit shall be issued to any person, firm or corporation who has not successfully passed an examination held by the Board of Plumbing Examiners and holding a certificate to that effect, which said certificate shall be exhibited when application is made.
- D. No connection shall be made to any borough sewer or lateral by any person until notice to do so has been given by the Plumbing Inspector, and no system of house plumbing shall be connected with any lateral until the whole system has been examined and approved by the Plumbing Inspector and he is satisfied that the same has been properly vented and trapped.
- E. The use of the system and the connection thereto, including house and building drainage and all water lines, shall be in strict conformity with the laws of the state and the Plumbing Code <sup>90</sup> hereto pertaining and the rules and regulation of the

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<sup>90</sup>. Editor's Note: See Ch. 188, Plumbing.

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Department of Environmental Protection of the Commonwealth of Pennsylvania.

- F. Each dwelling must have a separate sewer line, connecting from the building to the sanitary sewer system.
- G. No roof drainage, surface water, waste from hydrants or groundwater from absorption drains shall be admitted or be permitted to drain into the sewer system; it being distinctly understood that the sanitary sewer system now constructed or to be constructed is for the conveyance and treatment of sanitary sewage or liquid wastes only.
- H. It shall be unlawful for any person, firm or corporation, either owner or user, to cause to be drained or permit to flow into any part of the sewer system any corrosive, volatile, suffocating, inflammable or explosive liquid, gas, vapor, substance or material of any kind.
- I. It shall be unlawful for any slaughterhouse, dairy, garage, automobile service station, dry-cleaning and dyeing establishment, machine shop, butcher shop or similar establishment from which oil, fibers, grease, silt or grit may be discharged to cause or permit to flow into the sewers any substance which may form a deposit tending to cause a stoppage or injure in any way the sewers or which would tend to interfere with the successful operation of the same. Any objectionable industrial wastes from establishments above noted or from any other establishments at present operating or to be operated in the future shall be discharged into the laterals or sewers only after having been properly regulated so as not to cause excessive flow and treated in the special treatment process, specifically approved in writing by the Borough Council, which will render the industrial waste or effluent non-objectionable to either the sewer or a sewage treatment works or the successful operation thereof, and in case the industrial wastes from any establishment cannot be treated to produce effluent non-objectionable to either the sewer or a sewage treatment works or the successful operation of the same, they shall be excluded from the sewer entirely. Regardless of any approval by the Borough Council of special industrial waste treatment works, upon failure of said special treatment works to produce a non-objectionable effluent or upon its causing a stoppage in the sewer or injury to any part of the sewers or a sewage treatments works or tendency to interfere with the successful operation thereof, then the discharge therefrom shall be immediately discontinued or abandoned and said industrial wastes excluded from the sewers until such time as a successful special treatment process may be installed.
- J. No garbage, scraps, vegetables, straw, shavings, ashes, rags or any other material capable of causing obstruction, nuisance or injury in the sewer system shall be discharged to or permitted to enter the sewer system unless said garbage, scraps or vegetables are properly ground in an approved-type garbage grinding device installed in a proper fashion as part of a household plumbing installation.

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- K. No steam or hot water from boilers, steam bars, coffee heaters or the discharge of overflow or hot waste matter from steam heating systems or salt water from ice cream factories or stores shall be discharged to or be permitted to enter the sewer system.
- L. All hotels, restaurants, boardinghouses or other public eating places shall install adequate grease traps, of type and size approved by the Borough Engineer, in their system of plumbing or piping, and such grease traps shall be cleaned at sufficiently frequent intervals to prevent grease from entering the sewer system.
- M. All sewage shall drain into the sanitary sewer and not into any storm sewers.
- N. All connecting lines from building to sanitary sewer system must be properly trapped and vented to prevent danger of gas or back pressure.
- O. The same formalities are required in case of repairs, alterations and additions as are required in making original connections.
- P. No additional cesspools or septic tanks shall be constructed in the borough, except where property owners cannot connect with the sanitary sewer system, and then only upon approval of the Department of Environmental Protection.
- Q. Property owners shall be required to connect with the sanitary sewer system by the Department of Environmental Protection when said Department finds that the existing cesspools or septic tanks have ceased to function properly and are a menace to public health. Reasonable notice in writing, under the circumstances, shall be given by the Department of Environmental Protection to connect with the sanitary sewer system, and if not complied to within the time specified by such notice, connections shall be made by the Department of Environmental Protection and the costs for such connections shall be collected from the property owner according to law by lien or otherwise.
- R. In making connections, all trenches shall be entirely protected and safeguarded by barriers, lights and shoring when necessary, refilled within 24 hours after inspection, earth tamped and street put in the same condition as before opening was made and assuming all responsibility for loss, damage or injury to persons and property for the period of six months from date of permit, all subject to the approval of the Highway Department of the borough. If these conditions are not complied with, then in that event, no further permits shall be issued to the plumber in charge and the Highway Department shall make the necessary repairs to street to put the same in good condition as before opening was made and the costs of such repairs collected from the property owner according to law by lien or otherwise.
- S. The fees to be charged for each permit issued shall be as follows:
  - (1) For opening trench in unimproved street: \$5.

- (2) For making connection to sanitary sewer system: \$2640.00 <sup>91</sup>
- (3) For opening trench in improved streets: a charge of \$3 per square yard for oil bound macadam streets and \$9 for water bound streets shall be charged; measurement to be made by the Supervisor and a bill sent to the plumber making such opening, which said bill shall be paid within 30 days and no further permit shall be issued to such plumber until all former bills are paid. The trench opened shall be filled in, tamped and maintained by the plumber making the opening to the satisfaction of the Highway Department, for a period of six months, after which time the top surface shall be replaced by the Highway Department at no further cost to the plumber.
- (4) For installation of new fixtures or replacements: \$0.50.
- (5) Plumbers (All fees to be paid when application is made.):
  - (a) For resident plumbers: \$5 first calendar year and \$1 for each succeeding calendar year.
  - (b) For nonresident plumbers (master): \$10 for each job.
  - (c) For nonresident journeyman plumbers: \$5 for each job.
- (6) For each and every inspection: \$1.
- (7) No fee whatever shall be charged for an emergency repair to water lines on account of leaks.
- (8) Plumber's fees to be in addition to the other fees.

**§ 210-2. Violations and penalties. <sup>92</sup>**

Any person violating any of the provisions of this Part 1 shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

**§ 210-3. Extensions.**

Extensions to the present system will be constructed upon petition to the Borough Council for such extensions, and the costs thereto will be assessed against the abutting owners in accordance with the law. However, after a proper agreement may have been entered into by an individual, firm or corporation and after approval of the plans and specifications and obtaining the necessary permits from the State Sanitary Water Board, such individual, firm or corporation may construct an extension wholly at their expense, under the supervision of the Borough Engineer, and upon the approval and acceptance by the Borough Engineer, such

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<sup>91</sup> Amended Ordinance 2006-2 on July 3 2006, Updated (2)

<sup>92</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

extension will become the property of the Borough of Penbrook. The construction of an extension will not waive the borough's rights to collect such connection fees as may be levied by this Part 1.

**§ 210-4. Failure to comply; costs to be lien. <sup>93</sup>**

Should any person or persons refuse, neglect or fail to comply with any of the terms, provisions or requirements of this Part 1 or with any notice given in conformity with or pursuant to the provisions hereof, then the Borough Council is hereby empowered and directed to engage all labor and furnish all materials necessary or required to comply with said notice, and the cost and expenses thereof, together with 10% added thereon as a penalty, shall be certified to the Borough Solicitor, who shall enter the same as a lien against the property in the Court of Common Pleas of Dauphin County and shall proceed to collect the same in like manner as other municipal claims are by law collectible; or an act of assumpsit may be brought to recover the same in the name of the Borough of Penbrook from said owner or owners; and in addition thereto, the owner or owners who shall fail, neglect or refuse to comply with or who shall violate the terms, requirements and conditions of this Part 1 or of any notice as aforesaid shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

**Part 2**

**Sewer User Charges**

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. VIII, Art. 2, of the 1981 Code]

**ARTICLE II: Fees and Charges**

**§ 210-5. User charge.**

Each user of the sewer system of the Borough of Penbrook having a connection to the sewer system in the borough shall pay annually, beginning with the year 1959, a charge for the use of said system.

**§ 210-6. Classification of users.**

- A. For the purpose of this Part 2, the users shall be classified as follows:
- (1) Class 1 users: dwelling unit. As used in this Part 2, "dwelling unit" shall mean each place of abode of a one-family unit in the borough from which sewage is discharged into the sewer system of the Borough. Multiple-family unit buildings shall be considered such number of dwelling units as there are family units residing therein. Rooming houses having more than two rented rooms shall be considered two dwelling units.
  - (2) Class 2 users: commercial, industrial, school or other user. As used in this Part 2, the term "Class 2 user" shall include all users of the sewer system of

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**93. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

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the Borough of Penbrook having a situs in the Borough other than dwelling units. The term shall include but shall not be limited to churches, restaurants, stores, schools, motion-picture theaters, professional offices, firehouses, service stations, business offices and other commercial establishments, including bars and taprooms and manufacturing and industrial establishments.

- B. If any Class 2 user is supplementary or in addition to Class 1 use in the same building, a separate sewer use charge shall be made for each. If more than one Class 2 user occupies the same building, the space occupied by each shall be deemed a separate building, and each shall be charged at least the minimum charge. In the event that two or more Class 2 users occupy a building receive water through the same meter, the charge shall be made to them jointly and each shall be responsible for the entire charge regardless of any agreement between them for the division thereof.
- C. If use of classification of any property shall change within any year or if a new connection is made to the Borough of Penbrook's system during any year, the annual charge shall be prorated as of the date of such change or new connection.

**§ 210-7. Schedule of charges.** [Amended 12-12-1982 by Ord. No. 83-1; 12-28-1987 by Ord. No. 87-5; 12-26-1994 by Ord. No. 94-5; 12-28-1995 by Ord. No. 95-11; 12-29-1997 by Ord. No. 97-5; 12-6-2004 by Ord. No. 2004-5; 12-27-2006 by Ord. No. 2006-4; 12-26-2007 by Ord. No. 2007-11; 12-28-2009 by Ord. No. 2009-5; 12-30-2010 by Ord. No. 2010-6; 12-28-2011 by Ord. No. 2011-6; 12-3-2012 by Ord. No. 2012-5; 12-1-2014 by Ord. No. 2014-5; 12-7-2015 by Ord. No. 2015-8; 12-5-2016 by Ord. No. 2016-6; 12-4-2017 by Ord. No. 2017-2; 12-3-2018 by Ord. No. 2018-4; 12-2-2019 by Ord. No. 2019-8;]

Every Class I user in the Borough of Penbrook discharging into the Borough of Penbrook sewer system shall pay a minimum annual charge of \$450 per year, and every Class II user in the Borough of Penbrook sewer system shall pay a minimum annual charge of \$500; provided, however, that if the charge for the said property determined as hereinafter provided exceeds \$500 , the higher charge shall be imposed.

Each Class I user shall pay an annual charge of \$450 per dwelling unit.

Each Class 11 user shall pay an annual charge based on the rate of \$10.00 per 1,000 gallons of water used, as reflected by the water meter of the user as shown in the last available yearly period with a minimum annual rate; provided, however, that the annual charge shall be \$17.10 per employee for commercial and industrial users and \$8.50 per pupil for school users and \$19.00 annually for each employee and instructor if such charges are higher than the charges based on annual usage. If the amount of water used by a user cannot accurately be determined, the Borough Engineer of the Borough of Penbrook is authorized, empowered and directed to estimate the amount of water so used, and his estimate shall be conclusive for the purpose of determining the charge unless within 60 days from the date of mailing the bill for the sewer use charge he/she is furnished with satisfactory proof of the actual amount of water used.

**§ 210-8. Charges.** [Amended 12-11-1985 by Ord. No. 85-10]



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### A. Sewer charge.

- (1) Bills for the sewer charge shall be due and payable within 60 days from the date thereof. All users of the sewer system shall be entitled to a discount of 2% of the amount of their sewer charge if they make payment of the full amount thereof within 60 days of the date of the bill. All users who make payment of their sewer charges thereafter shall pay as follows:
  - (a) The full, face amount of the sewer charge if paid within the third and fourth month from the date of the bill.
  - (b) The full amount of the sewer charge plus a penalty of 5% if paid within the fifth and sixth month from the date of the bill.
  - (c) The full amount of the sewer charge plus a penalty of 10% if paid after six months from the date of the bill.
- (2) The Tax Collector of the Borough of Penbrook is authorized and directed to collect the annual sewer charge in the same manner, under the same terms and at the same time that he or she is authorized by law or borough ordinance or resolution to collect real estate taxes imposed by the Borough of Penbrook.

- B. The sewer charge imposed by this Part 2 is hereby declared to be a lien on property of the user or the property occupied by the user, and upon failure of any user or property owner to pay the same, said charge shall be collected in the manner provided by law for the enforcement of payment of municipal taxes and claims.

### § 210-9. Duties of users.

It shall be the duty of every user, upon failure to receive an annual statement, to so notify the Borough Secretary, in writing, of such fact, and upon failure of such user to give such notice, shall be liable to double the amount of the charges plus interest so provided herein.

### § 210-10. Billing.

All statements for charges hereunder commencing with the year 1960 and hereafter shall be sent to users on or about March 1 of each year.

### § 210-11. Unlawful actions.

No person shall discharge or permit to be discharged into the sewer collection system of the Borough of Penbrook any sewerage or industrial waste containing chemicals or other matter:

- A. Having a temperature higher than 100° F.
- B. Containing more than 120 parts per million by weight of tar, oil or grease.
- C. Containing any gasoline, benzine, naphtha, fuel oil or other inflammable or explosive liquids, solids or gases.

- D. Containing any garbage which has not been ground up by household-type or other suitable garbage grinders.
- E. Containing any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, cotton, wool, plastics or other fibers or any other solid or viscous substances capable of causing interference with proper operation of the sewer system.
- F. Having a pH lower than 6.5 or higher than 9.0 or having any other corrosive property capable of causing damage or hazards to structures, equipment or personnel of the sewer system.
- G. Containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute hazards to humans or create any hazard in sewer system operation. Toxic wastes shall include, but not by way of limitation, wastes containing cyanide, chromium and/or copper ions.
- H. Containing noxious or malodorous gases or substances capable of creating a public nuisance.

**§ 210-12. Purpose; violations and penalties. <sup>94</sup>**

The provisions of this Part 2 are declared to be for the health, safety and welfare of the citizens of the borough. Any person violating any of the terms, provisions, or requirements of this Part 2, or of the rules and regulations or who shall refuse, neglect or fail to comply with any notice given to such person by a duly authorized representative of the borough in conformity with or pursuant to the provisions of this Part 2 shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. Each thirty-day period during which a violation continues shall be considered a separate offense and punishable as such.

**§ 210-13. Failure to comply; costs to be lien.**

Should any person refuse, neglect or fail to comply with the provisions of this Part 2 or of any rules and regulations herein provided for or any notice given in conformity with or pursuant to the provisions hereof, then the appropriate official of the borough hereby is empowered and directed to supply all labor and material required of said negligent or delinquent owner, and the cost and expense thereof, together with ten-percent penalty thereon, shall be certified to the Borough Solicitor, who shall enter the same as a lien against the property in the Court of Common Pleas of Dauphin County and proceed to collect the same in like manner as other municipal claims are by law collectible; or an action of assumpsit may be brought to recover the same in the name of the borough from said owner or owners.

**Part 3**

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**94. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

**Agreement with City of Harrisburg**  
[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. VIII, Art. 3, of the 1981 Code]

**ARTICLE III: Supplemental Agreement**

**§ 210-14. Supplemental agreement.**

This municipality shall enter into a second supplemental agreement (the "second supplemental agreement") with the City and City Authority and, as applicable, certain other municipalities and municipality authorities described therein, amending, modifying and/or supplementing the existing agreement, substantially in the form referred to in § 210-15, under terms and provisions of which second supplemental agreement this municipality shall covenant and agree to make certain payments to the City from certain specified funds of this municipality, under terms and provisions of which agreement the City will covenant and agree to provide certain sewage transportation, as applicable, treatment and disposal services to this municipality relating to certain portions of this municipality; and under terms and provisions of which second supplemental agreement this municipality and the City will agree with respect to certain related matters.

**§ 210-15. Filing of agreement.**

The second supplemental agreement shall be substantially in the form presented to this meeting, which form is approved; and a copy of this second supplemental agreement, in the form so presented to this meeting and so approved, shall be filed with the Secretary of this municipality and shall be made available for inspection at reasonable times by interested persons requesting such inspection.

**§ 210-16. Authorization to deliver.**

The Mayor and President of Council and the Secretary of the municipality, as applicable, are authorized and directed to execute, to attest and to deliver the second supplemental agreement, in behalf of this municipality, substantially in the form approved in § 210-15.

**§ 210-17. Authorization to carry out.**

Proper officers of this municipality are authorized and directed to execute all documents and to do all other acts as may be necessary and proper to carry out this Part 3 and the undertakings of this municipality under the second supplemental agreement.

**§ 210-18. Declaration of purpose.**

It is declared that enactment of this Part 3 is necessary for the protection, benefit and preservation of the health, safety and welfare of inhabitants of this municipality.

**ARTICLE IV: Purpose**

**§ 210-19. Purpose.**

The collection system of the Borough of Penbrook is connected to and discharges sanitary sewage and industrial waste into the advanced wastewater treatment facility of the City of Harrisburg pursuant to the second supplemental agreement dated September 15, 1976, among the City of Harrisburg, Harrisburg Sewerage Authority and various suburban municipalities, including the Borough of Penbrook, as well as supplements and amendments to such agreement. The City of Harrisburg and the Borough of Penbrook are required to comply with the Federal Water and Pollution Control Act, also known as the "Clean Water Act of 1977," as amended, 33 U.S.C. § 11251, et seq., in relation to pretreatment of industrial waste collected and discharged into the advanced wastewater treatment facility of the City of Harrisburg. The purpose of this Part 4 is to implement, as appropriate, provisions necessary to effectuate such compliance for sanitary sewage and industrial waste emanating from the collection system of the Borough of Penbrook. This Part 4 provides that the City of Harrisburg will be principally administering and enforcing the provisions of this Ordinance and references to the City of Harrisburg in this Ordinance are intentional.

**ARTICLE V: Wastewater Regulations**

**§ 210-20. Definitions and abbreviations.**

These definitions, meaning of items and phrases shall apply throughout this Part 4, unless the context specifies and clearly indicates otherwise.

**ACCIDENTAL DISCHARGE** — A discharge not caused by the fault of any person, and one that could not have been prevented by any means suggested by common prudence, which would interfere with the operation of the advanced wastewater treatment facility (AWTF).

**ADVANCED WASTEWATER TREATMENT FACILITY OF THE CITY OF HARRISBURG (AWTF)** — The publicly owned wastewater collection conveyance and treatment system (POTW) as defined by Section 212 of the Federal Water Pollution Control Act, also known as the "Clean Water Act of 1977," as amended.

**APPLICANT** — All persons holding title to facilities or improvements for which a permit for the connection to or discharge into the sewer system is required.

**AUTHORIZED REPRESENTATIVE OF A SIGNIFICANT INDUSTRIAL USER** —  
Either:

- A. A principal executive officer of at least the level of vice president if the user is a corporation; or
- B. A general partner or proprietor if the user is a partnership or proprietorship, respectively; or

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- C. A principal executive officer or ranking elected official, if the user is a municipality, state, federal, or other public agency.
- D. A duly authorized representative of the individual designated in Subsection A, B, or C above if such representative is responsible for the operation of the facility or facilities from which the discharge originates. <sup>95</sup>

**BEST MANAGEMENT PRACTICES (BMP's)** — means a schedule of activities, prohibition of practices, maintenance procedures, or other management practices including treatment requirements and operating procedures, and practices to control the plant site run off, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage and shall be considered local limits and pretreatment standards for the purpose of 307 (d) of the act. <sup>96</sup>

**BIOLOGICAL OXYGEN DEMAND (BOD)** — The quantity utilized by the biochemical oxidation of organic matter under standard laboratory procedures, five days at 20° C. expressed in terms of weight and concentration (milligrams per liter).

**BOD** — Biochemical oxygen demand.

**BOROUGH** — The Borough of Penbrook.

**CFR** — The Code of Federal Regulations.

**CLEAN STREAMS LAW** — The Act of June 22, 1937, P.L. 1987, as enacted and reenacted by Act of October 10, 1980, P.L. 894, 35 P.S. §§ 691.1 to 691.702.2.

**CLEAN WATER ACT (aka Federal Water Pollution Control Act)** — A federal statute enacted by Public Law 92-500, October 18, 1972; 33 U.S.C. § 1251 et seq, as amended by Public Law 95-217, December 28, 1977; Public Law 97-117, December 29, 1981; Public Law 97-440, January 8, 1983; and Public Law 100-04, February 4, 1987.

**COLLECTION SYSTEM** — The sanitary sewer collection system of the city and the Borough in which wastewater is collected and discharged, or will be discharged, into the AWTF.

**COLLECTION CONVEYANCE SYSTEM** — The sanitary sewer collection system of the city and the Borough and the conveyance system of the Harrisburg Authority and the Borough in which wastewater is collected, conveyed and discharged, or will be discharged, into the advanced wastewater treatment facility (AWTF).

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<sup>95</sup> Amended Ordinance 2008-4 on Nov 3 2008 Updated and added text

<sup>96</sup> Amended Ordinance 2008-4 on Nov 3 2008 Added BMP's

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**COMMERCIAL ESTABLISHMENT** — Any premises or improvements not a dwelling unit or industrial establishment.

**COMPLIANCE MONITORING** — The act of checking specific conditions or requirements of the industrial user permit.

**CONVENTIONAL POLLUTANTS** — Pollutants which are usually found in domestic, commercial or industrial wastes, such as phosphorus, total suspended solids, biochemical oxygen demand, fecal coliform, adverse pH levels and oil and grease.

**COOLING WATER** — The water discharged from any use, such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

**DEPARTMENT** — The Department of Public Works of the City of Harrisburg.

**DEP** — See PA. DEP.

**DIRECTOR** or **DIRECTOR DPW** — The Director of the Department of Public Works of the City of Harrisburg.

**DISCHARGER** — Any person who contributes, causes or permits the contribution of treated or untreated wastewater into the sewer system.

**DOMESTIC WASTEWATER** — Ordinary water-carried household wastes from sanitary conveniences from residential and nonresidential establishments.

**ENVIRONMENTAL PROTECTION AGENCY (EPA)** — An agency or administrative department of the United States, or any other agency or administrative department of the United States hereafter exercising all or any portion, as appropriate, of the powers or jurisdiction presently being exercised thereby.

**EPA** — United States Environmental Protection Agency.

**EQUIVALENT DWELLING UNIT (EDLU)** — A measure of the volume of flow or expected flow of sanitary sewage or industrial waste from any property that is equal to the volume of flow discharged from one dwelling unit as determined in accordance with sound engineering practice.

**FEDERAL ACT** — The Federal Water Pollution Control Act, also known as the "Clean Water Act of 1977," as amended, 33 U.S.C. §§ 1251 et seq.

**FEDERAL CATEGORICAL PRETREATMENT STANDARDS** — National categorical pretreatment standards.

**GRAB SAMPLE** — A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

**HARRISBURG CONVEYANCE SYSTEM** — The interceptor sewers, pumping stations and force mains and all related structures which are a part of the wastewater facilities transporting and conveying wastewater from facilities of the city and any of suburban

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municipalities of the AWTF which are part of the wastewater facilities.

**HOLDING TANK WASTE** — Any waste from holding tanks of vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

**INDIRECT DISCHARGE** — The discharge or the introduction of nondomestic pollutants from any source regulated under Section 307(b), (c) or (d) of the Federal Act [33 U.S.C. 1317(b), (c) or (d)], into the AWTF. For the purposes of this definition, holding tank wastes shall be considered indirect discharge.

**INDUSTRIAL ESTABLISHMENT** — Any nonresidential establishment discharging sewage and wastes other than normal waste-carried domestic sewage and wastes and cooling water, directly or indirectly to the AWTF.

**INDUSTRIAL USER** — A source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to Section 402 of the Federal Act (33 U.S.C. § 1342).

**INDUSTRIAL WASTES** — Any solid, liquid or gaseous substance, waterborne wastes or form of energy rejected or escaping from any industrial, manufacturing, trade or business proceeds or from the development, recovering or processing of natural resources, as distinct from sanitary sewage.

**INTERFERENCE** — The inhibition or disruption of the AWTF treatment processes or operation which contributes to a violation of any requirement of the Harrisburg Authority's NPDES permit. The term includes pollution which prevents the use or disposal of sewage sludge by the AWTF in accordance with Section 405 of the Federal Act (33 U.S.C. § 1345) criteria, guidelines or regulations developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substance Control Act or more stringent state criteria applicable to the method of disposal or use employed by the AWTF.

**LEASE** — The agreement of lease between the city as lessee and the Harrisburg Authority as lessor, whereunder the wastewater facilities are leased to the city for operation and use, and any amendments and supplements to such lease.

**LOCAL LIMITS** — A locally established limit deemed to be a pretreatment standard for the purpose of Section 307(d) of the Clean Water Act. The limit is specific to the advanced wastewater treatment facility (AWTF) and is based on the potential for pass-through, interference, sludge contamination or capacity to cause damage or hazards to structures, equipment or personnel of the advanced wastewater treatment facility (AWTF) by the discharge of any pollutant by an industrial user.

**MILLIGRAM PER LITER (mg/l)** — Concentration based on mass of pollutant per unit volume.

**NATIONAL CATEGORICAL PRETREATMENT STANDARDS** — Any regulation containing pollutant discharge limits promulgated by the United States Environmental

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Protection Agency in accordance with Section 307(b) and (c) of the Federal Act, 33 U.S.C. § 1317(6)(b) and (c), which applies to a specific category of industrial users.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT** — A permit issued pursuant to Section 402 of the Federal Act, 33 U.S.C. § 1342.

**NATIONAL PROHIBITED DISCHARGE STANDARD** — Any regulation developed under authority of Section 307(b) of the Federal Act, 33 U.S.C. § I 317(b) and 40 CFR § 403.5.

**NEW SOURCE** — Any new building, structure, facility or installation from which there is or may be a discharge of pollutants which commences after the date of publication of a proposed pretreatment standard under Section 307(c) of the Clean Water Act.

**NONRESIDENTIAL ESTABLISHMENT** — Any building, structure, room, group of rooms, establishment or facility, other than a residence, which discharges sewage and wastes, including industrial wastes, directly or indirectly to the AWTF.

**OCCUPIED BUILDING** — Any structure erected and intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which structure sanitary sewage, industrial waste or both is or may be discharged.

**PA DEP** — The Department of Environmental Protection, an agency or administrative department of the commonwealth, or any other agency or administrative department of the commonwealth hereafter exercising all or any portion, as appropriate, of the powers or jurisdiction presently being exercised thereby.

**PARTS PER MILLION (ppm)** — Indicates a mass ratio meaning milligrams per million milligrams, and generally will be considered equivalent to milligrams per liter (mg/L).

**PASS-THROUGH** — A discharge which exits the AWTF into a waterway of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of the Harrisburg Authority's NPDES permit.

**PH** — The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

**POLLUTANT** — Any dredged solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand and cellar dirt and industrial, municipal and agricultural waste discharged into water.

**POLLUTION** — The man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.



POLYCHLORINATED BIPHENALS (PCB's) — The sum of Arochlors 1016, 1221, 1232, 1242, 1248, 1254 or 1260 <sup>97</sup>

PRETREATMENT or TREATMENT — The reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the AWTF. The reduction or alteration can be obtained by physical, chemical or biological process, or process changes by other means, except as prohibited by 40 CFR § 403.6(d), (dilution).

PRETREATMENT REQUIREMENT — Any substantive or procedural requirement related to pretreatment other than a pretreatment standard imposed on an industrial user.

PRETREATMENT STANDARD — Any national categorical pretreatment standard, local limit, or discharge prohibition regulation identified in Section 9-501.7(b) containing a list of pollutant discharge limitations.

PROCESS WASTEWATER — Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product or waste product. Sanitary, noncontact cooling and boiler blowdown wastewaters are excluded unless they become process make-up water.

PROHIBITED DISCHARGE STANDARD — National Prohibited Discharge Standard.

PROPERTY ACCESSIBLE TO THE COLLECTION SYSTEM — Any improved property (any property within the Borough of Paxtang upon which there is erected a structure intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which structure sanitary sewage and/or industrial waste shall be or may be discharged) abutting on or adjoining any street or highway in which a sewer or drain is located which is part of the sewer system.

PUBLICLY OWNED TREATMENT WORKS (POTW) — A treatment works as defined by Section 212 of the Clean Water Act, which is owned by a state or municipality (as defined by Section 502(4) of the Clean Water Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a treatment facility.

RESIDENTIAL PROPERTY — Any room, group of rooms, house, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by a single family or by persons living alone, which property shall be billed and considered a separate entity.

SANITARY SEWAGE — The normal water-carried household and toilet wastes from

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<sup>97</sup> Amended Ordinance 2011-2 on June 6 2011, Added Definition

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residences, business buildings, institutions and commercial and industrial establishments.

**SELF-MONITORING** — Sampling and analysis performed by the industrial user to ensure compliance with permit provisions.

**SERVICE AGREEMENT** — The second supplemental agreement dated September 15, 1976, among the City of Harrisburg, Harrisburg Sewerage Authority and the suburban municipalities and any supplements and amendments to such agreement.

**SERVICE PERIOD** — For sewer rental purposes, means the length of time for which sewer rentals are billed as may be determined by the Bureau of Water of the city to correspond with water service periods; except as otherwise provided in the second supplemental agreement dated September 15, 1976 among the City of Harrisburg and the suburban municipalities and any supplements and amendments to such agreement.

**SEWER SYSTEM** — All the facilities for the collection and conveyance of sewage and suitable industrial wastes into the AWTF and the treatment plant.

**SIC** — Standard Industrial Classification.

**SIGNATORY** — A responsible corporate officer, general partner, proprietor or duly authorized representative of that individual.

**SIGNIFICANT INDUSTRIAL USER** — All categorical industrial users or any noncategorical industrial users that:

- A. Have a discharge flow of 25,000 gallons or more per average work day of process wastewater; or
- B. Have an average process flow which makes up 5% or more of the average dry weather hydraulic or organic capacity of the treatment plan (Ord. 43-1990, City of Harrisburg); or
- C. Have a reasonable potential in the opinion of the Superintendent to adversely affect the treatment plan through inhibition, pass through of pollutants, sludge contamination or endangerment of AWTF workers or to violate any pretreatment standard of requirement.

**SIGNIFICANT NONCOMPLIANCE** — One or more violations of:

- A. Pretreatment standards or requirements, including chronic violations, technical review criteria violations, any discharge which alone or in combination causes the interference or past-through or endangers the health or welfare of AVVTF personnel, the public or environment or results in the AVVTF exercising its emergency authority to halt or prevent such a discharge;
- B. Best management practices;
- C. Compliance schedule milestones;

- D. Reporting requirements;
- E. Accurately reporting noncompliance; or
- F. Any other violation or group of violations the AVVTF considers to be significant. <sup>98</sup>

SLUG DISCHARGE — Any pollutant released in a discharge at a flow or concentration rate which will cause interference with the operation of the AWTF.

SPILL PREVENTION AND CONTROL PLAN — A plan prepared by an industrial user to minimize the likelihood of a spill and to expedite control and cleanup activities should a spill occur.

STANDARD INDUSTRIAL CLASSIFICATION — A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget (1972).

STATE — The Commonwealth of Pennsylvania.

STEELTON CONVEYANCE SYSTEM — The facilities owned or leased by the Borough of Steelton which transport and convey wastewater from facilities of any of the suburban municipalities, and not through the Harrisburg conveyance system, to the wastewater treatment facilities which are part of the wastewater facilities.

SUBURBAN MUNICIPALITIES or SUBURBAN MUNICIPAL AUTHORITIES — The Borough of Penbrook, Borough of Paxtang, Borough of Steelton, Township of Swatara, Township of Lower Paxton, and the Township of Susquehanna and, as applicable, Swatara Township Authority, Lower Paxton Authority, Steelton Borough Authority and Susquehanna Township Authority, collectively or individually, as appropriate.

SUPERINTENDENT — The person designated by the city to supervise the operation of the AWTF and who is charged with certain duties and responsibilities by this article or any other applicable legislation or one or more duly authorized representatives.

SUSPENDED SOLIDS — The total suspended matter that floats on the surface of or is suspended in water, wastewater or other liquids and which is removable by laboratory filtering.

TOXIC MATERIAL or POLLUTANT — Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the EPA under Section 307(a) of the Federal Act or the Federal Laws.

TREATMENT — Pretreatment.

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<sup>98</sup> Amended Ordinance 2008-4 on Nov 3 2008 Updated and added text

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**TREATMENT PLANT** — The plant for the treatment of sewage conveyed thereto by the collection system, and the equipment and facilities thereof; the AWTF.

**UPSET** — An exceptional incident in which there is unintentional and temporary noncompliance with the pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

**USER** — Any person who contributes, causes or permits the contribution of wastewater into the AWTF.

**VIOLATION** — The act of not meeting specific conditions or requirements (i.e., noncompliance).

**WASTEWATER** — The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with any pollutants which may be present, whether treated or untreated, which are contributed into or permitted to enter the sewer system.

**WASTEWATER FACILITIES** — The wastewater conveyance, treatment, disposal and related facilities owned by the Harrisburg Authority and leased to the City of Harrisburg for operation and use, including existing facilities and all future additions and improvements thereto.

### **§ 210-21. Compliance with all applicable laws and rules and regulations.**

No connection or discharge shall be made to or into the sewer system except in compliance with all federal, state and local laws, ordinances, resolutions, rules and regulations now in force and effect as well as such federal, state and local laws, ordinances, resolutions, rules and regulations as may, from time to time, be enacted, adopted, approved or promulgated by any federal, state or local authority, or may be otherwise provided by law.

### **§ 210-22. Power to prohibit connections and certain discharges.**

- A. The City and the Borough shall have the right to refuse permission to connect to the sewer system, to compel discontinuance of use of the sewer system or to compel pretreatment of wastewaters by any person in order to prevent discharges deemed harmful or deemed to have a deleterious effect upon the operation of, or any portion of, the sewer system.
- B. No wastewaters shall be discharged to the sewer system:
  - (1) Having heat in such quantities that the discharge causes the temperature at the AWTF to exceed 40° C. or 104° F.;
  - (2) Containing fats, wax, grease or oils of petroleum origin, whether emulsified or not, in excess of 100 mg/L, or petroleum oil, nonbiodegradable cutting oil

or petroleum products of mineral origin in amounts that will cause interference or pass-through at the AWTF.

- (3) Containing any gasoline, benzene; naphtha, fuel oil or other explosive liquids, solids or gases or any other pollutants which will create a fire or explosion hazard, including but not limited to wastestreams with a closed-cup flashpoint of less than 140° F. or 60° C. using the test methods specified in 40 CFR Part 261.21.
- (4) Containing any garbage that has not been ground by household-type or other suitable garbage grinders.
- (5) Containing any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solids or viscous substances capable of causing obstructions or other interferences with proper operation of the sewer system.
- (6) Having a pH lower than 6.0 or higher than 10.0 standard units, or having any other corrosive property capable of causing damage or hazards to structures, equipment or personnel of the sewer system.
- (7) Containing toxic or poisonous substances in sufficient quantity to injure or interfere with any wastewater treatment process, to constitute hazards to humans or animals or to create any hazard in waters which receive treated effluent from the sewer system treatment plant. Toxic wastes shall include, but not be limited to, wastes containing cyanide, chromium, cadmium, mercury, copper or nickel or any characteristic or listed hazardous waste;
- (8) Containing noxious or malodorous gases or substances capable of creating a public nuisance.
- (9) Containing solids of such character and quantity that special and unusual attention is required for their handling;
- (10) Containing any substance which may affect the AWTF's effluent and cause violation of the NPDES permit requirements.
- (11) Containing any substance which would cause the AWTF to be in noncompliance with sludge use, recycling or disposal criteria pursuant to guidelines or regulations developed under Section 405 of the Federal Act, the Clean Air Act or regulations criteria for sludge management and disposal as required by the DEP.
- (12) Containing color which is not removed in the treatment processes.
- (13) Containing any radioactive wastes or isotopes.
- (14) Containing any pollutant, including conventional pollutants, released at a

flow rate and/or pollutant concentration which would cause interference with the AWTF.

- (15) Containing substances which may solidify or become viscous at temperatures between 0° C. or 32° F. and 60° C. or 140° F.;
  - (16) Containing chemical constituents which, alone or in combination, result in the release of toxic gases, vapors or fumes in a quantity that may cause acute worker health and safety problems.
- C. When the Superintendent or Director determines that an industrial user is contributing any of the above substances in such amounts as to exceed stated limits or to interfere with the operation of the AWTF, he or she shall:
- (1) Advise the user and the Borough of Paxtang of the impact of such discharges on the operation of the AWTF.
  - (2) Develop effluent limitations for those discharges to correct the interference with the operations of the AWTF.
  - (3) Direct the user to comply with the effluent limitations as provided in § 210-55 et seq.
  - (4) Utilize the enforcement provisions of § 210-69.

**§ 210-23. Customer's pretreatment sampling facilities.**

- A. Upon notification to the customer and the Borough by the City, pretreatment facilities shall be installed, within 90 days of the date of such notice, at the sole cost of the significant industrial user, to meet City requirements. In no event shall dilution be acceptable as a means of pretreatment to meet the requirements of this article. Any order to install pretreatment facilities may be appealed to the director as provided in § 210-35.
- B. The City reserves the right to require nonresidential dischargers having large variations in rates of wastewater discharge to install suitable regulating devices for equalizing wastewater flows to the sewer system.
- C. When directed by the Department or by one of the suburban municipalities at the request of the Department, industrial users shall install, within 90 days of the directive, at their sole cost and expense, and thereafter maintain a manhole and such other devices as may be approved by the Department to facilitate observation, measurement and sampling of wastewaters discharged into the sewer system. The duly authorized representatives of the Department shall, at all times, be permitted to:
  - (1) Enter upon any and all properties of industrial users for the purpose of inspecting for compliance, observing, measuring and sampling wastewaters discharged into the sewer system.

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- (2) Set up and use monitoring equipment.
  - (3) Inspect and copy industrial waste discharge, monitoring and production records or any other records pertinent to compliance with this article.
  - (4) Have access to any meters used for establishing or determining water consumption, water excluded from the sewer system and wastewater discharged into the sewer system. If an individual user has security measures in force which physically limit entry to the premises of such user, the industrial user shall, within 30 days of the effective date of this section, immediately provide the Department with whatever is necessary to allow authorized city representatives to enter the premises, without delay, for the purpose of performing their duties and responsibilities.
- D. The Department and the Borough may require any industrial establishment to provide information needed to determine compliance with this article.

### **§ 210-24. Wastewater discharge permits.**

- A. Any industrial establishment in the Borough desiring to discharge or currently discharging, directly or indirectly, wastes into the sewer system or planning to change operations so as to materially alter the characteristics and/or volumes of wastewaters discharged into the sewer system, shall notify the Department, the Borough and any other affected suburban municipality in writing at least 30 days before making such connection or changing its operations and shall obtain a permit from the Department to do so. Applications for such permit shall be on the form supplied by the superintendent and shall be accompanied by all information requested by the Department for the determination of waste volumes, characteristics and constituents. The cost for obtaining such information shall be borne by the applicant. Any significant industrial user shall make application for a new permit within 30 days of the effective date of this section.
- B. This application shall include, but shall not be limited to, the following information in units and terms appropriate for evaluation:
- (1) Name, address and location of applicant.
  - (2) SIC number(s) according to the Standard Industrial Classification Manual, Bureau of Budget, 1972, as amended.
  - (3) Volume of wastewaters to be discharged.
  - (4) Wastewater constituents and characteristics, including, but not limited to, those set forth in § 210-22, as determined by reliable analytical procedures established by the United States EPA pursuant to Section 304(g) of the Federal Act, 33 U.S.C. § 1314(g), and the regulations promulgated thereunder, 40 CFR Part 136, as amended.

- (5) Time and duration of discharge.
  - (6) Average and maximum wastewater flow rates, including daily, monthly and seasonal variations, if any.
  - (7) A schematic flow representation which shall include floor plans, mechanical and plumbing plans and details of all sewers, sewer connections and appurtenances, sizes, locations and elevations.
  - (8) Number of employees and hours worked.
  - (9) Description of activities, facilities and plan processes on the premises, including all materials which are or could be discharged.
  - (10) Each product produced, listed by type, amount and rate of production.
  - (11) Type and amount of raw materials processed, average and maximum per day.
  - (12) Each substance considered toxic, hazardous, noxious or malodorous, including a description of the hazards associated with each substance.
  - (13) Certification of accuracy by the applicant.
  - (14) Any other information required by 40 CFR 403.12(b) or any other information as may be deemed necessary by the Department to evaluate that permit application.
  - (15) is schematic blow representation which shall include all pretreatment or treatment plans and details including appurtenances, sizes, locations, elevations.
  - (16) pretreatment, treatment and flow meters standard operating procedures manual.<sup>99</sup>
- C. The Department shall evaluate the data furnished by the applicant and may require additional information. After evaluation and acceptance of the data furnished and consultation with the Borough, the Superintendent shall issue a permit, subject to terms and conditions provided therein, as set forth in Subsection D hereof.
- D. Wastewater discharge permits shall be subject to all provisions of this article and all other applicable federal, state and local laws, rules, regulations, charges and fees. The conditions of such permits shall be uniformly enforced by the city in accordance with this article and applicable federal, state and local laws, rules and regulations.

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<sup>99</sup> Amended Ordinance 2008-4 on Nov 3 2008 Added (15) and (16)



Permits may contain, but shall not be limited to, the following conditions:

- (1) The unit charge or schedule of special charges and fees or wastewater surcharges to be paid the city for the wastewater to be discharged into the sewer system pursuant to such permit.
- (2) The average and maximum allowable wastewater constituent and characteristics.
- (3) Equalization, neutralization or other requirements to control high pH or highly variable pH discharge.
- (4) Limits on rate and time of discharge or requirements for flow regulations and equalization.
- (5) Requirements for installation, maintenance and/or operation of monitoring, inspection and sampling facilities.
- (6) Pretreatment requirements.
- (7) Requirements for submission of technical reports or discharge reports.
- (8) Signatory requirements for certification of technical reports or discharge reports.
- (9) Requirements for maintaining and retaining plant records relating to wastewater discharge for a minimum of three years or longer as specified by the Department and affording the Department access thereto.
- (10) Compliance schedules.
- (11) Specifications for monitoring programs, including self-monitoring, sampling location, frequency and method of sampling, number, types and standards for tests and reporting schedules.
- (12) Requirements for notification of pretreatment standard exceedance and repeat sampling and testing.
- (13) Requirements for notification of slug or accidental discharge.
- (14) Requirements for a spill or sludge discharge prevention and control plan in accordance with 40 CFR 403.8 (f)(2)(vi)(A), (B), (C) and (D).
- (15) requirements for best management practices;
- (16) other conditions as deemed appropriate by the City to insure compliance with these regulations. <sup>100</sup>

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<sup>100</sup> Amended Ordinance 2008-4 on Nov 3 2008, Replaced 14-15 add 16

- E. Wastewater discharge permits shall be issued for a specified time period, not to exceed five years, subject to compliance with all of the provisions of this article and the regulations promulgated thereunder. Any applicant who does not meet the standards of this article shall not be entitled to a five-year permit. All holders of a wastewater discharge permit must also comply with any national categorical pretreatment standards within 90 days of their promulgation or any revisions thereto.
- F. A wastewater discharge permit is not assignable or transferable to a new user, owner or new use.

**§ 210-25. Specific discharge limitations.**

No industrial user shall discharge, directly or indirectly, into the wastewater collection or conveyance system any wastewater containing in excess of the following pollutant in milligrams per liter:

<b>Pollutant</b>	<b>Daily Maximum</b>	<b>Instantaneous Maximum</b>
Arsenic (T)	2.81	5.62
Cadmium (T)	0.75	1.50
Chromium (T)	1.31	2.62
Copper (T)	2.99	5.98
Cyanide (T)	2.15	2.15
Lead (T)	0.55	1.10
Mercury (T)	0.04	0.08
Nickel (T)	1.00	2.00
Zinc (T)	2.20	4.40
Molybdenum	6.78mg	13.56mg
PCBs	1.28mg	2.56mg
Selenium	2.14mg	4.28mg
Silver	15.46mg	30.92mg
Zinc	2.20mg	4.40mg

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- B. The limits may be changed by regulation of the Director or by the EPA to whichever limitation is more stringent.

**§ 210-26. Federal categorical pretreatment standards.**

Upon promulgation of federal categorical pretreatment standards or any federal standard for a particular industry or subcategory, the standards referenced in 40 CFR Article I, Subarticle N, Parts 405-471, if more stringent than the limitations contained in this article for such discharges, shall immediately supersede the standards set forth in this article. The Superintendent shall notify all affected industrial users of the applicable reporting requirements under 40 CFR § 403.12.

**§ 210-27. State standards.**

Any state requirements and limitations on discharge which have been or may be adopted which are more stringent than the federal limitations or those contained in this article shall supersede both federal and city standards. The Superintendent shall notify all affected users of any such change.

**§ 210-28. Upset, slug or accidental discharge; notice requirements.**

- A. Each significant industrial user shall provide protection from an upset of pretreatment facilities, slug or accidental discharge of prohibited materials and any other substances requested by this article. Facilities to prevent and plans to mitigate an upset, slug or accidental discharge shall be provided and maintained at such user's expense. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at such user's expense. No significant industrial user which commences discharge into the sewer system shall be permitted to introduce pollutants into the sewer system until a spill, prevention and control plan has been approved by the Department. Approval of such plans and procedures shall not relieve such user of the responsibility to modify such user's facility as necessary to meet the requirements of this article.
- B. In the event of an upset, slug or accidental discharge, it shall be the responsibility of the significant industrial user to:
  - (1) Make immediate notification to the AWTF of location of discharge, date and time thereof, type of waste, including concentration and volume and corrective action taken;
  - (2) Within five days following an upset, slug or accidental discharge, submit to the Superintendent a written report which shall specify:
    - (a) Description of the upset, slug or accidental discharge, the cause thereof and the impact on the industrial user's compliance status, including location of discharge, type, concentration and volume of

waste.

- (b) Duration of noncompliance, including exact date and times of noncompliance, and, if the noncompliance continues, the time by which compliance is reasonably expected to occur.
  - (c) All steps taken or to be taken to reduce, eliminate and prevent recurrence of such an upset, slug or accidental discharge or other conditions of noncompliance.
- C. The notification required by this section shall not relieve the significant industrial user of any expense, loss, damage or other liability incurred to the AWTF, the City, the Borough, any state or federal department or authority or any damage to person, property or environment; nor will this notification relieve the significant industrial user of any fines, penalties or any other liability which may be imposed by § 210-55 et seq. or any other applicable law.

**§ 210-29. Compliance; reports.**

- A. With 90 days following the date for final compliance or, if a new source, the commencement of discharge, any user subject to the pretreatment provisions of this article shall submit to the Superintendent a report indicating the nature and concentration of pollutants and the average and maximum flows of the discharges which are limited by such pretreatment standards and requirements. The report shall state whether the applicable pretreatment standards and requirements are being met and, if not, what additional pretreatment facilities or additional operations and maintenance tasks are necessary to bring such user into compliance with the applicable pretreatment standards and requirements. This statement shall be signed by an authorized representative of the user and certified by a qualified individual.
- B. Any significant industrial user subject to the provisions of this article shall submit to the Superintendent, at least on a semiannual basis, a report containing the information required by its permit. The reports required by this subsection shall be certified by an authorized signatory of the user and submitted within 30 days following the end of the reporting period, unless the Superintendent authorizes, in writing, another submission date or schedule.
- C. If any sampling and testing required by Subsections A and B hereof indicate a violation of a pretreatment standard, the industrial user shall notify the Department within 24 hours of becoming aware of the violation, repeat sampling and testing within 72 hours, or the first day representative of normal operation, and submit, in writing, the results of the repeat analysis within 30 days.
- D. In addition to the requirements of Subsections A, B and E hereof, if the Director or Superintendent has reason to believe that a significant industrial user is not meeting the pretreatment standards on a consistent basis, such user may be required to submit interim compliance reports on a regular or irregular schedule.

- E. Any reports required by this section shall be maintained and retained for a minimum of three years or longer, as specified by the Department, and access by the Department afforded thereto.

**§ 210-30. Prior notice of discharge of hazardous waste.**

No industrial user shall introduce any untreated process waste or process wastewater into the sewer system containing any hazardous waste constituent identified in 40 CFR Part 261 without prior written notification to the Superintendent. Any notification shall provide the identity of the waste, the hazardous waste constituent and number and an estimation of the mass and concentration of hazardous waste to be discharged and shall be accompanied by a statement certifying that a waste reduction program is in place. In no case shall the introduction of any hazardous process waste or non-process waste constituent be permitted as a substitute for the proper treatment and disposal of any such waste.

**§ 210-31. Limitations on point of discharge.**

- A. No user shall discharge any waste or wastewater directly into a manhole or other opening in the sewer system, other than an approved building sewer, unless such user has been issued a special permit to do so by the Superintendent. Such permit shall be of limited duration, and the permittee shall comply with all applicable provisions of this article.
- B. The discharge of any trucked or hauled pollutants is prohibited except at discharge points designated in a special permit approved by the Superintendent. Such permit shall be of limited duration, and the permittee shall comply with all applicable provisions of this section.

**§ 210-32. Holding tank wastes.**

No user shall discharge any holding tank or septic tank wastes unless such person has been issued a special permit to do so by the Superintendent and a special permit to do so by the Borough. Such permit shall not be assignable or transferable.

**§ 210-33. Charges and fees.**

- A. The Director shall adopt a schedule of charges and fees to cover and the city shall collect the costs of implementation of the pretreatment provisions of Part 4. These fees are in addition to and separate from all other fees charged by the City and Borough and will be assessed by the City on all permit holders. Such charges and fees may include, but are not limited to, the following:
  - (1) Costs of monitoring, inspection and surveillance procedures.
  - (2) Costs of reviewing permit applications.
  - (3) Administrative costs of appeals.

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- (4) Costs of reviewing accidental discharge reports.
  - (5) Costs of reviewing pretreatment facility construction plans.
  - (6) Costs of consistent removal by the AWTF of pollutants subject to pretreatment standards.
  - (7) Any other costs incurred by the City and Borough in implementing the requirements of this article.
- B. The Borough may adopt a schedule of charges and fees to cover all costs associated with implementation of the provisions of this article. Those fees and charges shall be in addition to and separate from all other fees charged by the City and Borough and will be accrued on all permit holders, and may include, but not be limited to the costs set forth in § 210-33A.

### **§ 210-34. Applicability.**

The pretreatment provisions and all other requirements of this article shall apply to any person currently discharging into, directly or indirectly, or otherwise using the sewer system or any person who shall in the future discharge into, directly or indirectly, or otherwise use the sewer system.

### **§ 210-35. Present and future rules and regulations.**

The Director is authorized to promulgate such rules and regulations as are necessary for the proper administration and enforcement of this article. This authority is in addition to that granted in any section of this article. Such rules and regulations shall have the same force and effect as the provisions of this section, and any violation thereof shall be deemed a violation of the applicable articles for enforcement purposes in § 210-55 et seq. The Director shall publish notice of the promulgation of any such rules and regulations and shall notify each of the suburban municipalities prior to adoption of the same, pursuant to § 210-48 et seq.

### **§ 210-36. Failure to comply.**

Should any user refuse, neglect or fail to comply with any provision of this article or any of the rules and regulations promulgated thereunder or any notice or directive given in conformity with or pursuant to the provisions of this article, the City or Borough may pursue any or all of the remedies set forth in § 210-55 et seq.

### **§ 210-37. Confidentiality of proprietary information.**

Any information submitted to the city or Borough pursuant to this Part 4 or any rules and regulations promulgated thereunder may be claimed as confidential by the submitter. Any such claim shall be asserted at the time of submission by the stamping or placing of the words "Confidential Business Information" on each page containing such information. If no claim is made at the time of submission, the city or Borough may make the information available to the public without further notice. If a claim is asserted, the information shall be

treated in accordance with the procedures in 40 CFR Part 2 (Public Information); provided, however, that any information regarding effluent data shall be available to the public without restriction.

**§ 210-38. Compliance monitoring and inspection performed by the city.**

Compliance monitoring and inspection will be performed by the city. This duty will be based on a schedule determined by the type of facility, type and concentration of pollutants in the discharge and the past performances of compliance by the industrial user.

**ARTICLE VI: Sanitary Sewer Rentals**

**§ 210-39. Sewer rental payment by property owner.**

All persons owning property connected to, and from which sanitary sewage or industrial wastes are discharged into, the sewer system shall pay to the City rates and rental charges for each service period in accordance with the schedule or rates set forth in this article.

**§ 210-40. Charges payable by suburban municipalities pursuant to service agreement.**

- A. Residences and nonresidential establishments. Billings by the City to the Borough for residential properties and nonresidential establishment customers of the Borough shall be based on the sewer rental rates as set forth in § 210-42 for persons whose wastewater is ultimately discharged by the respective municipality into the Harrisburg conveyance system or the Steelton conveyance system. Billings by the Borough to its respective customers shall be based on either the volume rate or the flat rate as specified by resolution or ordinance of the Borough.
- B. Nonresidential establishments and industrial establishments that discharge excess strength wastes to wastewater system. See § 210-41 for relevant provisions.

**§ 210-41. Charges payable by significant industrial users which discharge excess strength waste into sewer system.**

- A. A significant industrial user discharging, directly or indirectly, into the sewer system wastewaters having an average five-day biochemical oxygen demand (BOD) greater than 290 mg/L or a suspended solids content (SS) greater than 380 mg/L, or total phosphorus (P) content greater than 10 mg/L shall pay to the Department a strength-of-waste surcharge in addition to applicable volume charges. Such surcharges shall be determined in accordance with rates set forth in § 210-42 and shall be billed by the Department to the significant industrial user. The strength of wastewaters to be used for establishing the amount of surcharges shall be determined at least once annually either:
  - (1) By suitable sampling and analysis of the wastewaters for three consecutive days during a period of normal discharge; or

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- (2) From estimates made by the City; or
  - (3) From known relationships of products produced to strengths of wastewaters for those users for which such factors have been established.
- B. In establishing wastewater strengths for surcharge purposes by analysis, analyses shall be made in accordance with procedures outlined in the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, Inc. or any method approved by the EPA. Owners of industrial establishments discharging domestic and/or industrial wastewater to the sewer system shall furnish the Department, upon request, all information deemed essential for determination of applicable sewer rental surcharges for excess strength wastes. The cost of obtaining such information shall be borne by the owners of such industrial establishments.

### § 210-42. Rates, rentals and charges.

- A. Effective January 1, 1996, the city established rates or charges for the use and service of the wastewater facilities of the City. The gross rate established is that set forth in Subsection C hereof, which gross rate is the applicable sum total of "user charges" for operating and maintenance charges of the wastewater facilities as set forth in Subsection C(1) hereof and that portion of charges applicable to rental and other obligations of city as imposed by the lease entered into between the City and The Harrisburg Authority as set forth in Subsections C(2), (3) and (4) hereof.
- B. The rates set forth under the column captioned "payable by suburban municipalities" are set forth on a "per customer" basis. These rates are charged by the City, Borough and other municipalities under the service agreement dated September 15, 1976, as amended. The Borough shall be responsible for billing its respective customers.
- C. Total sewer rental rates payable with respect to the wastewater facilities (the total of Subsections C (1), (2), (3) and (4) below):
- (1) Sewer rental attributable to operation, maintenance and administration expenses. **102**
  - (2) Sewer rental attributable to 1984 and 1988 Series A lease rental and related revenue requirements. **103**
  - (3) Sewer rental attributable to Series B lease and related revenue requirements. **104**
  - (4) Sewer rental attributable to the 1996 PENNVEST loan, pension fund loan

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**102. Editor's Note: The schedule of rates set forth in this subsection are on file in the borough offices.**

**103. Editor's Note: The schedule of rates set forth in this subsection are on file in the borough offices.**

**104. Editor's Note: The schedule of rates set forth in this subsection are on file in the borough offices.**



and related revenue requirements. <sup>105</sup>

**§ 210-43. City and Borough right of entry.**

For the purpose of determining the amount of sewer rental payable under the provisions set forth in §§ 210-39 through 210-42, the City and Borough shall have access at all reasonable times without delay to all industrial users using the sewer system and any meters used for establishing or determining water consumption, water excluded from the sewer system and sewage or wastewater discharged into the sewer system.

**§ 210-44. Bills and billing.**

Bills for the payment of strength of waste surcharges for sewer service and the commercial or industrial use of the sewer system pursuant to this section shall be rendered at the same time and intervals as commercial or industrial charges for water consumed in and furnished to the same property and shall be due and payable upon presentation. All quarterly billings shall be made and distributed and shall cover service over the following months:

<b>Months of Billing</b>	<b>Months of Service Covered by Billing</b>
January, February or March	January, February or March
April, May or June	April, May or June
July, August or September	July, August and September
October, November or December	October, November and December

**§ 210-45. Delinquent rental; penalty.**

If any bill for strength of waste surcharges, except for annual service periods, is not paid within 60 days after the same becomes due and payable, it shall be delinquent, and a penalty shall be imposed as provided in Article 1-301.5 of the Recodified Ordinances of the City of Harrisburg. Bills for annual service periods shall be subject to the same penalties, except that penalties shall not be added or begin to accrue until August 1 of such annual service period.

**§ 210-46. Shutting off service.**

Upon the failure of any person to pay in full any bill for strength of waste surcharge within 60 days after the same becomes due and payable, the City and/or Borough shall have the right to terminate sewer service to the property of such person or to turn off the water supply to such property as provided in § 210-55 et seq. Service may be restored upon payment of all delinquent bills against such property and expenses which may have been incurred in terminating such service, turning off the water supply or restoring the same, as provided in

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**105. Editor's Note: The schedule of rates set forth in this subsection are on file in the borough offices.**

Section 210-59.

**§ 210-47. Collection of unpaid bills.**

The sewer rentals imposed by this article shall be collected as provided in § 210-55 et seq.

**ARTICLE VII: Sewer Connections**

**§ 210-48. Application for connection.**

- A. No connection to the sewer system beyond the limits of the City shall be made except under the terms, provisions and conditions set forth in this section and those in § 210-20 et seq., if applicable, and after issuance of a permit by the Director of DPW or authorized agent thereof if required by § 210-24. Any industrial establishment desiring to connect to the sewer system beyond the limits of the city shall make application to the Director or authorized agent thereof for a permit to connect upon a form provided by the Superintendent. To the form shall be attached a sketch or plan showing in detail: the location and size of lot; the improvements now of such lot or thereon proposed to be erected for which the permit is requested; the precise place where the tassage is proposed to be made to the sewer system; and the location, length and size of the sewerage line proposed therefor. The Superintendent shall notify the Borough and/or affected suburban municipality upon receipt of any such application.
- B. Any other connection to the sewer system beyond the City limits shall be according to the terms and conditions set forth in the service agreement of 1976 or any amendments thereto.

**§ 210-49. Filing fee.**

All such applications by an industrial establishment shall be accompanied by a filing fee of \$75 to cover the costs and expenses of investigating same.

**§ 210-50. Investigation and recommendation.**

Upon the filing of the application and payment of the filing fee, the Director shall forthwith cause to be made an investigation to determine whether the requested tassage will or will not be prejudicial to the best interests of the AWTF in view of the additional burden imposed on the sewer system and after taking into consideration present and anticipated future needs.

**§ 210-51. Issuance of permit; acceptance of terms.**

Upon the approval of any such application, the Director is authorized to issue a permit granting to the applicant the right or privilege of tapping in conformity with the application into a specified sanitary sewer. The permit shall be subject to the terms of this Part 4, to which terms, provisions and conditions the applicant, for it and any successors in title to the improvements in question, by accepting the permit and acting thereon hereby agrees to all as though specifically set forth in written contract between the City and the applicant. The

permit shall not be assignable or transferable.

**§ 210-52. Permitted discharges only.**

Unless otherwise allowed by a permit issued pursuant to § 210-24, any connection beyond the City limits shall be for the purpose of discharging sanitary sewerage only into the sewer system.

**§ 210-53. Surcharge for industrial establishments.**

Each industrial establishment governed by the pretreatment requirements of § 210-20, et seq. located in a suburban municipality shall be assessed a surcharge directly by the City for the pollutant load for all sewage and wastes discharged into the sewer system which exceed the maximum threshold levels set forth therein, such surcharge to be determined by the City.

**§ 210-54. Legal requirements.**

- A. Any municipality contributing to the sewer system shall agree to adopt, enforce and keep in full force and effect during the term of any agreement or discharge into the sewer system an ordinance or ordinances or resolution or resolutions, as appropriate, prohibiting the discharge into its sewage collection system which discharges into the City and Borough sewer systems of any wastes prohibited to be discharged into the sewer systems under the ordinances, rules and regulations of the City and the Borough as the same shall be, from time to time, reasonably adopted.
- B. Any municipality contributing to the sewer system shall agree to adopt such ordinances or resolutions necessary to impose any rates, charges, tariffs or requirements upon any of the customers by agreements or laws and regulations which relate to obligations assumed under such agreements.
- C. Any municipality contributing to the sewer system shall agree to cooperate with the City in any investigation regarding industrial waste discharges into the sewer system and shall grant to the City the right to review, at any time, the volume, pollutant load and character of sewage and wastes being discharged into the sewer system.

**ARTICLE VIII: Enforcement and Penalty**

**§ 210-55. Applicability.**

Whoever violates any provision of §§ 210-19 through 210-54 shall be subject to the penalty, enforcement and other provisions hereinafter set forth, including the right of the City and Borough to disconnect service.

**§ 210-56. Termination of service or permit suspension of permit.**

Pursuant to the notice requirements of § 210-60, the City may suspend wastewater treatment and/or a discharge permit when such suspension is necessary, in the opinion of the City, in order to stop an actual or threatened discharge which: presents or may present an imminent or substantial endangerment to the health or welfare of persons or to the environment; causes

or may cause interference with the operation of or damage to the AWTF; or causes the City to violate any condition of its NPDES permit.

**§ 210-57. Cessation of harmful activity.**

After informal notice to halt or prevent a discharge which reasonably appears to present an imminent endangerment to the health or welfare of persons, the AWTF, the sewerage system or the environment, the person responsible for the discharge shall immediately stop or eliminate the contribution. In the event of failure of the person to cease or cause to cease such contribution, the Superintendent shall notify the Director, who shall authorize any actions as deemed necessary to halt or prevent such contribution, including immediate severance of the sewer connection, to prevent or minimize damage to the sewerage system and/or the AWTF, the environment or to any individuals.

**§ 210-58. Suspension or revocation of permit.**

The existence of any one of the following conditions may cause the City to revoke the permit of the significant industrial user:

- A. Failure to factually report the wastewater constituents and characteristics of a discharge.
- B. Failure to report significant changes in operations or in wastewater constituents and characteristics.
- C. Refusal of access to the discharger's premises for the purpose of inspecting or monitoring or determining the amount of sewer rental payable.
- D. Failure to comply with any of the terms and conditions of a permit.
- E. Failure to comply with any of the provisions of Part 4.
- F. Failure to pay in full any bill for sewer rental, sewer maintenance charge, tappage fee or any other charge or fee imposed by ordinance or regulation within 60 days after the same becomes due and payable.

**§ 210-59. Reinstatement of permit and restoration of service.**

The City shall reinstate a permit and/or restore service under the following conditions, as applicable:

- A. Demonstration to the satisfaction of the City that such significant industrial user is now utilizing good management practices to prevent or reduce the contribution of pollutants to the sewer system. Good management principals include, but are not limited to, preventive operations and maintenance practices to reduce the quantity or improve the quality of effluent discharged and the control of plant spillage, leaks and drainage from storage areas.
- B. Submission to the City of proof of elimination of any noncomplying discharge.

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- C. Submission within 15 days of the occurrence.
- D. Access to the premises in question for enforcement purposes is assured.
- E. Submission of a detailed report describing the measures taken to ensure present and future compliance with the terms and conditions of a permit.
- F. Evidence of compliance with federal, state and local laws, rules and regulations is submitted.
- G. Payment in full of all delinquent bills, fees and charges and all charges incurred by the city in damages or as costs of enforcement is made.

### **§ 210-60. Notice of violation.**

Whenever the Superintendent finds that any person has violated or is violating any provisions of the sections to which these enforcement provisions apply, any permit issued thereunder or any applicable federal, state or local regulation, the Superintendent or a designee shall serve or cause to be served upon such person a written notice stating the nature of the violation and requiring the submission within 30 days of the date of the notice a plan for the satisfactory correction of such violation. If the violation has occurred in the Borough or outside the City, the Superintendent shall mail a copy of such notice to the Borough.

### **§ 210-61. Right to hearing.**

Any person affected by a notice, directive or other decision of the Superintendent may request a hearing before the Director and present evidence of circumstances justifying reconsideration of the decision of the Superintendent. Such request must be in writing and served on the Director within 10 days of the date of the notification or decision. The Director shall hold a hearing and render a decision within 15 days of the request.

### **§ 210-62. Injunctive relief.**

Subject to the notice provisions of § 210-60, in circumstances where the nature of the violation constitutes a violation of the Clean Streams Law, the City and/or Borough may apply for a mandatory preliminary injunction or special injunction in the Court of Common Pleas of Dauphin County or the Commonwealth Court of Pennsylvania in accordance with the Pennsylvania Rules of Civil Procedure relating to actions in equity.

### **§ 210-63. Civil liability.**

- A. Any person who permits or allows a discharge which causes an obstruction or damage to the AWTF shall be assessed a charge equal to the amount necessary to repair or replace the damaged facilities.
- B. Should any person refuse, neglect or fail to comply with pretreatment provisions and discharge limitations of §§ 210-22, 210-25 and 210-26, with any of the rules and regulations promulgated thereunder, or with any directive or notice given pursuant to this article or to any other article in Part 4 to which these enforcement provisions

apply, then the Director is hereby empowered to authorize and may authorize the supply of all labor and materials necessary to effect compliance. Such person shall be assessed a charge equal to the amount necessary to effect compliance.

- C. Should the City suffer the termination or suspension of its NPDES permit or be assessed penalties or fines for violations thereof, which violations were caused by the failure of a discharger to comply with the provisions of §§ 210-22, 210-25 and 210-26 or other sections in this Part 4 of any applicable rules and regulations, such discharger shall be assessed a charge equal to the amount expended by the city to cause its NPDES permit to be reinstated, plus the amount of any penalties or fines imposed against it.

**§ 210-64. Remedy by city and Borough.**

- A. All charges assessed in accord with § 210-63, all sewer rental, tappage and sewer maintenance fees, fees or charges imposed for inspection, monitoring and laboratory analysis or any other fees or charges authorized by any provision to which this Part 4 applies shall be a lien on the properties served from the date the charge therefor first becomes due and payable.
- B. All charges imposed pursuant to § 210-20 et seq. and § 210-63, together with a ten-percent penalty thereon, shall be certified by the Director to the City Solicitor, who shall enter the same as a lien in the Court of Common Pleas of Dauphin County and proceed to collect the same in like manner as other municipal claims are by law collectible.
- C. Sewer rental, tappage and maintenance fees shall be a lien on the properties served from the date the charge therefor first becomes due and payable. If such charges are not paid, the City and Borough may file such liens and proceed to collect the same in like manner as other municipal claims are by law collectible.
- D. The Borough may recover any charges, fees and costs associated with the implementation of the provisions of Part 4.
- E. In addition to the above method, the city and/or Borough may proceed to collect such assessments by action in assumpsit in the name of the city and/or Borough against the owner of the property charged and/or the person discharging into the sewer system.
- F. In addition to the above, the City and Borough may recover reasonable attorneys' fees, court costs, court reporter fees and all other expenses of litigation to enforce the claim or claims of the City and Borough.

**§ 210-65. Public notification.**

Pursuant to the public participation requirements of 40 CFR Part 25, the Department shall cause to have published at least annually in the largest daily newspaper of general circulation in the City a list of all industrial users who, during the previous twelve-month period, were

in significant noncompliance with applicable pretreatment standards or other pretreatment requirements. For the purpose of this provision, a significant noncompliance violation is:

- A. One or more violations of a pretreatment standard or requirement including chronic violations and technical review criteria violations.
- B. Any discharge which, alone or in combination, causes interference or pass-through or endangers the health or welfare of AWTF personnel, the public or the environment or results in the AWTF exercising its emergency authority to halt or prevent such a discharge.
- C. Failure to implement best management practices;  
Failure to meet a compliance schedule milestone;  
Failure to provide a required report;  
Failure to accurately report noncompliance or;

Any other violation or group of violations the AWTF considers to be significant. <sup>106</sup>

**§ 210-66. Public nuisance.**

Any person who violates any of the terms, provisions or requirements of §§ 210-20 through 210-54 or any of the applicable rules and regulations regarding discharges shall be deemed to be maintaining a nuisance, which nuisance the City or Borough is authorized and directed to abate in the manner provided by law.

**§ 210-67. Service of notice.**

Whenever notice is necessary under this article, such notice shall be properly served upon an owner if a copy thereof is delivered to the owner personally; or by leaving a notice at the usual place of abode with someone of suitable age and discretion who shall be informed of the contents thereof; or by certified or registered mail addressed to the owner at the last known address with return receipt showing it has been delivered. If the return receipt shows that it has not been delivered, then service may be made by posting a copy thereof in a conspicuous place in or about the structure affected by such notice. Such notice shall set forth a reasonable time for such compliance to be accomplished.

**§ 210-68. Issuing authorities.**

- A. The Superintendent of the AWTF, Pretreatment Coordinator, City Engineer and Plumbing Inspector shall act in the capacity of police officers for the limited purpose of issuing nontraffic summary citations to owners of premises or persons who are found in violation of this Part 4. Notice of issuance of a citation shall also be given to the Borough.

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<sup>106</sup> Amended Ordinance 2008-4 on Nov 3 2008, Update section

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- B. The Director may, by written rule or regulation, designate further employees of the Department of Public Works who may issue such citations. Such rules and regulations shall be effective three days following filing with the City Clerk.

### **§ 210-69. Violations and penalties.**

- A. Civil penalty. In addition to proceedings under this Part 4 or any other remedy available at law or equity for violation of pretreatment standards requirements, any person who fails to comply with any provision of §§ 210-19 through 210-54 or any applicable rules or regulations, or whoever fails to comply with a notice given pursuant to those sections and/or this Part 4, may be assessed a civil penalty, whether or not the violation was willful or negligent, in accordance with Subsection 4(a)(1) of the Publicly Owned Treatment Works Penalty Law, Act of March 26, 1992, P.L. 23, 35 P.S. § 752.4(a)(1), of not more than \$25,000 per day of violation. Each twenty-four-hour period during which a violation continues shall be considered a separate and distinct offense under this provision and punishable as such.
- B. Criminal penalty. Any person who knowingly or negligently violates any of the terms, provisions or requirements of §§ 210-19 through 210-54 or any of the applicable rules and regulations or whoever refuses or neglects to comply with any notice given pursuant to these sections to such person or whoever obstructs or interferes with any person in the enforcement of these sections shall, upon conviction thereof, severally for each and every violation or noncompliance respectively, be fined not more than \$1,000 or imprisoned for not more than 90 days, or both. Each twenty-four-hour period during which a violation continues shall be considered a separate offense and punishable as such.
- C. Any person who knowingly or negligently makes a false, oral or written statement in any report, record, plan, application or other document filed with the City or Borough or who falsifies, tampers with or renders inaccurate any monitoring device or method required under this Part 4, shall be liable to prosecution under appropriate criminal statutes, including but not limited to: false swearing, 18 Pa. C.S.A. § 4903; unsworn falsification to authorities, 18 Pa. C.S.A. § 4904; tampering or fabricating physical evidence, 18 Pa. § 4910; and tampering with public records or information, 18 Pa. C.S.A. § 4911.



## Chapter 214: SMOKE DETECTORS

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 10-3-1988 by Ord. No. 88-7. Amendments noted where applicable.]

### GENERAL REFERENCES

Building construction — See Ch. 104.

Heating appliances, fireplaces and chimneys — See Ch. 154.

#### § 214-1. Dwelling units for residential occupancy.

Dwelling units for residential occupancy containing sleeping accommodations, including but not limited to single-family attached or detached dwellings, lodging or rooming houses, dormitories, apartment buildings, hotels or motels, shall be equipped and maintained with smoke detectors pursuant to the following provisions.

#### § 214-2. Responsibility for installation.

The owners, tenants and residents of any new or existing dwelling unit for residential occupancy shall be obligated to install smoke detectors.

#### § 214-3. Equipment required.

- A. Smoke detectors shall be capable of sensing visible and invisible particles of combustion and shall provide an audible signal when activated by smoke or fire. All smoke detectors shall be approved by Underwriters' Laboratories, Inc., and shall comply with all provisions of the National Fire Protection Association (NFPA) Standards, Latest Edition, including Standard 72-E.
- B. Smoke detectors must have a self-contained power supply such as a monitored battery unit. The power supply may also be directly connected to the power supply for the dwelling unit, but in such instance, there shall also be an auxiliary self-contained power supply.

#### § 214-4. Alternative systems.

As an alternative to smoke detectors, a sprinkler system may be installed, provided that it is manufactured and installed in accordance with all codes of the National Fire Protection Association (NFPA), including 13 and 13-D, Latest Edition, and shall also be approved by Underwriters' Laboratories, Inc.

#### § 214-5. Location.

- A. At least one smoke detector shall be installed to protect each sleeping area. A "sleeping area" is defined as the area or areas of the dwelling unit habitually used for sleeping. A sleeping area that is separated by other areas as a kitchen or living room shall be considered a separate sleeping area.
- B. At least one smoke detector shall be installed at the head or top of each stairway leading to a sleeping area.

- C. All smoke detectors required under this chapter shall be installed on the ceilings, but never closer than 12 inches from corners of interior walls.

**§ 214-6. Maintenance.**

- A. The owners, tenants and residents shall be obligated to maintain smoke detectors in proper working condition, including but not limited to replacing batteries when necessary and/or keeping them connected to the electrical source so that they remain capable of transmitting an audible signal in the presence of smoke or fire.
- B. No person shall remove or damage any smoke detector installed in a residential dwelling unit, except in conjunction with the immediate replacement or repair of said smoke detector.

**§ 214-7. Change of occupancy.**

At every change of occupancy of every residential dwelling unit occasioned by or incidental to a sale, lease or sublease of said unit, the seller, lessor or sublessor, as the case may be, shall certify to the new occupant before occupancy by the new occupant that all smoke detectors as required by this section or other applicable laws are installed and in proper working condition.

**§ 214-8. Permits.**

A permit must be obtained from the Borough of Penbrook if a smoke detector is to be directly wired to the electrical system of the dwelling unit.

**§ 214-9. Adoption of National Fire Protection Association Standards.**

This chapter is intended to be used with and supplemented by the applicable provisions of the NFPA Standards 72-E and 74, Latest Edition, and 13 and 13-D, Latest Edition, which are hereby adopted. In the event that there shall be any conflict between this chapter and the NFPA Standards, this chapter and any rules and regulations adopted pursuant thereto shall prevail.

**§ 214-10. Violations and penalties. <sup>107</sup>**

Any person who shall violate any of the provisions of this article shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

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**107. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

## Chapter 218: SOLID WASTE

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]

### GENERAL REFERENCES

Brush, grass and weeds — See Ch. 200.  
Outdoor burning — See Ch. 112.  
Junk and junkyards — See Ch. 160.  
Property maintenance — See Ch. 200.  
0.5 POINT

### ARTICLE I: Accumulation of Trash

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. IV, Art. 6, of the 1981 Code]

#### § 218-1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

TRASH — Any discarded, unusual or unsightly material ordinarily disposed of by property owners or other persons.

#### § 218-2. Unlawful action declared.

No person shall allow or permit an accumulation of trash on his property or deposit such material on the highways, lots or streams of the borough or upon the property of others.

#### § 218-3. Storage of trash.

Any person storing such trash on his premises for collection by a duly authorized collector, as herein set forth, shall provide proper facilities so as to prevent the scattering of the same.

#### § 218-4. Removal of trash.

Any person desiring to conduct the business of removing trash shall make application to the Borough Secretary, setting forth, inter alia, the name and address of all persons interested in the business, types of equipment to be used in the collection, charges to be made to residents and disposition to be made of collected material.

#### § 218-5. Issuance of license; term.

The Secretary, upon being satisfied that the applicant or applicants are able to provide adequate service and are proper persons, shall issue a license for a period of one year ending February 28 of each year.

#### § 218-6. License required for hauling.

No person shall engage in the business of hauling trash unless and until he has secured a license as aforesaid.

#### § 218-7. License fee.

Upon the issuance of such license, the licensee shall pay a fee of \$50.

**§ 218-8. Violations and penalties. 108**

Any person violating the provisions of this article, upon conviction thereof, shall be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

**ARTICLE II: Collection and Disposal**

[Adopted 12-26-1990 by Ord. No. 90-3]

**§ 218-9. Title.**

This article shall be known as the "Sanitation and Refuse Disposal Ordinance."

**§ 218-10. Definitions.**

A. For purposes of this article, the following terms, phrases or words shall have the meanings ascribed to them in this section except where the context in which the word is used clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural and words in the plural number include the singular. The word "shall" is always mandatory and not merely directory.

B. As used in this article, the following terms shall have the meanings indicated:

ASHES — Residue from burning of wood, coal, coke or other combustible material.

BOROUGH COLLECTOR — Individual, partnership, firm, corporation or business entity designated by the Borough Council, by means of an individual contract, as the person having the exclusive right to collect, haul, carry, remove or dispose of all garbage, trash, ashes, rubbish and refuse from designated dwelling units or designated commercial properties within the borough, but shall not be construed as meaning that said person is an employee, official or representative of the Borough of Penbrook.

CARRY-OUT SERVICE — Receptacles for carry-out service shall be located at ground level or the floor closest thereto and not more than 75 feet from the street or alley from which collection is made.

COMMERCIAL — The use of premises other than as a dwelling.

DWELLING UNIT — One or more rooms in a dwelling, which room or rooms has fixed cooking facilities arranged for occupancy by one person, two or more persons living together or one family.

GARBAGE — Putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of foods.

MATERIAL — Includes garbage, trash, ashes, refuse and rubbish.

MULTIFAMILY DWELLING — A building containing two or more dwelling units.

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108. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

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**REFUSE** — All putrescible and non-putrescible solid wastes (excluding body wastes), including garbage, rubbish, ashes and street cleanings.

**RUBBISH** — Includes glass, metal, paper, plant growth, wood or non-putrescible solid wastes.

### § 218-11. Authorization of collectors.

- A. It shall be unlawful for any person, other than such persons as are duly authorized by the borough, to collect and haul refuse of any nature within or from the borough.
- B. The Borough Council, by resolution, shall designate a person or persons to be the borough collector or collectors to collect refuse from dwelling units for a designated period of time.
- C. The Borough Council, by resolution, may designate a person or persons as the borough collector or collectors for refuse collection from commercial and other properties for a designated period of time.
- D. The borough collector or collectors shall have the exclusive right and obligation to collect and haul refuse from said designated dwelling units or said designated commercial properties.
- E. If the borough does not designate a collector or collectors for dwelling units or commercial or other properties or if a contract is not entered into with a designated collector or if dumpsters are placed at multifamily dwelling units or commercial properties pursuant to this article, then the affected property or properties may use private collectors rather than the borough collector. In this event, all private collectors must be licensed by the borough as provided by borough ordinances for private collectors.

### § 218-12. Licensing of collectors.

Except as otherwise expressly provided, all refuse in the borough shall be collected, transported and disposed of by collectors licensed by the borough and not by any other person.

### § 218-13. Pre-collection practices.

- A. Preparation of refuse.
  - (1) All refuse shall be drained of liquid and wrapped in paper before being placed in containers.
  - (2) All cans, bottles or other food containers shall be rinsed free of food particles and drained before being placed in containers.
  - (3) Newspapers, magazines and other printed matter shall be placed either in containers or shall be securely tied in bundles which shall not exceed two feet in height and 40 pounds in weight.
  - (4) Tree trimmings, shrubbery trimmings and similar rubbish shall be placed in containers or shall be securely tied in bundles which shall not exceed four

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feet in length and two feet in diameter and shall not weigh more than 40 pounds.

- (5) Ashes shall be placed in paper, plastic or glass containers after they are cold.

### B. Refuse containers.

- (1) Except as otherwise provided herein, all garbage and other refuse shall be placed in containers which shall be provided by the owners, lessees or occupants of each dwelling unit or commercial establishment.
- (2) Refuse containers shall be of durable, watertight, rust-resistant material having a close-fitting lid and outside handles to facilitate collection and shall be of a size that can be easily handled by one man and in no event shall be more than 32 gallons in capacity. Containers containing garbage shall be covered with a lid which fits securely and prevents access to flies and other insects.
- (3) In lieu of the containers described in Subsection B(2) above, rubbish may be placed in disposable plastic bags for collection, provided that such plastic bags shall be of a quality which do not tear or break during handling, storage or disposal and shall be not less than 1.5 millimeters in thickness and shall not exceed a thirty-gallon capacity. All plastic bags shall be securely tied at the top, and none of its contents shall be sharp or protrude through the bags.
- (4) No containers shall exceed a weight of 60 pounds, and no plastic bags shall exceed a weight of 40 pounds.
- (5) It shall be unlawful to permit the accumulation of residue or liquids, solids or a combination of such material on the bottom or sides of containers, it being the intention of this provision that the interior of containers shall be kept clean by thorough rinsing and draining as often as necessary.
- (6) All containers shall be kept in a sanitary condition and shall be kept in good condition. Any container that does not conform with this article or that is likely to injure the collector or his employees or that hampers the prompt collection of refuse shall be replaced upon notice. Failure to replace said defective container may result in the loss of refuse collection until such time as the container is replaced.
- (7) Commercial establishments and multifamily dwellings may use dumpsters when there is a large volume of refuse and there is reasonable access to the dumpster by the collector. Dumpsters shall be substantially constructed so that they are sturdy and stable and they shall be located on level, hardened and stabilized surfaces. Dumpsters having wheels or casters shall be provided with permanent wheel stops or other devices to prevent unauthorized movement of the dumpster.

### C. Accumulation of refuse.

- (1) No person shall place any refuse upon any street, alley, walk or other public

place or upon any private property except in proper containers for collection or as otherwise authorized by this article or by express permission of the borough.

- (2) No person shall deposit refuse in any stream or body of water. No person shall place refuse on the property of another without the consent of the owner, lessee or occupier of said property.
- (3) No person, except the owners, lessees or occupants of the property on which the container is placed and an authorized collector, shall remove the lids of the container and/or remove its contents.
- (4) Any refuse which is highly flammable or highly infectious or contagious or any refuse which constitutes a toxic waste or hazardous waste under applicable federal or state law or regulation shall not be placed for collection by the borough collector. Any such waste shall be disposed of in accordance with regulations of the Pennsylvania Department of Health, Pennsylvania Department of Environmental Protection, United States Environmental Protection Agency or any other applicable law or regulation of the Commonwealth of Pennsylvania and the United States.
- (5) No refuse shall be placed for collection from a dwelling unit or any commercial establishment unless such refuse was produced at said particular dwelling unit or commercial establishment.

**§ 218-14. Collection practices.**

- A. Refuse shall be collected from dwelling units once a week.
- B. Refuse shall be collected from multifamily dwellings utilizing dumpsters and from commercial establishments at least once a week. Collections from these establishments shall be on a more frequent basis if necessary, to prevent unreasonable accumulation of refuse or to prevent unsafe, unsightly or unsanitary accumulations of refuse.
- C. Refuse containers, plastic bags and bundles for dwelling units shall be placed for collection at such positions at the alley, street curb or roadway so as to be easily accessible to the collector, but not upon curb, sidewalks or roadways. Final decision on the location of the placement for collection shall be made by the borough. Containers, plastic bags and bundles shall not remain at the curbside or along any public right-of-way for periods longer than 10 hours prior to or following regularly scheduled collection days.
- D. Persons may request the borough collector to provide carry-out service for an additional fee if this is permitted under the borough's contract with the borough collector.
- E. The borough collector will be required to collect only a total of four containers, plastic bags and bundles of the authorized size and weight from each dwelling unit at each collection time for the regular rate established by the borough. The borough

collector shall collect additional containers upon payment by the owner, lessee or occupier of a dwelling unit of additional charges established by the borough.

- F. At various times during the year as designated by the Borough Council (cleanup days), the borough collector shall collect an unlimited amount of refuse of the types and from the dwelling units designated by the borough and for the charges and under the conditions established by the borough. [Added 5-11-1995 by Ord. No. 95-4]

**§ 218-15. Rates and charges.**

Rates and charges for collection by the borough collector shall be established by resolution of the Borough Council and shall be collected by either the borough or the borough collector as established by resolution of the Borough Council.

**§ 218-16. Regulations and administration.**

The Borough Council shall have the authority to promulgate reasonable rules and regulations concerning the manner, materials, days and times for collection of refuse by the borough collector and any other matters required to implement the terms of this article. The Borough Manager shall administer the provisions of this article and the contract with the borough collector. In the absence of conflicting rules and regulations promulgated by the Borough Council, the Borough Manager shall issue reasonable rules and regulations as to the manner, materials, days and times for collection by the borough collector and any other matters required to implement this article and the contract with the borough collector.

**§ 218-17. Sanitation trucks.**

Trucks for the removal of refuse in the borough shall be metal, securely covered, watertight, strongly built and kept thoroughly cleansed and have painted on each side of the truck the name of the contractor, telephone number and truck number, in letters of a size that are easily legible.

**§ 218-18. Dumping.**

- A. No person shall dump, bring, deposit or otherwise dispose of garbage, ashes, rubbish or refuse of any kind or nature within the Borough of Penbrook, except for collection as herein provided or except under express written permission issued by the Borough Council.
- B. Every person who collects refuse within the boundaries of the Borough of Penbrook shall dump all refuse in an approved sanitary landfill or resource recovery facility operating in accordance with the rules and regulations of the Pennsylvania Department of Environmental Protection.

**§ 218-19. Violations and penalties. <sup>109</sup>**

Any person, firm or corporation violating any of the provisions of this article or any regulations issued pursuant thereto or who or which fails or refuses to comply with any notice, order or direction of any officer or employee of the borough given pursuant to the authority conferred herein shall, upon conviction thereof, be subject to the penalties provided

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**109. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**



in Chapter 1, General Provisions, Article II, Enforcement; Penalties. Each violation and each day of a violation shall constitute a separate offense.

### **ARTICLE III: Recycling**

[Adopted 1-6-1997 by Ord. No. 97-1]

#### **§ 218-20. Title.**

This article shall be known as the "Waste Reduction and Recycling Ordinance."

#### **§ 218-21. Purpose.**

The purpose of this article is to return valuable materials to productive use, to conserve energy and to reduce the weight or volume of solid waste generated in the borough by establishing a source-separation recycling program for persons residing in residential, commercial, municipal and institutional establishments. <sup>110</sup>

#### **§ 218-22. Definitions.**

A. For purposes of this article, the following terms, phrases or words shall have the meanings ascribed to them in this section except where the context in which the word is used clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural and words in the plural number include the singular. The word "shall" is always mandatory and not merely directory.

B. As used in this article, the following terms shall have the meanings indicated:

ALUMINUM CANS — All food and beverage containers consisting of aluminum, excluding aluminum foil, trays, plates and miscellaneous aluminum products.

BIMETALLIC CANS — All food and beverage containers consisting of a steel (ferrous) cylinder bottom and an aluminum top.

BOROUGH COLLECTOR — Person or entity with which the Borough of Penbrook contracts to undertake curbside recycling collection or other collection of recyclable materials.

COMMERCIAL ESTABLISHMENT — Those properties used primarily for commercial or industrial purposes, excluding, however, those establishments which are institutional or municipal, as hereinafter defined. In addition, "commercial establishment" shall mean multifamily rental housing properties with five or more units or multifamily dwelling units at which dumpsters have been placed in accordance with the Sanitation and Refuse Disposal Ordinance of the Borough of Penbrook. <sup>111</sup>

COMMUNITY ACTIVITIES — Events sponsored in whole or in part by a municipality, or conducted within a municipality and sponsored privately, which

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<sup>110</sup> Amended Ordinance 2018-2 on May 7 2018, Updated 218-21

<sup>111</sup> Editor's Note: See Article II, Collection and Disposal, of this chapter.

include, but are not limited to, fairs, bazaars, socials, picnics and organized sporting events that will be attended by 200 or more individuals per day. <sup>112</sup>

**CORRUGATED PAPER** — Paper or pasteboard contracted into parallel grooves and ridges, commonly referred to as "cardboard," which is used for wrapping, packing, shipping and/or storage.

**CURBSIDE RECYCLING COLLECTION** — The scheduled collection and transport of recyclable materials placed at the curblineline or other similar location by residential establishments.

**GLASS** — All empty bottles, jars and other containers made of clear, green or brown glass. This includes all food and beverage containers made of glass. Excluded are blue glass, ceramics, light bulbs, pottery and flat glass commonly known as "window or plate glass."

**HIGH-GRADE OFFICE PAPER** — Printed or unprinted sheets, shavings and cuttings of sulphite or sulphate ledger, bond, writing and other pages which have similar fibre and filler content. This grade must be free of treated, coated, padded or heavily printed stock. This includes lightweight office papers, i.e., bond, xerox paper and onionskin, as well as computer paper.

**INSTITUTIONAL ESTABLISHMENT** — Those facilities that house or serve groups of people, including but not limited to hospitals, nursing homes, child day-care centers, libraries and nonprofit associations.

**LEAF WASTE** — Leaves, garden residues, shrubbery and tree trimmings and similar material, but not including grass clippings.

**MULTIFAMILY DWELLINGS** — A residence having two or more dwelling units per structure.

**MUNICIPAL ESTABLISHMENT** — Public facilities operated by Borough of Penbrook and other governmental and quasi-governmental authorities.

**NEWSPAPER** — Paper of the type commonly referred to as "newsprint" and distributed at fixed intervals, having printed thereon news and other matters of public interest, but not including glossy advertising inserts typically included with newspapers, nor does "newspaper" include magazines or periodicals.

**NEWSPRINT** — Paper commonly having printed thereon news and other matters of public interest, but not including glossy advertising inserts, magazines or periodicals.

**PERSON** — Any individual, partnership, corporation, association, institution or cooperative enterprise. In any provisions of this article prescribing a fine, imprisonment or penalty, or any combination of the foregoing, the term "person" shall include the officers and directors of any corporation or other legal entity having

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<sup>112</sup> Amended Ordinance 2018-2 on May 7 2018, Add definition

officers and directors.

**PLASTICS** — All food, beverage and detergent containers comprised of the following resins: No. 1 Polyethylene Terephthalate (PETE) and No. 2 High-Density Polyethylene (HDPE); and all plastic materials as set forth by the recycling regulations.

**RECYCLABLE MATERIALS** — Those materials specified by Borough of Penbrook to be recycled.

**RECYCLING** — The separation, collection, recovery and sale or reuse of metals, glass, paper, leaf waste, plastics and other materials which would otherwise be disposed or processed as solid waste or the mechanized separation and treatment of solid waste (other than through combustion) and creation and recovery of reusable materials other than a fuel for the generation of energy.

**RESIDENTIAL ESTABLISHMENT** — Any occupied single or multifamily dwelling, except multifamily rental housing properties with five or more units or multifamily dwelling units at which dumpsters have been placed in accordance with the Sanitation and Refuse Disposal Ordinance of the Borough of Penbrook. <sup>113</sup>

**SOLID WASTE** — All refuse (garbage and rubbish) and other discarded solid material normally collected by private haulers.

**SOURCE-SEPARATED RECYCLABLE MATERIALS** — Recyclable materials that are separated from solid waste at the point of origin for the purpose of recycling.

**STEEL CANS** — All food and beverage containers consisting of steel.

**§ 218-23. Recycling program.**

- A. There is hereby established a program for the mandatory source separation of recyclable materials from solid waste by persons residing in residential, commercial, municipal and institutional establishments located in the Borough of Penbrook.
- B. Recyclable material for all persons shall consist of: clear glass, colored glass, aluminum, steel, bimetallic cans, plastic containers (numbers 1-7) and newsprint. All empty bottles, jars and other containers shall be emptied and rinsed thoroughly. The borough by regulation may designate other materials to be recyclable materials. <sup>114</sup>

**§ 218-24. Residential establishments.**

- A. Residents of residential establishments shall separate all recyclable materials as specified in this article or by regulations of the borough from other solid waste generated at residential establishments and shall store such materials in compliance

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<sup>113</sup> Editor's Note: See Article II, Collection and Disposal, of this chapter.

<sup>114</sup> Amended Ordinance 2018-2 on May 7 2018, Update section A and B

with the ordinances and regulations of the Borough of Penbrook until collection.

- B. Recyclable materials from residential establishments shall be placed at the curb or other similar area, separate from solid waste, for collection at such times as specified by the borough.
- C. Collection of recyclable materials from residential establishments shall be collected once every week and shall be on the same day of collection as established for the collection of solid waste in the borough and, if designated by the borough, shall be by the borough collector.
- D. Clear glass, colored glass, aluminum, steel, bimetallic cans and plastic containers (numbers 1-7) <sup>115</sup> shall be deposited in a container by persons occupying residential establishments in the Borough of Penbrook. Said containers shall be of a capacity of not less than 10 gallons or more than 33 gallons and shall be clearly marked thereon by designation that such container has recyclable materials. Unless otherwise specified by the borough, each container shall be metallic or plastic, with one or two handles and shall be watertight and shall have a tight cover that shall be kept on the container at all times. The container shall be kept clean and in good condition at all times.
- E. All residents occupying residential establishments in the borough shall provide the container for recyclable materials unless the borough or the borough collector provides the container.
- F. Newspaper shall be bundled or placed in a paper container such as a grocery bag and set out for recycling on the same basis as the other recyclable materials.

**§ 218-25. Commercial, Municipal and Institutional Establishments**

- A. Owners or agents of an owner of a commercial, municipal or institutional establishment shall establish a collection system for required recyclable materials through the use of Dauphin County registered hauler.
- B. Commercial, Municipal and Institutional Establishments shall separate and store, until collection, high-grade office paper, newsprint, corrugated paper, aluminum, clear glass, colored glass, steel, bimetallic cans and plastic containers (numbers 1 through 7).
- C. Persons occupying commercial. (including multifamily rental housing properties with four or more units), institutional, industrial and municipal establishments, within the Borough municipal boundaries, not part of the Borough curbside recycling program and otherwise providing for the recycling of materials they are required by this Part to recycle must provide, annually, written documentation to the Borough of

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<sup>115</sup> Amended Ordinance 2018-2 on May 7 2018, Update recycling numbers

the total number of tons recycled or estimated to be recycled, as well as the name of any authorized collector collecting their recyclables. <sup>116</sup>

**§ 218-26. Community Events**

The following recyclable materials shall be separated from solid waste at community events sponsored wholly or in part by the Borough, or held within the Borough but sponsored privately:

High grade office paper

Corrugated paper.

Aluminum

Clear glass

Colored glass

Steel

Bimetallic cans

Plastic containers (numbers 1 through 7) <sup>117</sup>

**§ 218-27. Leaf waste.**

All persons who reside in residential establishments and all persons who are responsible for the operation of commercial, institutional and municipal establishments who gather leaves shall source-separate all leaves and place them for collection at the times and in the manner prescribed by regulation unless those persons have otherwise provided for the composting of leaf waste.

**§ 218-28. Franchise or license.**

- A. Except as otherwise expressly provided, all recyclable materials shall be collected and marketed by collectors licensed by the borough pursuant to borough ordinances for the collection and hauling of refuse, solid waste or recyclable materials.
- B. The borough may enter into a contract with public or private agencies for the curbside or other collection of all or part of the recyclable materials within its municipal boundaries. Rates, charges for said collection shall be established by resolution of the Borough Council and shall be collected by either the borough or the borough collector as established by resolution of the Borough Council.

**§ 218-29. Collector trucks.**

All trucks used in the collection of recyclable materials must be thoroughly cleaned and well painted and must have the name of the contractor and the telephone number painted on each side of the truck, in letters of a size that can be read and are legible.

**§ 218-30. Collection by unauthorized persons.**

From the time of placement of recyclable materials at the curb or a similar area for collection

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<sup>116</sup> Amended Ordinance 2018-2 on May 7 2018, Update section C

<sup>117</sup> Amended Ordinance 2018-2 on May 7 2018, Add new sections 25-26, re-numbered remaining sections

in accordance with this article, those materials shall be and become the property of the borough and the authorized collector(s). It shall be a violation of this article for any person(s), not authorized by the borough, to collect or pick up or cause to be collected or picked up any such recyclable material. Any and each such collection in violation hereof from one or more locations shall constitute a separate and distinct offense, punishable as hereinafter provided.

**§ 218-31. Enforcement and administration.**

The Borough Council shall have the authority to promulgate reasonable rules and regulations concerning the manner, materials, days and times for the collection of recyclable materials and any other matters required to implement the terms of this article. The Borough Manager shall administer the provisions of this article and the contract with the borough collector. In the absence of conflicting rules and regulations promulgated by the Borough Council, the Borough Manager shall issue reasonable rules and regulations as to the manner, materials, days and times for collection by the borough collector and any other matters required to implement this article and the contract for collection of recyclable materials by the borough collector.

**§ 218-32. Violations and penalties. 118**

Any person, firm or corporation violating any of the provisions of this article and article or any regulations issued pursuant thereto or who or which fails or refuses to comply with any notice, order or direction of any officer or employee of the borough given pursuant to the authority conferred herein shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. Each violation and each day of a violation shall constitute a separate offense.

## Chapter 222: SPEED-TIMING DEVICES

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 4-2-1984 by Ord. No. 84-5. Amendments noted where applicable.]

### GENERAL REFERENCES

Police Department — See Ch. 45.  
Vehicles and traffic — See Ch. 254.

#### § 222-1. Findings; authorized equipment.

The Borough Council has found it necessary and desirable to equip its Police Department with electrical devices for use in timing the rate of speed of vehicles within the Borough of Penbrook, which electrical devices have been approved by the Pennsylvania Department of Transportation for the effective enforcement of traffic laws under the Motor Vehicle Code. <sup>119</sup> It has been published in the Pennsylvania Bulletin that Speed Chek, manufactured for the Union Agency, is an approved electrical device for use in timing the rate of speed of vehicles. The Borough Council has authorized the purchase of a Speed Chek Unit, Model 1, bearing Serial No. 112, for the Penbrook Borough Police Department to employ in carrying out its police powers under the Motor Vehicle Code to protect the public health, safety and welfare. Accordingly, pursuant to Section 6109 of the Motor Vehicle Code, <sup>120</sup> the Penbrook Borough Police Department is authorized to use and employ said Speed Chek Model for use in timing the rate of speed of vehicles within the Borough of Penbrook. This authorization provision shall be effective immediately.

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<sup>119</sup>. Editor's Note: See 75 Pa.C.S.A. § 101 et seq.

<sup>120</sup>. Editor's Note: See 75 Pa.C.S.A. § 101 et seq.

## Chapter 226: Stormwater Management Ordinance <sup>121</sup>

### ARTICLE I

Amendments where noted

#### § Section 226-101. Short Title

This Ordinance shall be known and may be cited as the “Penbrook Borough Stormwater Management Ordinance.”

#### § Section 226-102. Statement of Findings

The governing body of Penbrook Borough finds that:

Inadequate management of accelerated stormwater runoff resulting from development throughout a watershed increases flood flows and velocities, contributes to erosion and sedimentation, overtaxes the carrying capacity of existing streams and storm sewers, greatly increases the cost of public facilities to convey and manage stormwater, undermines floodplain management and flood reduction efforts in upstream and downstream communities, reduces groundwater recharge, threatens public health and safety, and increases non-point source pollution of water resources.

A comprehensive program of stormwater management, including reasonable regulation of development and activities causing accelerated runoff, is fundamental to the public health, safety, welfare, and the protection of the people of Penbrook Borough and all the people of the Commonwealth, their resources, and the environment.

Inadequate planning and management of stormwater runoff resulting from land development and redevelopment throughout a watershed can also harm surface water resources by changing the natural hydrologic patterns; accelerating stream flows (which increase scour and erosion of streambeds and stream banks thereby elevating sedimentation); destroying aquatic habitat; and elevating aquatic pollutant concentrations and loadings such as sediments, nutrients, heavy metals, and pathogens. Groundwater resources are also impacted through loss of recharge.

Stormwater is an important water resource which provides groundwater recharge for water supplies and base flow of streams, which also protects and maintains surface water quality.

Public education on the control of pollution from stormwater is an essential component in successfully addressing stormwater issues.

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<sup>121</sup> Editor’s Note: Ordinance 2011-4 adopted on July 6, 2011, Revised 9-4-2013



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Federal and state regulations require certain municipalities to implement a program of stormwater controls. These municipalities are required to obtain a permit for stormwater discharges from their separate storm sewer systems under the National Pollutant Discharge Elimination System (NPDES).

Non-stormwater discharges to municipal separate storm sewer systems can contribute to pollution of Waters of the Commonwealth.

### **§ Section 226-103. Purpose**

The purpose of this Ordinance is to promote health, safety, and welfare within Penbrook Borough, Dauphin County, by minimizing the harms and maximizing the benefits described in Section 226-102 of this Ordinance through provisions intended to:

Meet legal water quality requirements under state law, including regulations at 25 PA Code Chapter 93 to protect, maintain, reclaim, and restore the existing and designated uses of the Waters of the Commonwealth.

Manage accelerated runoff and erosion and sedimentation problems close to their source, by regulating activities that cause these problems.

Preserve the natural drainage systems to the maximum extent practicable.

Maintain groundwater recharge, to prevent degradation of surface and groundwater quality, and to otherwise protect water resources.

Maintain existing flows and quality of streams and watercourses.

Preserve and restore the flood-carrying capacity of streams and prevent scour and erosion of stream banks and streambeds.

Manage stormwater impacts close to the runoff source, with a minimum of structures and a maximum use of natural processes.

Provide procedures, performance standards, and design criteria for stormwater planning and management.

Provide proper operations and maintenance of all temporary and permanent stormwater management facilities and Best Management Practices (BMPs) that are constructed and implemented.

Provide standards to meet the NPDES permit requirements.

Implement an “illegal discharge detection and elimination program” within MS4 permitted urbanized areas to address non-stormwater discharges into Penbrook Borough’s separate storm sewer system.

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### § Section 226-104. Statutory Authority

#### Primary Authority:

Penbrook Borough is empowered to regulate these activities by the authority of the Act of October 4, 1978, 32 P.S., P.L. 864 (Act 167), 32 P.S. Section 680.1 et seq., as amended, the "Storm Water Management Act", and the Chapter 226 Of the Penbrook Borough Code.

#### Secondary Authority:

Penbrook Borough also is empowered to regulate land use activities that affect runoff by the authority of the Act of July 31, 1968, P.L. 805, No. 247, The Pennsylvania Municipalities Planning Code, as amended.

### § Section 226-105. Applicability

This Ordinance shall apply to all areas of Penbrook Borough, any Regulated Activity within Penbrook Borough, and all stormwater runoff entering into Penbrook Borough's separate storm sewer system from lands within the boundaries of Penbrook Borough.

Earth disturbance activities and associated stormwater management controls are also regulated under existing state law and implementing regulations. This Ordinance shall operate in coordination with those parallel requirements; the requirements of this Ordinance shall be no less restrictive in meeting the purposes of this Ordinance than state law.

"Regulated Activities" are any earth disturbance activities or any activities that involve the alteration or development of land in a manner that may affect stormwater runoff. "Regulated Activities" include, but are not limited to, the following listed items:

#### Earth Disturbance Activities

#### Land Development

#### Subdivision

Construction of new or additional impervious or semi-pervious surfaces

Construction of new buildings or additions to existing buildings

Diversion or piping of any natural or man-made stream channel

Installation of stormwater management facilities or appurtenances thereto

Installation of stormwater BMPs

See Section 226-302 of this Ordinance for Exemption/Modification Criteria.

### § Section 226-106. Repealer

Any ordinance, ordinance provision(s), or regulation of Penbrook Borough inconsistent with any of the provision(s) of this Ordinance is hereby repealed to the extent of the inconsistency only.

**§ Section 226-107. Severability**

In the event that a court of competent jurisdiction declares any section(s) or provision(s) of this Ordinance invalid, such decision shall not affect the validity of any of the remaining section(s) or provision(s) of this Ordinance.

**§ Section 226-108. Compatibility with Other Ordinance Requirements**

Approvals issued and actions taken pursuant to this Ordinance do not relieve the Applicant of the responsibility to comply with or to secure required permits or approvals for activities regulated by any other applicable codes, laws, rules, statutes, or ordinances. To the extent that this Ordinance imposes more rigorous or stringent requirements for stormwater management, the specific requirements contained in this Ordinance shall be followed.

**§ Section 226-109. Duty of Persons Engaged in the Development of Land**

Notwithstanding any provision(s) of this Ordinance, including exemptions, any landowner or any person engaged in the alteration or development of land which may affect stormwater runoff characteristics shall implement such measures as are reasonably necessary to prevent injury to health, safety, or other property. Such measures also shall include actions as are required to manage the rate, volume, direction, and quality of resulting stormwater runoff in a manner which otherwise adequately protects health, property, and water quality.

**§ Section 226-110. Waivers**

- A. If the Municipality determines that any requirement under this Ordinance cannot be achieved for a particular regulated activity, the Municipality may, after an evaluation of alternatives, approve measures other than those in this Ordinance, subject to Section 226-302.
- B. Waivers or modifications of the requirements of this Ordinance may be approved by the Municipality if enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that the modifications will not be contrary to the public interest and that the purpose of the Ordinance is preserved. Cost or financial burden shall not be considered a hardship. Modification may be considered if an alternative standard or approach will provide equal or better achievement of the purpose of the Ordinance. A request for modifications shall be in writing and accompany the Stormwater Management Site Plan submission. The request

shall provide the facts on which the request is based, the provision(s) of the Ordinance involved and the proposed modification.

- C. No waiver or modification of any regulated stormwater activity involving earth disturbance greater than or equal to one acre may be granted by the Municipality unless that action is approved in advance by the Department of Environmental Protection (DEP) or the delegated county conservation district.<sup>122</sup>

## ARTICLE II

### § Section 226-201 Definitions

For the purpose of this Ordinance, certain terms and words used herein shall be interpreted as follows:

Words used in the present tense include the future tense; the singular number includes the plural; and the plural number includes the singular; words of masculine gender include feminine gender; and words of feminine gender include masculine gender.

The word "includes" or "including" shall not limit the term to the specific example but is intended to extend its meaning to all other instances of like kind and character.

The word "person" includes an individual, firm, association, organization, partnership, trust, company, corporation, or any other similar entity.

The words "shall" and "must" are mandatory; the words "may" and "should" are permissive.

The words "used or occupied" include the words "intended, designed, maintained, or arranged to be used, occupied or maintained".

**Accelerated Erosion** - The removal of the surface of the land through the combined action of human activity and natural processes at a rate greater than would occur because of the natural process alone.

**Agricultural Activities** - Activities associated with agriculture such as agricultural cultivation, agricultural operation, and animal heavy use areas. This includes the work of

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<sup>122</sup> Section 226-110 added Ordinance 2022-04 August 1, 2022

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producing crops, tillage, land clearing, plowing, disking, harrowing, planting, harvesting crops, or pasturing and raising of livestock and installation of conservation measures. Construction of new buildings or impervious area is not considered an Agricultural Activity.

**Alteration** - As applied to land, a change in topography as a result of the moving of soil and rock from one location or position to another; changing of surface conditions by causing the surface to be more or less impervious; land disturbance.

**Applicant** - A landowner, developer, or other person who has filed an application for approval to engage in any Regulated Activities at a project site within Penbrook Borough.

**Best Management Practices (BMPs)** - Activities, facilities, designs, measures or procedures used to manage stormwater impacts from Regulated Activities, to meet State Water Quality Requirements, to promote groundwater recharge and to otherwise meet the purposes of this Ordinance. Stormwater BMPs are commonly grouped into one of two broad categories or measures: “non-structural” or “structural”. “Non-structural” BMPs are measures referred to as operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff whereas “structural” BMPs are measures that consist of a physical device or practice that is installed to capture and treat stormwater runoff. “Structural” BMPs include, but are not limited to, a wide variety of practices and devices, from large-scale wet ponds and constructed wetlands, to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, and manufactured devices. “Structural” stormwater BMPs are permanent appurtenances to the project site.

**BMP Manual** - Shall mean the Pennsylvania Stormwater Best Management Practices Manual as published by the Department of Environmental Protection, Bureau of Watershed Management, document number: 363-0300-002, effective date: December 30, 2006, and as revised.

**Channel Erosion** - The widening, deepening, and headward cutting of small channels and waterways, due to erosion caused by moderate to large floods.

**Cistern** - An underground reservoir or tank used for storing rainwater.

**Conservation District** - The Dauphin County Conservation District (DCCD). The Dauphin County Conservation District has the authority under a delegation agreement executed with the Department of Environmental Protection to administer and enforce all or a portion of the regulations promulgated under 25 PA Code Chapter 102.

**Culvert** - A structure with appurtenant works that carries a stream and/or stormwater runoff under or through an embankment or fill.

**Dam** - An artificial barrier, together with its appurtenant works, constructed for the purpose of impounding or storing water or another fluid or semifluid, or a refuse bank, fill or structure

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for highway, railroad or other purposes which does or may impound water or another fluid or semifluid.

**Design Storm** - The magnitude and temporal distribution of precipitation from a storm event measured in probability of occurrence (e.g., a 25-year storm) and duration (e.g., 24-hours), used in the design and evaluation of stormwater management systems. Also see Return Period.

**Designee** - The agent of Penbrook Borough and/or agent of the governing body involved with the administration, review or enforcement of any provisions of this Ordinance by contract or memorandum of understanding.

**Detention Basin** - An impoundment structure designed to manage stormwater runoff by temporarily storing the runoff and releasing it at a predetermined rate.

**Detention Volume** - The volume of runoff that is captured and released during or after a storm event into Waters of the Commonwealth at a controlled rate.

**Developer** - A person, partnership, association, corporation, or other entity, or any responsible person therein or agent thereof, that undertakes any Regulated Activity of this Ordinance.

**Development Site - (Site)** - The specific tract of land for which a Regulated Activity is proposed. Also see Project Site.

**Disturbed Area** - An un-stabilized land area where an Earth Disturbance Activity is occurring or has occurred.

**Downslope Property Line** - That portion of the property line of the lot, tract, or parcels of land being developed located such that all overland or piped flow from the site would be directed toward it.

**Drainage Conveyance Facility** - A stormwater management facility designed to convey stormwater runoff and shall include streams, channels, swales, pipes, conduits, culverts, storm sewers, etc.

**Drainage Easement** - A right granted by a landowner to a grantee, allowing the use of private land for stormwater management, drainage, or conveyance purposes.

**Drainageway** - Any natural or artificial watercourse, trench, ditch, pipe, swale, channel, or similar depression into which surface water flows.

**Earth Disturbance Activity** - A construction or other human activity which disturbs the surface of the land, including, but not limited to, clearing and grubbing, grading, excavations, embankments, land development, agricultural plowing or tilling, timber harvesting activities, road maintenance activities, mineral extraction, and the moving, depositing, stockpiling, or storing of soil, rock or earth materials.

**Erosion** - The movement of soil particles by the action of water, wind, ice, or other natural forces.

**Erosion and Sediment Pollution Control Plan** - A plan which is designed to minimize accelerated erosion and sedimentation.

**Exceptional Value Waters** - Surface waters of high quality, which satisfies PA Code Title 25 Environmental Protection, Chapter 93 Water Quality Standards 93.4b(b) (relating to anti-degradation).

**Existing Conditions** - The initial condition of a project site prior to the proposed construction. If the initial condition of the site is not forested or undeveloped land, the land use shall be considered as "meadow" unless the natural land cover is documented to generate lower Curve Numbers or Rational "C" Coefficients, such as forested lands.

**FEMA** - The Federal Emergency Management Agency.

**Flood** - A general but temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers, and other Waters of the Commonwealth.

**Flood Fringe** - The remaining portions of the one hundred (100) year floodplain outside of the floodway boundary.

**Floodplain** - Any land area susceptible to inundation by water from any natural source or delineated by applicable Department of Housing and Urban Development, Federal Insurance Administration Flood Hazard Boundary - mapped as being a special flood hazard area. Included are lands adjoining a river or stream that have been or may be inundated by a 100-year flood. Also included are areas that comprise Group 13 Soils, as listed in Appendix A of the Pennsylvania Department of Environmental Protection (PADEP) Technical Manual for Sewage Enforcement Officers (as amended or replaced from time to time by PADEP).

**Floodway** - The channel of the watercourse and those portions of the adjoining floodplains that are reasonably required to carry and discharge the 100-year frequency flood. Unless otherwise specified, the boundary of the floodway is as indicated on maps and flood insurance studies provided by FEMA. In an area where no FEMA maps or studies have defined the boundary of the 100-year frequency floodway, it is assumed - absent evidence to the contrary - that the floodway extends from the stream to 50 feet from the top of the bank of the stream.

**Forest Management/Timber Operations** - Planning and activities necessary for the management of forestland. These include timber inventory and preparation of forest management plans, silvicultural treatment, cutting budgets, logging road design and construction, timber harvesting, site preparation and reforestation.

**Freeboard** - A vertical distance between the elevation of the design high water and the top of a dam, levee, tank, basin, or diversion ridge. The space is required as a safety margin in a pond or basin.

**Grade** - A slope, usually of a road, channel or natural ground specified in percent and shown on plans as specified herein.

**(To) Grade** - To finish the surface of a roadbed, top of embankment or bottom of excavation.

**Groundwater Recharge** - Replenishment of existing natural underground water supplies.

**HEC-HMS Model Calibrated** - (Hydrologic Engineering Center Hydrologic Modeling System) A computer-based hydrologic modeling technique adapted to the watersheds in Dauphin County for the Act 167 Plan. The model has been calibrated by adjusting key model input parameters.

**High Quality Waters** - Surface water having quality, which exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water by satisfying PA Code Title 25 Environmental Protection, Chapter 93 Water Quality Standards 93.4b(a).

**Hydrologic Soil Group (HSG)** - Infiltration rates of soils vary widely and are affected by subsurface permeability as well as surface intake rates. Soils are classified into one of four HSG (A, B, C, and D) according to their minimum infiltration rate, which is obtained for bare soil after prolonged wetting. The Natural Resource Conservation Service (NRCS) of the US Department of Agriculture defines the four groups and provides a list of most of the soils in the United States and their group classification. The soils in the area of interest may be identified from a soil survey report from the local NRCS office or the Dauphin County Conservation District.

**Impervious Surface (Impervious Area)** - A surface that prevents the infiltration of water into the ground. Impervious surfaces (or areas) shall include, but are not limited to: roofs, additional indoor living spaces, patios, garages, storage sheds and similar structures, and any new streets and sidewalks. Decks, parking areas, and driveway areas are not counted as impervious areas if they do not prevent infiltration. Any surface area proposed to initially be gravel or crushed stone shall be assumed to be impervious, unless designed as an infiltration BMP.

**Infiltration Structures** - A structure designed to direct runoff into the ground (e.g., French drains, seepage pits, seepage trench, etc.).

**Inlet** - A surface connection to a closed drain. A structure at the diversion end of a conduit. The upstream end of any structure through which water may flow.

**Karst** - A type of topography or landscape characterized by surface depressions, sinkholes, rock pinnacles/uneven bedrock surface, steep-sided hills, underground drainage and caves. Karst is formed on carbonate rocks, such as limestone or dolomites and sometimes gypsum.

**Land Development (Development)** - (i) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving (a) a group of two or more buildings, or (b) the division or allocation of land or space between or among two or



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more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups, or other features; (ii) Any subdivision of land; (iii) Development in accordance with Section 503(1.1) of the PA Municipalities Planning Code.

**Limit of Disturbance** - A line provided on the SWM Site Plan that indicates the total area to be disturbed during a proposed earth disturbance activity.

**Main Stem (Main Channel)** - Any stream segment or other runoff conveyance facility used as a reach in the Dauphin County Act 167 watershed hydrologic model(s).

**Manning Equation (Manning Formula)** - A method for calculation of velocity of flow (e.g., feet per second) and flow rate (e.g., cubic feet per second) in open channels based upon channel shape, roughness, depth of flow and slope. "Open channels" may include closed conduits so long as the flow is not under pressure.

**Municipality** - Penbrook Borough, Dauphin County, Pennsylvania.

**National Pollutant Discharge Elimination System (NPDES)** - The federal government's system for issuance of permits under the Clean Water Act, which is delegated to PADEP in Pennsylvania.

**NOAA Atlas 14:** - Precipitation-Frequency Atlas of the United States, Atlas 14, Volume 2, US Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Hydrometeorological Design Studies Center, Silver Spring, Maryland (2004). NOAA's Atlas 14 can be accessed at Internet address: <http://hdsc.nws.noaa.gov/hdsc/pfds/>.

**Non-point Source Pollution** - Pollution that enters a water body from diffuse origins in the watershed and does not result from discernible, confined, or discrete conveyances.

**NRCS** - Natural Resource Conservation Service (previously Soil Conservation Service (SCS)).

**Open Channel** - A drainage element in which stormwater flows with an open surface. Open channels include, but shall not be limited to, natural and man-made drainageways, swales, streams, ditches, canals, and pipes not under pressure.

**Outfall** - (i) Point where water flows from a conduit, stream, or drain; (ii) "Point Source" as described in 40 CFR § 122.2 at the point where the Municipality's storm sewer system discharges to surface Waters of the Commonwealth.

**Outlet** - Points of water disposal from a stream, river, lake, tidewater, or artificial drain.

**PADEP** - The Pennsylvania Department of Environmental Protection.

**Parking Lot Storage** - Involves the use of impervious parking areas as temporary impoundments with controlled release rates during rainstorms.

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**Peak Discharge** - The maximum rate of stormwater runoff from a specific storm event.

**Person** - An individual, partnership, public or private association or corporation, or a governmental unit, public utility or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

**Pervious Area** - Any area not defined as impervious.

**Pipe** - A culvert, closed conduit, or similar structure (including appurtenances) that conveys stormwater.

**Planning Commission** - The Planning Commission of Penbrook Borough.

**Point Source** - Any discernible, confined, or discrete conveyance, including, but not limited to: any pipe, ditch, channel, tunnel, or conduit from which stormwater is or may be discharged, as defined in State regulations at 25 Pennsylvania Code § 92.1.

**Probable Maximum Flood (PMF)** - The flood that may be expected from the most severe combination of critical meteorological and hydrologic conditions that are reasonably possible in any area. The PMF is derived from the probable maximum precipitation (PMP) as determined on the basis of data obtained from the National Oceanographic and Atmospheric Administration (NOAA).

**Project Site** - The specific area of land where any Regulated Activities in the Municipality are planned, conducted, or maintained.

**Qualified Professional** - Any person licensed by the Pennsylvania Department of State or otherwise qualified by law to perform the work required by the Ordinance.

**Rational Formula** - A rainfall-runoff relation used to estimate peak flow.

**Redevelopment** - Earth disturbance activities on land, which has previously been developed.

**Regulated Activities** - Any earth disturbance activities or any activities that involve the alteration or development of land in a manner that may affect stormwater runoff.

**Regulated Earth Disturbance Activity** - Activity involving Earth Disturbance subject to regulation under 25 PA Code Chapter 92, Chapter 102, or the Clean Streams Law.

**Release Rate** - The percentage of pre-development peak rate of runoff from a site or sub-watershed area to which the post-development peak rate of runoff must be reduced to protect downstream areas.

**Release Rate District** - Those sub-watershed areas in which post-development flows must be reduced to a certain percentage of pre-development flows as required to meet the plan requirements and the goals of Act 167.

**Retention Volume/Removed Runoff** - The volume of runoff that is captured and not released directly into the surface Waters of this Commonwealth during or after a storm event.

**Return Period** - The average interval, in years, within which a storm event of a given magnitude can be expected to recur. For example, the probability of a 25-year storm occurring in any one given year is 0.04 (i.e. a 4% chance).

**Riparian Buffer** - A vegetated area bordering perennial and intermittent streams and wetlands, that serves as a protective filter to help protect streams and wetlands from the impacts of adjacent land uses.

**Riser** - A vertical pipe extending from the bottom of a pond that is used to control the discharge rate from the pond for a specified design storm.

**Road Maintenance** - Earth disturbance activities within the existing road right-of-way, such as grading and repairing existing unpaved road surfaces, cutting road banks, cleaning or clearing drainage ditches, and other similar activities. Road maintenance activities that do not disturb the subbase of a paved road such as milling and pavement overlays are not considered earth disturbance activities.

**Rooftop Detention** - Temporary ponding and gradual release of stormwater falling directly onto flat roof surfaces by incorporating controlled-flow roof drains into building designs.

**Runoff** - Any part of precipitation that flows over the land surface.

**Runoff Capture Volume** - The volume of runoff that is captured (retained) and not released into surface Waters of the Commonwealth during or after a storm event.

**Sediment** - Soils or other materials transported by surface water as a product of erosion.

**Sediment Basin** - A barrier, dam, or detention basin located and designed to retain rock, sand, gravel, silt, or other material transported by stormwater runoff.

**Sediment Pollution** - The placement, discharge, or any other introduction of sediment into Waters of the Commonwealth occurring from the failure to properly design, construct, implement or maintain control measures and control facilities in accordance with the requirements of this Ordinance.

**Sedimentation** - The process by which mineral or organic matter is accumulated or deposited by the movement of water.

**Seepage Pit/Seepage Trench** - An area of excavated earth filled with loose stone or similar coarse material, into which surface water is directed for infiltration into the ground.

**Separate Storm Sewer System** - A conveyance or system of conveyances (including roads with drainage systems, Municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) primarily used for collecting and conveying stormwater runoff.

**Sheet Flow** - Runoff that flows over the ground surface as a thin, even layer, not concentrated in a channel.

**Soil Cover Complex Method** - A method of runoff computation developed by the NRCS that is based on relating soil type and land use/cover to a runoff parameter called Curve Number (CN).

**Spillway (Emergency)** - A depression in the embankment of a pond or basin, or other overflow structure, that is used to pass peak discharges greater than the maximum design storm controlled by the pond or basin.

**State Water Quality Requirements** - The regulatory requirements to protect, maintain, reclaim, and restore water quality under Title 25 of that Pennsylvania Code and the Clean Streams Law – including, but not limited to:

Each stream segment in Pennsylvania has a “designated use,” such as “cold water fishery” or “potable water supply,” which is listed in Chapter 93. These uses must be protected and maintained, under state regulations.

“Existing uses” are those attained as of November 1975, regardless whether they have been designated in Chapter 93. Earth Disturbance activities must be designed to protect and maintain existing uses and maintain the level of water quality necessary to protect those uses in all streams, and to protect and maintain water quality in special protection streams.

Water quality involves the chemical, biological, and physical characteristics of surface water bodies. After Earth Disturbance activities are complete, these characteristics can be impacted by addition of pollutants such as sediment, and changes in habitat through increased flow volumes and/or rates as a result of changes in land surface area from those activities. Therefore, permanent discharges to surface waters must be managed to protect the stream bank, streambed, and structural integrity of the waterway, to prevent these impacts.

Protection and maintenance of water quality in special protection streams pursuant to 25 PA Code Chapter 93.

**Storage Indication Method** - A reservoir routing procedure based on solution of the continuity equation (inflow minus outflow equals the change in storage) with outflow defined as a function of storage volume and depth.

**Storm Frequency** - The number of times that a given storm "event" occurs or is exceeded on the average in a stated period of years. See also Return Period.

**Storm Sewer** - A system of pipes and/or open channels that convey intercepted runoff and stormwater from other sources, but excludes domestic sewage and industrial wastes.

**Stormwater** - Drainage runoff from the surface of the land resulting from precipitation, snow, or ice melt.

**Stormwater Hotspot** - A land use or activity that generates higher concentrations of hydrocarbons, trace metals, or toxicants than are found in typical stormwater runoff.

**Stormwater Management Facilities** - Any structure, natural or man-made, that, due to its condition, design, or construction; conveys, stores, or otherwise affects stormwater runoff. Typical stormwater management facilities include, but are not limited to: detention basins, wet ponds, open channels, storm sewers, pipes and infiltration facilities.

**Stormwater Management Plan** - The Dauphin County Stormwater Management Plan for managing stormwater runoff in Dauphin County as required by the Act of October 4, 1978, P.L. 864, (Act 167) and known as the “Storm Water Management Act”.

**Stormwater Management Site Plan (SWM Site Plan)** - The plan prepared by the Applicant or his representative indicating how stormwater runoff will be managed at the project site in accordance with this Ordinance.

**Stream Enclosure** - A bridge, culvert, or other structure in excess of 100 feet in length upstream to downstream which encloses regulated Waters of the Commonwealth.

**Sub-watershed Area** - The smallest drainage unit of a watershed for which stormwater management criteria has been established in the Stormwater Management Plan.

### **ARTICLE III: Stormwater Management Standards**

#### **§ Section 226-301. General Requirements**

For all Regulated Activities, unless specifically exempted in Section 226-302:

Preparation and implementation of an approved SWM Site Plan is required.

No Regulated Activities shall commence until the municipality issues written approval of a SWM Site Plan, which demonstrates compliance with the requirements of this Ordinance.

The SWM Site Plan shall demonstrate that adequate capacity will be provided to meet the Volume and Rate Control Requirements, as described under Sections 226-303 and 226-304 of this Ordinance.

The SWM Site Plan approved by the municipality, shall be on-site throughout the duration of the Regulated Activities.

For all Regulated Earth Disturbance Activities, erosion and sediment control BMPs shall be designed, implemented, operated, and maintained during the Regulated Earth Disturbance Activities (e.g., during construction) to meet the purposes and requirements of this Ordinance and to meet all requirements under Title 25 of the Pennsylvania Code (including, but not limited to Chapter 102 Erosion and Sediment Control) and the Clean Streams Law. Various BMPs and their design standards are listed in the *Erosion and Sediment Pollution*

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*Control Program Manual* (E&S Manual), No. 363-2134-008 (April 15, 2000), as amended and updated.

For all Regulated Activities, stormwater BMPs shall be designed, installed, implemented, operated, and maintained to meet the purposes and requirements of this Ordinance and to meet all requirements under Title 25 of the Pennsylvania Code and the Clean Streams Law, conform to the State Water Quality Requirements, meet all requirements under the Storm Water Management Act and any more stringent requirements as determined by the municipality.

The municipality may, after consultation with PADEP and/or DCCD, approve measures for meeting the State Water Quality Requirements other than those in this Ordinance, provided that they meet the minimum requirements of, and do not conflict with, state law including, but not limited to, the Clean Streams Law.

All Regulated Activities shall include, to the maximum extent practicable, measures to:

Protect health, safety, and property.

Meet the water quality goals of this Ordinance by implementing measures to:

Minimize disturbance to floodplains, wetlands, natural slopes, existing native vegetation and woodlands.

Create, maintain, or extend riparian buffers and protect existing forested buffers.

Provide trees and woodlands adjacent to impervious areas whenever feasible.

Minimize the creation of impervious surfaces and the degradation of Waters of the Commonwealth and promote groundwater recharge.

Protect natural systems and processes (drainageways, vegetation, soils, and sensitive areas) and maintain, as much as possible, the natural hydrologic regime.

Incorporate natural site elements (wetlands, stream corridors, mature forests) as design elements.

Avoid erosive flow conditions in natural flow pathways.

Minimize soil disturbance and soil compaction.

Minimize thermal impacts to Waters of the Commonwealth.

Disconnect impervious surfaces by directing runoff to pervious areas wherever possible, and decentralize and manage stormwater at its source.

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Applicants are encouraged to incorporate the techniques for Low Impact Development Practices described in the “*Pennsylvania Stormwater Best Management Practices Manual* (BMP Manual)” to reduce the costs of complying with the requirements of this Ordinance and the State Water Quality Requirements.

### Impervious Areas:

The measurement of impervious areas shall include all of the impervious areas in the total proposed development, even if development is to take place in stages.

For development taking place in stages, the entire development plan must be used in determining conformance with this Ordinance.

For projects that add impervious area to a developed parcel, the new impervious area is subject to the requirements of this Ordinance; and any existing impervious area that is within the new proposed limit of disturbance is also subject to the requirements of this Ordinance.

If diffused flow is proposed to be concentrated and discharged onto adjacent property, the Applicant must document that adequate downstream conveyance facilities exist to safely transport the concentrated discharge, or otherwise prove that no erosion, sedimentation, flooding, or other harm will result from the concentrated discharge.

Applicant must provide an executed easement for newly concentrated flow across adjacent properties.

Stormwater drainage systems shall be provided in order to permit unimpeded flow along natural watercourses, except as modified by stormwater management facilities or open channels consistent with this Ordinance.

Where watercourses traverse a development site, drainage easements (with a minimum width of 20 feet) shall be provided conforming to the line of such watercourses. The terms of the easement shall prohibit excavation, the placing of fill or structures, and any alterations that may adversely affect the flow of stormwater within any portion of the easement. Also, maintenance, including mowing of vegetation within the easement may be required, except as approved by the appropriate governing authority.

When it can be shown that, due to topographic conditions, natural drainageways on the site cannot adequately provide for drainage, open channels may be constructed conforming substantially to the line and grade of such natural drainageways. Work within natural drainage ways shall be subject to approval by PADEP under regulations at 25 PA Code Chapter 105 through the Joint Permit Application process, or, where deemed appropriate by PADEP, through the General Permit process.

Any stormwater management facilities or any facilities that constitute water obstructions (e.g., culverts, bridges, outfalls, or stream enclosures, etc.) that are regulated by this

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Ordinance, that will be located in or adjacent to Waters of the Commonwealth (including wetlands), shall be subject to approval by PADEP under regulations at 25 PA Code Chapter 105 through the Joint Permit Application process, or, where deemed appropriate by PADEP, the General Permit process. When there is a question whether wetlands may be involved, it is the responsibility of the Applicant or his agent to show that the land in question cannot be classified as wetlands; otherwise, approval to work in the area must be obtained from PADEP.

Should any stormwater management facility require a dam safety permit under PADEP Chapter 105, the facility shall be designed in accordance with Chapter 105 and meet the regulations of Chapter 105 concerning dam safety which may be required to pass storms larger than 100-year event.

Any stormwater management facilities regulated by this Ordinance that will be located on, or discharged onto State highway rights-of-ways shall be subject to approval by the Pennsylvania Department of Transportation (PennDOT).

When stormwater management facilities are proposed within 1,000 feet of a downstream Municipality, the stormwater analysis shall be submitted to the downstream Municipal's engineer for review and comment.

Minimization of impervious surfaces and infiltration of runoff through seepage beds, infiltration trenches, etc., are encouraged, where soil conditions and geology permit, to reduce the size or eliminate the need for detention facilities.

Infiltration BMPs should be dispersed throughout the site, made as shallow as practicable, and located to maximize use of natural on-site infiltration features while still meeting the other requirements of this Ordinance.

The design of facilities over karst shall include an evaluation and implementation of measures to minimize adverse effects.

Roof drains shall not be connected to streets, sanitary or storm sewers, or roadside ditches in order to promote overland flow and infiltration/percolation of stormwater where it is advantageous to do so. When it is more advantageous to connect directly to streets or storm sewers, then the Municipality shall permit it on a case-by-case basis.

### **§ Section 226-302. Exemptions/Modifications**

Under no circumstance shall the Applicant be exempt from implementing such measures as necessary to:

Meet State Water Quality Standards and Requirements.

Protect health, safety, and property.

Meet special requirements for High Quality (HQ) and Exceptional Value (EV) watersheds.



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The Applicant must demonstrate that the following BMPs are being utilized to the maximum extent practicable to receive consideration for the exemptions:

Design around and limit disturbance of Floodplains, Wetlands, Natural Slopes over 15%, existing native vegetation, and other sensitive and special value features.

Maintain riparian and forested buffers.

Limit grading and maintain non-erosive flow conditions in natural flow paths.

Maintain existing tree canopies near impervious areas.

Minimize soil disturbance and reclaim disturbed areas with topsoil and vegetation.

Direct runoff to pervious areas.

The Applicant must demonstrate that the proposed development/additional impervious area will not adversely impact the following:

Capacities of existing drainageways and storm sewer systems.

Velocities and erosion.

Quality of runoff if direct discharge is proposed.

Existing known problem areas.

Safe conveyance of the additional runoff.

Downstream property owners.

An Applicant proposing Regulated Activities, after demonstrating compliance with Sections 226-302.A, 226-302.B, and 226-302.C, may be exempted from various requirements of this Ordinance according to the following table:

<b>New Impervious Area*</b> <b>[Since the Date of Adoption of this Ordinance]</b> <b>(square footage)</b>	<b>Applicant Must Submit to the Borough of Penbrook</b>
0 – 1,000	---
1,000 – 5,000	Volume Controls and SWM Site Plan & Report
> 5,000	Rate Controls, Volume Controls, SWM Site Plan & Report and Record Drawings

\*Gravel in the existing condition shall be considered pervious and proposed gravel shall be considered impervious.

The purpose of this section is to ensure consistency of stormwater management planning between local ordinances and NPDES permitting (when required) and to ensure that the

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Applicant has a single and clear set of stormwater management standards to which the Applicant is subject. The Municipality may accept alternative stormwater management controls provided that:

The Applicant, in consultation with the Municipality, PADEP and/or DCCD, states that meeting the requirements of the Volume Controls or Rate Controls of this Ordinance is not possible or creates an undue hardship.

The alternative stormwater management controls, proposed by the Applicant, are documented to be acceptable to the Municipality, PADEP and/or DCCD for NPDES requirements pertaining to post construction stormwater management requirements.

The alternative stormwater management controls are in compliance with all other sections of this Ordinance, including but not limited to sections 226-301.D, 226-302.A, 226-302.B and 226- 302.C.

Forest management and timber operations are exempt from Rate and Volume Control requirements and SWM Site Plan preparation requirement of this Ordinance provided the activities are performed according to the requirements of 25 PA Code Chapter 102. It should be noted that temporary roadways are not exempt.

Agricultural activities are exempt from the requirements of this Ordinance provided the activities are performed according to the requirements of 25 PA Code Chapter 102.

Linear roadway improvement projects that create additional impervious area are not exempt from the requirements of this Ordinance. However, alternative stormwater management strategies may be applied at the joint approval of the Municipality and the Dauphin County Conservation District (if an NPDES permit is required) when site limitations (such as limited right-of-way) and constraints (as shown and provided by the Applicant), preclude the ability of the Applicant to meet the enforcement of the stormwater management standards in this Ordinance. All strategies must be consistent with PADEP's regulations, including NPDES requirements.

The municipality may, after an Applicant has demonstrated compliance with Sections 226-302.A, 226-302.B, and 226-302.C, grant a modification of the requirements of one or more provisions of this Ordinance if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of the Ordinance is observed.

All requests for a modification shall be in writing and shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the Ordinance involved, and the minimum modification necessary.

### **§ Section 226-303. Volume Controls**

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The Low Impact Development Practices provided in the BMP Manual and in Appendix B of this Ordinance shall be utilized for all Regulated Activities to the maximum extent practicable.

Stormwater runoff Volume Controls shall be implemented using the *Design Storm Method* or the *Simplified Method*. For Regulated Activities equal to or less than one (1) acre, this Ordinance establishes no preference for either method; therefore, the Applicant may select either method on the basis of economic considerations, the intrinsic limitations on applicability of the analytical procedures associated with each methodology, and other factors.

The *Design Storm Method* (CG-1 in the BMP Manual) is applicable to any sized Regulated Activity. This method requires detailed modeling based on site conditions.

Do not increase the post-development total runoff volume when compared to the pre-development total runoff volume for the 2-year/24-hour storm event.

For hydrologic modeling purposes:

Existing non-forested pervious areas must be considered meadow (good condition) for pre-development hydrologic calculations.

Twenty (20) percent of existing impervious area, when present on the proposed project site, and contained within the new proposed limit of disturbance, shall be considered meadow (good condition) for pre-development hydrologic calculations for re-development.

The *Simplified Method* (CG-2 in the BMP Manual) is independent of site conditions and should be used if the *Design Storm Method* is not followed. This method is not applicable to Regulated Activities greater than one (1) acre. For new impervious surfaces:

Stormwater facilities shall capture at least the first two (2) inches of runoff from all new impervious surfaces.

At least the first one (1) inch of runoff from new impervious surfaces shall be permanently removed from the runoff flow, i.e. it shall not be released into surface Waters of the Commonwealth. Removal options include reuse, evaporation, transpiration, and infiltration.

Wherever possible, infiltration facilities should be designed to accommodate infiltration of the entire permanently removed runoff; however, in all cases at least the first one-half (0.5) inch of the permanently removed runoff should be infiltrated.

All applicable worksheets from Chapter 8 of the BMP Manual must be used when establishing Volume Controls.

Actual field infiltration tests at the location of the proposed elevation of the stormwater BMPs are required when 5,000 square feet or greater of new impervious surface is added.

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Infiltration test shall be conducted in accordance with BMP Manual. The municipality shall be notified 24-hours prior to infiltration tests being conducted as to provide an opportunity for the municipality to witness the tests.

### **§ Section 226-304. Rate Controls**

Lands contained within Dauphin County that have not had release rates established under an approved Act 167 Stormwater Management Plan:

Post-development discharge rates shall not exceed the pre-development discharge rates for the 1-year, 2-year, 10-year, 25-year, 50-year, and 100-year storms.

Lands contained within Dauphin County that have had release rates established under an approved Act 167 Stormwater Management Plan:

Post-development discharge rates shall not exceed the pre-development discharge rates for the 1-year, 50-year, and 100-year storms.

For the 2-year, 10-year, and 25-year storms, the post-development peak discharge rates shall be in accordance with the approved release rate map for the individual watershed.

## **ARTICLE IV: E&S Standards**

### **§ Section 226-401. Erosion and Sedimentation Requirements During Earth Disturbance Activities**

The applicant shall meet requirements as contained in 25 PA Code, Chapters 92 and 102 as required and applicable as follows:

The implementation and maintenance of erosion and sediment control BMPs.

Development of written plans.

Submission of plans for approval.

Obtaining Erosion and Sediment Control and NPDES permits.

Maintaining plans and permits on site.

Evidence of any necessary plan or permit approval for Earth Disturbance activities from PADEP or the Dauphin County Conservation District must be provided to the Municipality.

A copy of the approved Erosion and Sediment Control Plan and any other permit, as required by PADEP or the Dauphin County Conservation District, shall be available at the project site at all times if required under Chapter 102.

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Construction of temporary roadways (e.g., for utility construction, timber harvesting, etc.) shall comply with all applicable standards for erosion and sedimentation control and stream crossing regulations under 25 PA Code, Chapters 102 and 105. The Erosion and Sedimentation Control Plan shall be submitted to the Dauphin County Conservation District for approval and shall address the following, as applicable:

Design of the roadway system, including haul roads, skid roads, landing areas, trails, and storage and staging areas.

Runoff control structures (e.g., diversions, culverts, detention ponds, etc.).

Stream crossings for both perennial and intermittent streams.

Access to public roadways, including design of rock construction entrance for mud and debris control.

A remediation plan for restoring the disturbed area through re-grading, topsoil placement, reseeded, and other stabilization techniques, as required.

Additional erosion and sedimentation control design standards and criteria that must be applied where infiltration BMPs are proposed include the following:

Areas proposed for infiltration BMPs shall be protected from sedimentation and compaction during the construction phase, as to maintain their maximum infiltration capacity.

Infiltration BMPs shall be protected from receiving sediment-laden runoff.

The source of protection for infiltration BMPs shall be identified (i.e. orange construction fence surrounding the perimeter of the BMP).

### **§ Section 226-402. Total Maximum Daily Load (TMDL) Requirements**

Agricultural activities contributory to a watershed within Dauphin County containing an established non-point source (agricultural) TMDL, shall be conducted in compliance with Chapter 102 (Erosion and Sediment Pollution Control), Chapter 91 - Section 91.36 (General Provisions related to Manure Management) and Act 38 (Nutrient Management).

As of the date of the establishment of this Ordinance, non-point source (agricultural) TMDLs are established in the following watersheds (refer to the Dauphin County Act 167 Plan for stream reaches with established TMDLs):

Conewago Creek Watershed

Unnamed Tributary to Bow Creek Watershed

Wiconisco Creek Watershed

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### Little Wiconisco Creek

This section shall apply also to agricultural activities conducted in watersheds where TMDLs are established in the future.

**ARTICLE V: Floodplain Standards**

**§ Section 226-501. Floodplain Requirements – RESERVED**

**ARTICLE VI: Riparian Buffer Standards**

**§ Section 226-601 Riparian Buffer Requirements – RESERVED**



**ARTICLE VII: Design Criteria**

**§ Section 226-701. Design Criteria for Stormwater Management & Drainage Facilities**

General Design Guidelines:

Stormwater shall not be transferred from one watershed to another, unless (1) the watersheds are sub-watersheds of a common watershed which join together within the perimeter of the property; (2) the effect of the transfer does not alter the peak rate discharge onto adjacent lands; or (3) easements from the affected landowner(s) are provided.

Consideration shall be given to the relationship of the subject property to the drainage pattern of the watershed. A concentrated discharge of stormwater to an adjacent property shall be within an existing watercourse or confined in an easement or returned to a pre-development flow type condition.

Stormwater BMPs and recharge facilities are encouraged (e.g., rooftop storage, drywells, cisterns, recreation area ponding, diversion structures, porous pavements, holding tanks, infiltration systems, stream channel storage, in-line storage in storm sewers, and grading patterns). They shall be located, designed, and constructed in accordance with the latest technical guidance published by PADEP, provided they are accompanied by detailed engineering plans and performance capabilities and supporting site specific soils, geology, runoff and groundwater and infiltration rate data to verify proposed designs. Additional guidance from other sources may be accepted at the discretion of the Municipal Engineer (a pre-application meeting is suggested).

All existing and natural watercourses, channels, drainage systems and areas of surface water concentration shall be maintained in their existing condition unless an alteration is approved by the appropriate regulatory agency.

No outlet structure from a stormwater management facility, or swale, shall discharge directly onto a Municipal or State roadway.

The invert of all stormwater management facilities and underground infiltration/storage facilities shall be located a minimum of two (2) feet above the seasonal high groundwater table or other soil limiting zone. The invert of stormwater facilities may be lowered if adequate sub-surface drainage, which does not alter the existing water table level, is provided.

Any stormwater management facility may be required to be fenced with a minimum four (4) foot high fence of material acceptable to the Municipality. Gates with a minimum opening of ten (10) feet shall be provided for access.

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Stormwater management facilities excavated to carbonate rock must either be fitted with an impervious clay liner, or over-excavated four (4) feet and refilled with a suitable material mix. Suitable backfill material is subject to the approval of the Municipal Engineer.

The type, location, and number of landscaping and planting specification shall be provided for all stormwater management facilities and be specific for each type of facility.

Stormwater Management Facilities (with a depth of water equal to or greater than 3 feet measured from the lowest point inside a facility to the crest of the emergency spillway):

Any stormwater management facility designed to store runoff and requiring a berm or earthen embankment, shall be designed to provide an emergency spillway to handle peak rate of stormwater runoff up to and including the 100-year post-development flow, with a blocked primary outlet structure. The height of embankment must be set as to provide a minimum one (1) foot of freeboard through the spillway, above the maximum water surface elevation, computed when the spillway functions for the 100-year post-development inflow, with a blocked outlet structure. The primary outflow structure must be designed to pass all design storms (up to and including the 100-year event) without discharging through the emergency spillway. The maximum water depth within any stormwater management facility shall be no greater than eight (8) feet when functioning through the primary outlet structure.

Emergency spillways shall be armored to prevent erosion during the 100-year post-development flow, with blocked primary outlet structure. Synthetic liners or rip-rap may be used, and calculations sufficient to support proposed armor must be provided. An earthen plug must be used to accurately control the spillway invert if rip-rap is the proposed armoring material. Emergency spillway armor must extend up the sides of the spillway, and continue at full width to a minimum of ten (10) feet past the toe of slope.

A stormwater management facility berm cross sections must be at least five (5) feet wide at the top, and eight (8) feet wide through the emergency spillway. For fill embankments, the side slopes shall be no steeper than 3:1 on the inside of the facility and 2:1 on the outside of the facility. For cut slopes, the side slopes shall be no steeper than 2:1.

A cutoff and key trench of impervious material shall be provided under all embankments four (4) feet or greater in height.

Soils used for the construction of stormwater management facilities shall have low-erodibility factors ("K" factors) (refer to E&S Manual) and be identified on the SWM Site Plan.

Trash racks must be provided to prevent clogging of primary outflow structure stages for all orifices equivalent to twelve (12) inches or smaller in diameter.

Anti-seep collars must be provided on all outflow culverts in accordance with the methodology contained in the latest edition of the E&S Manual. An increase in seepage

length of 15 percent must be used in accordance with the requirements for permanent anti-seep collars.

Conventional, non-BMP stormwater management facilities (i.e. dry detention basins) must empty over a period of time not less than 24 hours and not more than 72 hours from the end of the facility's inflow hydrograph. Infiltration tests performed at the facility locations and proposed basin bottom depths, in accordance with the BMP Manual, must support time-to-empty calculations if infiltration is a factor in the sizing of the stormwater management facility.

Impervious low-flow channels are not permitted within stormwater management facilities to promote water quality and groundwater recharge for frequent storm events. Facilities designed as water quality / infiltration BMPs may have a bottom slope of zero. Minimal maintenance, saturation tolerant vegetation must be provided in basins designed as water quality / infiltration BMPs. Conventional, non-BMP stormwater management facilities must have a minimum slope of 1% extending radially out from the primary outlet structure. Water storage below the lowest outlet structure stage (i.e. dead storage) is permitted in stormwater management facilities designed as water quality / infiltration BMPs.

Stormwater management facilities bottom elevations must be greater than adjacent floodplain elevations (FEMA or HEC-RAS analysis). If no floodplain is defined, bottom elevations must be higher than existing ground elevations fifty (50) feet from top of stream bank in the facilities vicinity.

Basin outflow culverts discharging into floodplains must account for tailwater. Tailwater corresponding to the 100-year floodplain elevation may be used for all design storms, or the Applicant may elect to determine flood elevations of the adjacent watercourse for each design storm. The floodplain is assumed to be fifty (50) feet from top of stream bank in areas where a floodplain is not designated, or where no other evidence is provided.

Exceptions to these requirements may be made at the discretion of the Municipality for BMPs that retain or detain water, but are of a much smaller scale than traditional stormwater management facilities.

### Storm Sewer Facilities:

Storm sewers must be able to convey post-development runoff from a ten (10) year design storm without surcharging inlets where appropriate. When connecting to an existing storm sewer system, the Applicant must demonstrate that the proposed system will not exacerbate any existing stormwater problems and that adequate downstream capacity exists.

A minimum pipe size of fifteen (15) inches in diameter shall be used in all roadway systems (public or private) proposed for construction. Pipes shall be designed to provide a minimum velocity of two and one-half (2 1/2) feet per second when flowing full, but in all cases, the slope shall be no less than 0.5%. Arch pipe of equivalent cross-sectional area may be substituted in lieu of circular pipe where cover or utility conflict conditions exist.

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In proposed curbed roadway sections, the maximum encroachment of water on the roadway pavement shall not exceed half of a through travel lane or one (1) inch less than the depth of curb during the ten (10) year design storm of five (5) minute duration. Gutter depth shall be verified by inlet capture/capacity calculations that account for road slope and opening area. The maximum distance between inlets in curbed roadway sections shall be no more than 600 feet, however access to underground pipes shall be provided every 300 feet.

Standard Type “C” inlets with 8” hoods shall be used along vertical concrete curbs roadway networks. Type “C” inlets with 10” hoods that provide a 2” sump condition may be used with approval of the Municipal Engineer when roadway longitudinal slopes are 1.0% or less.

For inlets containing a change in pipe size, the elevation for the crown of the pipes shall be the same or the smaller pipe’s crown shall be at a higher elevation.

All inlets shall provide a minimum 2” drop between the lowest inlet pipe invert elevation and the outlet pipe invert elevation.

On curbed sections, a double inlet shall be placed at the low point of sag vertical curves, or an inlet shall be placed at the low point and on each side of the low point at a distance not to exceed 100 feet, or at an elevation not to exceed 0.2 feet above the low point.

At all roadway low points, swales and easements shall be provided behind the curb or swale and through adjacent properties to channelize and direct any overflow of stormwater runoff away from dwellings and structures.

Inlets shall be placed so drainage cannot cross intersections or street centerlines.

All inlets in paved areas shall have heavy duty bicycle safe grating consistent with PennDOT Publication 72M. A note to this effect shall be added to the SWM Site Plan or inlet details therein.

Inlets must be sized to accept the specified pipe sizes without knocking out any of the inlet corners. All pipes entering or exiting inlets shall be cut flush with the inlet wall. A note to this effect shall be added to the SWM Site Plan or inlet details therein.

Inlets shall have weep holes covered with geotextile fabric placed at appropriate elevations to completely drain the sub grade prior to placing the base and surface course on roadways.

Inlets, junction boxes, or manholes greater than five (5) feet in depth shall be equipped with ladder rungs and shall be detailed on the SWM Site Plan.

Inlets shall not have a sump condition in the bottom (unless designed as a water quality BMP). Pipes shall be flush with the bottom of the box or concrete channels shall be poured.

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Inlets, manholes, pipes, and culverts shall be constructed in accordance with the specifications set forth in PennDOT's Publication 408, latest edition, and as detailed in the PennDOT's Publication 72M - Standards for Roadway Construction (RC), latest edition, or as approved by the Municipal Engineer. All material and construction details (inlets, manholes, pipe trenches, etc.), must be shown on the SWM Site Plan, and a note added that all construction must be in accordance with PennDOT's Publication 408 and PennDOT's Publication 72M, latest edition. A note shall be added to the plan stating that all frames, concrete top units, and grade adjustment rings shall be set in a bed of full mortar according to Publication 408.

Accessible drainage structures shall be located on continuous storm sewer system at all vertical dislocations, at all locations where a transition in storm sewer pipe sizing is required, at all vertical and horizontal angle points exceeding five (5) degrees, and at all points of convergence of two (2) or more storm sewer pipes.

All storm drainage piping (equal to or greater than 12") discharging to the ground surface shall be provided with either reinforced concrete headwalls and end sections or plastic and metal pipe end sections compatible with the pipe size involved in accordance with PennDOT Publication 408 and Publication 72M.

Outlet protection shall be provided at all surface discharge points with storm drainage piping (equal to or greater than 12") in order to minimize erosion consistent with the E&S Manual.

Pavement base drain shall be provided at all low point in cut areas, toe of slope areas, and other areas as dictated by proven engineering principles and design judgment. All base drain shall be in accordance with PennDOT Publication 408.

### Swale Conveyance Facilities:

Swales must be able to convey post-development runoff from a 10-year design storm with six (6) inches of freeboard to top of the swale.

Swales shall have side slopes no steeper than 3:1.

All swales shall be designed, labeled on the SWM Site Plan, and details provided to adequately construct and maintain the design dimension of the swales.

Swales shall be designed for stability using velocity or shear criteria. Velocity criteria may be used for channels with less than 10% slope. Shear criteria may be used for all swales.

Documentation must be provided to support velocity and/or shear limitations used in calculations.

Where swale bends occur, the computed velocities or shear stresses shall be multiplied by the following factor for the purpose of designing swale erosion protection:

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1.75 – When swale bend is 30 to 60 degrees

2.00 – When swale bend is 60 to 90 degrees

2.50 – When swale bend is 90 degrees or greater

Swales must be designed for both temporary and permanent conditions in accordance with the latest E&S Manual.

### § Section 226-702. Calculation Methodology

All calculations shall be consistent with the guidelines set forth in the BMP Manual.

Stormwater runoff from all development sites shall be calculated using either the Rational Method or a Soil Cover Complex methodology. Methods shall be selected by the Qualified Professional based on the individual limitations and suitability of each method for a particular site.

Rainfall Values:

Rational Method – The Pennsylvania Department of Transportation Drainage Manual, Intensity-Duration-Frequency Curves, Publication 584, Chapter 7A, latest edition, shall be used in conjunction with the appropriate time of concentration and return period.

Soil Cover Complex Method – The Soil Conservation Service Type II, 24-hour rainfall distribution shall be used in conjunction with rainfall depths from NOAA Atlas 14 or consistent with the following table.

Return Interval (Year)	24-hour Rainfall Total (inches)
1	2.40
2	2.90
10	4.36
25	5.43
50	6.38
100	7.48

Peak Flow Rates:

Rational Method – May be used for drainage areas up to 20 acres. Extreme caution should be used by the Qualified Professional if the watershed has more than one main drainage

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channel, if the watershed is divided so that hydrologic properties are significantly different in one versus the other, if the time of concentration exceeds 60 minutes, or if stormwater runoff volume is an important factor. The combination of Rational Method hydrographs based on timing shall be prohibited.

The use of the Modified Rational Method to design stormwater management facilities must be approved by the Municipal Engineer.

Soil Cover Complex Method – May be used for drainage areas greater than 20 acres. This method is recommended for design of stormwater management facilities and where stormwater runoff volume must be taken into consideration.

For comparison of peak flow rates, flows shall be rounded to a tenth of a cubic foot per second (cfs).

Runoff Coefficients:

Rational Method – Use Table C-1 (Appendix C).

Soil Cover Complex Method – Use Table C-2 (Appendix C).

For the purposes of pre-development peak flow rate and volume determination, existing non-forested pervious areas conditions shall be considered as meadow (good condition).

For the purposes of pre-development peak flow rate and volume determination, twenty (20) percent of existing impervious area, when present on the project site, and contained within the new proposed limit of disturbance, shall be considered meadow (good condition) for pre-development hydrologic calculations for re-development.

Design Storm:

All drainage facilities (inlets, pipes, and swales) shall be designed to safely convey the 10-year storm.

All stormwater management facilities shall be verified by routing the proposed 1-year, 2-year, 10-year, 25-year, 50-year, and 100-year hydrographs through the facility using the storage indication (Modified Puls) method. The design storm hydrograph shall be computed using a calculation method that produces a full hydrograph.

The stormwater management and drainage system shall be designed to safely convey the post-development 100-year storm event to stormwater detention facilities, for the purpose of meeting peak rate control.

All structures (culvert or bridges) proposed to convey runoff under a Municipal road shall be designed to pass the 50-year design storm with a minimum one (1) foot of freeboard measured below the lowest point along the top of the roadway.

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All design within State or Federal right-of-way's or that falls under the design criteria of any higher authority must meet the requirements of that agency in addition to meeting the minimum requirements of this Ordinance.

Time of Concentration:

Time of concentration shall be computed using the NRCS Segmental Method as described in TR-55 (SCS 1986 or most current update). The length of sheet flow shall be limited to 100-feet. The Manning's "n" Roughness Coefficient for TR-55 sheet flow can be found in Table C-4 (Appendix C). Time of concentration for channel and pipe flow shall be computed using Manning's equation.

For sites with insignificant channelized flow and less than 20% imperviousness coverage, the time of concentration may be computed using the NRCS equation for lag time:

Time of Concentration =  $T_c = [(T_{lag}/.6) * 60]$  (minutes)

$$T_{lag} = L^{0.8} \frac{(S + 1)^{0.7}}{1900\sqrt{Y}}$$

Where:

$T_{lag}$  = Lag time (hours)

L = Hydraulic length of watershed (feet)

Y = Average overland slope of watershed (percent)

S = Maximum retention in watershed as defined by:  $S = [(1000/CN) - 10]$

CN = NRCS Curve Number for watershed as defined by the NRCS Loss Method

Additionally, the following provisions shall apply to calculations for time of concentration:

The post-development time of concentration shall never be greater than the pre-development time of concentration for any watershed or subwatershed.

The minimum time of concentration for any watershed shall be five (5) minutes.

The designer may choose to assume a five (5) minute time of concentration for any post-development watershed or sub-watershed without providing any computations.

The designer must provide computations for all pre-development time of concentration paths. A five (5) minute time of concentration cannot be assumed for pre-development.



Un-detained fringe areas (areas that are not tributary to a stormwater facility but where a reasonable effort has been made to convey runoff from all new impervious coverage to best management practices) may be assumed to represent the pre-development conditions for purpose of time of concentration calculations.

Drainage areas tributary to sinkholes or closed depressions in areas underlain by limestone or carbonate geologic features shall be excluded from the modeled point of analysis defining pre-development flows. If left undisturbed during construction activities, areas draining to closed depressions may also be removed from peak runoff rates in the post-development analysis. New, additional contributing runoff shall not be directed to existing sinkholes or closed depressions.

Where uniform flow is anticipated, the Manning's equation shall be used for hydraulic computations and to determine the capacity of open channels, pipes, and storm sewers. The Manning's equation should not be used for analysis of pipes under pressure flow or for analysis of culverts. Manning's "n" values shall be obtained from Table C-3 (Appendix C). Inlet control shall be checked at all inlet boxes to ensure the headwater depth during the ten (10) year design event is contained below the top of grate for each inlet box.

The Municipality may approve the use of any generally accepted full hydrograph approximation technique that shall use a total runoff volume that is consistent with the volume from a method that produces a full hydrograph.

The Municipality has the authority to require that computed existing runoff rates be reconciled with field observations, conditions and site history. If the designer can substantiate, through actual physical calibration, that more appropriate runoff and time of concentration values should be utilized at a particular site, then appropriate variations may be made upon review and approval of the Municipality.

## **ARTICLE VIII: SWM Site Plan & Report Requirements**

### **§ Section 226-801. General Requirements**

For any of the activities regulated by this Ordinance and not eligible for the exemptions provided in Section 226-302, the final approval of subdivision and/or land development plans, the issuance of any building or occupancy permit, or the commencement of any land disturbance activity, may not proceed until the Applicant has received written approval of a SWM Site Plan from the Penbrook Borough.

### **§ Section 226-802. SWM Site Plan & Report Contents**

The SWM Site Plan & SWM Site Report shall consist of all applicable calculations, maps, and plans. All SWM Site Plan materials shall be submitted to the Penbrook Borough in a

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format that is clear, concise, legible, neat and well organized; otherwise, the SWM Site Plan shall be rejected.

Appropriate sections from the Municipal Subdivision and Land Development Ordinance, and other applicable local ordinances, shall be followed in preparing the SWM Site Plan.

SWM Site Plan shall include (but not limited to):

Plans no larger than 24-inch x 36-inch sheets and in a form that meets the requirements for recording in the Office of the Recorder of Deeds of Dauphin County.

The name of the development; name and location address of the property site; name, address, and telephone number of the Applicant/Owner of the property; and name, address, telephone number, email address, and engineering seal of the individual preparing the SWM Site Plan.

The date of submission and dates of all revisions.

A graphical and written scale on all drawings and maps.

A north arrow on all drawings and maps.

A location map at a minimum scale of one (1) inch equals one-thousand (1,000) feet.

Metes and bounds description of the entire tract perimeter.

Existing and final contours at intervals of two (2) feet.

Existing waterbodies within the project area including streams, lakes, ponds, field delineated wetlands or other bodies of water, sinkholes, flood hazard boundaries (FEMA delineated floodplains and floodways), areas of natural vegetation to be preserved, the total extent of the upstream area draining through the site, and overland drainage paths.

The location of all existing and proposed utilities, on-lot wastewater facilities, water supply wells, sanitary sewers, and water lines on and within fifty (50) feet of property lines.

A key map showing all existing man-made features beyond the property boundary that may be affected by the project.

Soil names and boundaries with identification of the Hydraulic Soil Group classification.

The proposed limit of disturbance line and associated proposed disturbed acres.

Proposed structures, roads, paved areas, and buildings, including plans and profiles of roads and paved areas and floor elevations of buildings.

Horizontal alignment, vertical profiles, and cross sections of all open channels, pipes, swales and other BMPs

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The location and clear identification of the nature of permanent stormwater BMPs.

The location of all erosion and sedimentation control facilities.

A minimum twenty (20) foot wide access easement around all stormwater management facilities that would provide ingress to and egress from a public right-of-way. In lieu of providing an easement to the public right-of-way, a note may be added to the plan granting the Penbrook Borough or their designees access to all easements via the nearest public right-of-way.

Construction details for all drainage and stormwater BMPs.

Construction details of any improvements made to sinkholes.

Identification of short-term and long-term ownership, operations, and maintenance responsibilities.

Notes and Statements:

A statement, signed by the landowner, acknowledging that the stormwater BMPs are fixtures that cannot be altered or removed without prior approval by the Municipality.

A statement referencing the Operation and Maintenance (O&M) Agreement and stating that the O&M Agreement is part of the SWM Site Plan.

A note indicating that Record Drawings will be provided for all stormwater management facilities prior to occupancy, or the release of financial security.

The following signature block for the Qualified Professional preparing the SWM Site Plan:

“I, \_\_\_\_\_, hereby certify that the Stormwater Management Plan meets all design standards and criteria of the Penbrook Borough’s Stormwater Management Ordinance.”

SWM Site Report shall include (but not limited to):

The name of the development; name and location address of the property site; name, address, and telephone number of the Applicant/Owner of the property; and name, address, telephone number, email address, and engineering seal of the individual preparing the SWM Site Report.

Project description narrative including expected project time schedule.

Location map showing the project site and its location relative to release rate districts.

Drainage area maps for all watersheds and inlets depicting the time of concentration paths.

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A detailed description of the existing site conditions. A detailed site evaluation shall be completed for projects proposed in areas of carbonate geology or karst topography, and other environmentally sensitive areas such as brownfields.

Complete hydrologic, hydraulic and structural computations, calculations, assumptions, and criteria for the design of all stormwater BMPs.

Description of, justification, and actual field results for infiltration testing with respect to the type of test and test location for the design of infiltration BMPs.

Calculations showing the total drainage area and impervious area loading rates to each BMP.

The effect of the project (in terms of runoff volumes, water quality, and peak flows) on surrounding properties and aquatic features and on any existing municipal stormwater collection system that may receive runoff from the project site.

Description of the proposed changes to the land surface and vegetative cover including the type and amount of impervious area to be added.

All applicable worksheets from Chapter 8 of the BMP Manual when establishing volume controls.

Identification of short-term and long-term ownership, operation, and maintenance responsibilities as well as schedules and costs for inspection and maintenance activities for each permanent stormwater or drainage BMP, including provisions for permanent access or maintenance easements.

Supplemental information to be provided prior to recording of the SWM Site Plan, as applicable:

Signed and executed Operations and Maintenance Agreement (Appendix A).

Signed and executed easements, as required for all on-site and off-site work.

An Erosion and Sedimentation Control Plan & approval letter from the Dauphin County Conservation District.

A NPDES Permit.

Permits from PADEP and ACOE.

A Geologic Assessment.

A Wetland Delineation Report.

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A Highway Occupancy Permit from PennDOT when utilization of a PennDOT storm drainage system is proposed or when proposed facilities would encroach onto a PennDOT right-of-way.

### **§ Section 226-803. SWM Site Plan & Report Submission**

The Applicant shall submit the SWM Site Plan & Report for the Regulated Activity.

Three (3) copies of the SWM Site Plan & Report shall be submitted to the Municipality and may be distributed as follows:

Two (2) copies for the Municipality accompanied by the requisite Municipal Review Fee, as specified in this Ordinance

One (1) copy for the Municipal Engineer

Additional copies shall be submitted as requested by the Municipality, Tri-County Regional Planning Commission, Dauphin County Conservation District or PADEP.

### **§ Section 226-804. SWM Site Plan & Report Review**

The Municipality shall require receipt of a complete SWM Site Plan & Report as specified in this Ordinance. The Municipality shall review the SWM Site Plan & Report for consistency with the purposes, requirements, and intent of this Ordinance.

The Municipality shall not approve any SWM Site Plan & Report that is deficient in meeting the requirements of this Ordinance. At its sole discretion and in accordance with this Article, when a SWM Site Plan & Report is found to be deficient, the Municipality may disapprove the submission and require a resubmission, or in the case of minor deficiencies, the Municipality may accept submission of modifications.

The Municipality shall notify the Applicant in writing within forty-five (45) calendar days whether the SWM Site Plan & Report is approved or disapproved if the SWM Site Plan & Report is not part of a Subdivision or Land Development Plan. If the SWM Site Plan & Report involves a Subdivision or Land Development Plan, the timing shall follow the Subdivision and Land Development process according to the Municipalities Planning Code.

The Municipal Building Permit Office shall not issue a building permit for any Regulated Activity if the SWM Site Plan & Report has been found to be inconsistent with this Ordinance, as determined by the Municipality. All required permits from PADEP must be obtained prior to issuance of a building permit.

### **§ Section 226-805. Modification of Plans**

A modification to a submitted SWM Site Plan & Report for a development site that involves a change in stormwater management facilities or techniques, or that involves the relocation

or re-design of stormwater management facilities, or that is necessary because soil or other conditions are not as stated on the SWM Site Plan as determined by the Municipality, shall require a resubmission of the modified SWM Site Plan in accordance with this Ordinance.

**§ Section 226-806. Resubmission of Disapproved SWM Site Plan & Report**

A disapproved SWM Site Plan & Report may be resubmitted with the revisions addressing the Municipality's concerns documented in writing, to the Municipality in accordance with this Ordinance. The applicable Municipal Review Fee must accompany a resubmission of a disapproved SWM Site Plan & Report.

**§ Section 226-807. Authorization to Construct and Term of Validity**

The Municipality's approval of a SWM Site Plan & Report authorizes the Regulated Activities contained in the SWM Site Plan for a maximum term of validity of five (5) years following the date of approval. The Municipality may specify a term of validity shorter than five (5) years in the approval for any specific SWM Site Plan. Terms of validity shall commence on the date the Municipality signs the approval for a SWM Site Plan. If stormwater management facilities included in the approved SWM Site Plan have not been constructed, or if a Record Drawing of these facilities has not been approved within this time, then the Municipality may consider the SWM Site Plan disapproved and may revoke any and all permits or approvals.

**§ Section 226-808. Record Drawings, Completion Certificate and Final Inspection**

The Applicant shall be responsible for providing Record Drawings of all stormwater BMPs included in the approved SWM Site Plan. The Record Drawings and an explanation of any discrepancies with the approved SWM Site Plan shall be submitted to the Municipality.

The Record Drawings shall include a certification of completion signed by a Qualified Professional verifying that all permanent stormwater BMPs have been constructed according to the approved SWM Site Plan & Report.

After receipt of the Record Drawings and certification of completion, the Municipality may conduct a final inspection.

**ARTICLE IX: Easements**

**§ Section 226-901. Easements**

Easements shall be established to accommodate the existence of drainageways.

Easements shall be established for all on-site stormwater management or drainage facilities, including but not limited to: detention facilities (above or below ground), infiltration

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facilities, all stormwater BMPs, drainage swales, and drainage facilities (inlets, manholes, pipes, etc.).

Easements are required for all areas used for off-site stormwater control.

All easements shall be a minimum of twenty (20) feet wide.

Easements shall provide ingress to and egress from a public right-of-way. In lieu of providing an easement to the public right-of-way, a note may be added to the plan granting the Municipality or their designees access to all easements via the nearest public right-of-way.

Where possible, easements shall be centered on side and/or rear lot lines.

The following note shall be placed on the recorded plan, “Nothing shall be planted or placed within the easement which would adversely affect the function of the easement, or conflict with any conditions associated with such easement.”

A note shall be placed on the SWM Site Plan identifying the party responsible for assuring the continued functionality and required maintenance of any easement.

### **ARTICLE X: Maintenance Responsibilities**

#### **§ Section 226-1001. Financial Guarantee**

The Applicant shall provide a Financial Guarantee to the Municipality for the timely installation and proper construction of all stormwater management controls as required by the approved SWM Site Plan and this Ordinance, equal to 110% of the full construction cost of the required controls in accordance with the Municipalities Planning Code.

At the completion of the project and as a prerequisite for the release of the Financial Guarantee, the Applicant shall:

Provide a certification of completion from an engineer, architect, surveyor or other qualified professional, verifying that all permanent facilities have been constructed according to the SWM Site Plan & Report and approved revisions thereto.

Provide a set of Record Drawings.

Request a final inspection from the Municipality to certify compliance with this Ordinance, after receipt of the certification of completion and Record Drawings by the Municipality.

#### **§ Section 226-1002. Maintenance Responsibilities**

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The SWM Site Plan & Report for the project site shall describe the future operation and maintenance responsibilities. The operation and maintenance description shall outline required routine maintenance actions and schedules necessary to ensure proper operation of the stormwater control facilities.

The SWM Site Plan & Report for the project site shall establish responsibilities for the continuing operation and maintenance of all proposed stormwater control facilities, consistent with the following principals:

If a development consists of structures or lots that are to be separately owned and in which streets, sewers, and other public improvements are to be dedicated to the Municipality, stormwater control facilities/BMPs may also be dedicated to and maintained by the Municipality.

If a development site is to be maintained in a single ownership or if sewers and other public improvements are to be privately owned and maintained, then the ownership and maintenance of stormwater control facilities/BMPs shall be the responsibility of the owner or private management entity.

Facilities, areas, or structures used as stormwater BMPs shall be enumerated as permanent real estate appurtenances and recorded as deed restrictions or easements that run with the land.

The SWM Site Plan & Operation and Maintenance (O&M) Agreement shall be recorded as a restrictive deed covenant that runs with the land.

The Municipality may take enforcement actions against an Applicant for failure to satisfy any provision of this Ordinance.

The Municipality, upon recommendation of the Municipal Engineer, shall make the final determination on the continuing maintenance responsibilities prior to final approval of the SWM Site Plan & Report. The Municipality may require a dedication of such facilities as part of the requirements for approval of the SWM Site Plan. Such a requirement is not an indication that the Municipality will accept the facilities. The Municipality reserves the right to accept or reject the ownership and operating responsibility for any portion of the stormwater management controls.

If the Municipality accepts ownership of stormwater BMPs, the Municipality may, at its discretion, require a fee from the Applicant to the Municipality to offset the future cost of inspections, operations, and maintenance.

It shall be unlawful to alter or remove any permanent stormwater BMP required by an approved SWM Site Plan, or to allow the property to remain in a condition, which does not conform to an approved SWM Site Plan, unless the Municipality grants an exception in writing.



**§ Section 226-1003. Maintenance Agreement for Privately Owned Stormwater Facilities**

Prior to final approval of the SWM Site Plan & Report, the Applicant shall sign the Operation and Maintenance (O&M) Agreement (Appendix A) covering all stormwater control facilities that are to be privately owned. The Operation and Maintenance (O&M) Agreement shall be recorded with the SWM Site Plan and made a part hereto.

Other items may be included in the Operation and Maintenance (O&M) Agreement where determined necessary to guarantee the satisfactory operation and maintenance of all BMP facilities. The Operation and Maintenance (O&M) Agreement shall be subject to the review and approval of the Municipality and the Municipal Solicitor.

The owner is responsible for operation and maintenance of the stormwater BMPs. If the owner fails to adhere to the Operation and Maintenance (O&M) Agreement, the Municipality may perform the services required and charge the owner appropriate fees. Non-payment of fees may result in a lien against the property.

**ARTICLE XI: Inspections**

**§ Section 226-1101. Schedule of Inspections**

PADEP or its designees normally ensure compliance with any permits issued, including those for stormwater management. In addition to PADEP compliance programs, the Municipality or their municipal assignee may inspect all phases of the installation of temporary or permanent stormwater management facilities.

During any stage of Earth Disturbance Activities, if the Municipality determines that the temporary or permanent stormwater management facilities are not being installed in accordance with the approved SWM Site Plan, the Municipality shall revoke any existing permits or approvals until a revised SWM Site Plan is submitted and approved as specified in this Ordinance.

Stormwater BMPs shall be inspected by the landowner, or the landowner's designee according to the inspection schedule described on the SWM Site Plan for each BMP.

The Municipality may require copies of the inspection reports, in a form as stipulated by the Municipality.

If such inspections are not conducted or inspection reports not submitted as scheduled, the Municipality, or their designee, may conduct such inspections and charge the owner appropriate fees. Non-payment of fees may result in a lien against the property.

Prior to conducting such inspections, the Municipality shall inform the owner of its intent to conduct such inspections. The owner shall be given thirty (30) days to conduct required inspections and submit the required inspection reports to the Municipality.

**§ Section 226-1102. Right-of-Entry**

Upon presentation of proper credentials, duly authorized representatives of the Municipality may enter at reasonable times, upon any property within the Municipality, to inspect the implementation, condition, or operations and maintenance of the stormwater BMPs in regard to any aspect governed by this Ordinance.

Stormwater BMP owners and operators shall allow persons working on behalf of the Municipality ready access to all parts of the premises for the purposes of determining compliance with this Ordinance.

Persons working on behalf of the Municipality shall have the right to temporarily locate on any stormwater BMP in the Municipality such devices, as are necessary, to conduct monitoring and/or sampling of the discharges from such stormwater BMP.

Unreasonable delay in allowing the Municipality access to a stormwater BMP is a violation of this Ordinance.

**Section 226-1103. Inspections**

The landowner or the owner's designee (including the Municipality for dedicated and owned facilities) shall inspect SWM BMPs, facilities and/or structures installed under this Ordinance according to the following frequencies, at a minimum, to ensure the BMPs, facilities and/or structures continue to function as intended:

1. Annually for the first 5 years.
2. Once every 3 years thereafter.
3. During or immediately after the cessation of a precipitation event of 3 inches or more precipitation within a 24-hour period.

A written inspection report shall be created to document each inspection. The inspection report shall contain the date and time of the inspection, the individual(s) who completed the inspection, the location of the BMP, facility or structure inspected, observations on performance, and recommendations for improving performance, if applicable. Inspection reports shall be submitted to the Municipality within 30 days following completion of the inspection. <sup>123</sup>

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<sup>123</sup> Section 226-1103 added Ordinance 2022-04 August 1, 2022

**ARTICLE XII: Enforcement and Penalties**

**§ Section 226-1201. Notification**

In the event that a person fails to comply with the requirements of this Ordinance, an approved SWM Site Plan, or fails to conform to the requirements of any permit or approval issued hereunder, the Municipality shall provide written notification, via certified mail, of the violation to the Landowner indicated on the O&M Agreement. Such notification shall set forth the nature of the violation(s) and establish a time limit for correction of these violation(s).

Failure to comply within the time specified shall subject such person to the penalties provisions of this Ordinance. All such penalties shall be deemed cumulative and shall not prevent the Municipality from pursuing any and all other remedies. It shall be the responsibility of the owner of the real property on which any Regulated Activity is proposed to occur, is occurring, or has occurred, to comply with the terms and conditions of this Ordinance.

**§ Section 226-1202. Enforcement**

The municipal governing body is hereby authorized and directed to enforce all of the provisions of this Ordinance. The approved SWM Site Plan shall be on file at the project site throughout the duration of the construction activity. The Municipality or their designee may make periodic inspections during construction.

Adherence to Approved SWM Site Plan:

It shall be unlawful for any person, firm, or corporation to undertake any Regulated Activity on any property except as provided for by an approved SWM Site Plan and pursuant to the requirements of this Ordinance.

It shall be unlawful to alter or remove any control structure required by the SWM Site Plan pursuant to this Ordinance.

It shall be unlawful to allow a property to remain in a condition that does not conform to an approved SWM Site Plan.

**§ Section 226-1203. Public Nuisance**

A violation of any provision of this Ordinance is hereby deemed a Public Nuisance.

Each day that a violation continues shall constitute a separate violation.

**§ Section 226-1204. Suspension and Revocation**

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Any approval or permit issued by the Municipality may be suspended or revoked for:

Non-compliance with or failure to implement any provision of the approved SWM Site Plan or Operation and Maintenance (O&M) Agreement.

A violation of any provision of this Ordinance or any other applicable law, Ordinance, rule or regulation relating to the Regulated Activity.

The creation of any condition or the commission of any act, during the Regulated Activity which constitutes or creates a hazard or nuisance, pollution, or which endangers the life or property of others.

A suspended approval or permit may be reinstated by the Municipality when:

The Municipality or their designee has inspected and approved the corrections to the violation(s) that caused the suspension.

The Municipality is satisfied that the violation(s) has been corrected.

An approval that has been revoked by the Municipality cannot be reinstated. The Applicant may apply for a new approval under the provisions of this Ordinance.

### **§ Section 226-1205. Penalties**

Anyone violating the provisions of this Ordinance shall be guilty of a summary offense and upon conviction, shall be subject to a fine of not more than \$300.00 for each violation, recoverable with costs. Each day that the violation continues shall be a separate offense and penalties shall be cumulative.

In addition, the Municipality, through its solicitor, may institute injunctive, mandamus, or any other appropriate action or proceeding at law or in equity for the enforcement of this Ordinance. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus, or other appropriate forms of remedy or relief.

### **§ Section 226-1206. Appeals**

Any person aggrieved by any action of the Municipality or its designee, relevant to the provisions of this Ordinance, may appeal to the Municipality within thirty (30) days of that action.

Any person aggrieved by any decision of the Municipality, relevant to the provisions of this Ordinance, may appeal to the Dauphin County Court of Common Pleas within thirty (30) days of the Municipality's decision.

**ARTICLE XIII: Prohibitions**

**§ Section 226-1301. Prohibited Discharges and Connections**

- A. Any drain (including indoor drains and sinks), or conveyance whether on the surface or underground, that allows any non-stormwater discharge including sewage, process wastewater, and wash water to enter the Municipality's separate storm sewer system or Waters of the Commonwealth is prohibited.
- B. Any drain or conveyance connected from a commercial or industrial land use to the Municipality's separate storm sewer system, which has not been documented in plans, maps, or equivalent records, and approved by the Municipality is prohibited.
- C. No person shall allow, or cause to allow, discharges into the Municipality's separate storm sewer system or into surface Waters of the Commonwealth, which are not composed entirely of stormwater, except: (1) as provided in subsection 226-1301.D below, and (2) discharges allowed under a state or federal permit.
- D. The following discharges are authorized unless they are determined to be significant contributors to pollution to the Waters of the Commonwealth:
  - 1. Discharges or flows from firefighting activities.
  - 2. Discharges from potable water sources including water line flushing and fire hydrant flushing if such discharges do not contain detectable concentrations of Total Residual Chlorine (TRC).
  - 3. Non-contaminated irrigation water, water from lawn maintenance, landscape drainage and flows from riparian habitats and wetlands.
  - 4. Diverted stream flows and springs.
  - 5. Non-contaminated pumped ground water and water from foundation and footing drains and crawl space pumps.
  - 6. Non-contaminated HVAC condensation and water from geothermal systems.
  - 7. Residential (i.e., not commercial) vehicle wash water where cleaning agents are not utilized.

8. Non-contaminated hydrostatic test water discharges if such discharges do not contain detectable concentrations of TRC. <sup>124</sup>
- E. In the event that the Municipality or PADEP determines that any of the discharges identified in subsection 1301.D, significantly contribute to pollution of Waters of the Commonwealth, or is so notified by PADEP, the Municipality will notify the responsible person(s) to cease the discharge.
- F. Upon notice provided by the Municipality or PADEP under subsection 226-1301.E, the discharger will have a reasonable time, as determined by the Municipality or PADEP, to cease the discharge, consistent with the degree of pollution caused by the discharge.
- G. Disposal of substantial amounts of grass clippings by discarding them on the public right-of-way is hereby considered a prohibited act under this ordinance subject to the fines and penalties contained in Article IX. Grass clippings which remain on the public right-of-way are considered a public nuisance.

It shall be considered prima fascia evidence of a violation of this section if a substantial quantity of grass clippings are found on the public right-of-way surrounding any residential or commercial property in the Borough of Penbrook. Such evidence shall include a rebuttable presumption that the owner caused or permitted the disposal of substantial amounts of grass clippings on the public right of way. Grass clippings deposited on the public right-of-way by action of a tenant in possession shall include a rebuttable presumption that the owner of the property permitted the action of the tenant.

All deposits of grass clippings shall be removed from the public right-of-way on completion of the mowing process. Grass clippings may be deposited for collection with the rubbish and garbage from the premises by the designated collector. <sup>125</sup>

- H. Nothing in this Section shall affect a discharger's responsibilities under Commonwealth Law.

**§ Section 226-1302. Roof Drains**

Roof drains and sump pumps shall discharge to infiltration areas, vegetative BMPs, or pervious areas to the maximum extent practicable.

**§ Section 226-1303. Alteration of BMPs**

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<sup>124</sup> Section 226-1301 Section D updated Ordinance 2022-04 August 1, 2022

<sup>125</sup> Editor's Note: Amended by Ordinance 2013-2 dated September 4, 2013

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No person shall modify, remove, fill, landscape, or alter any existing stormwater BMP, facilities, areas, or structures unless it is part of an approved maintenance program, without the written approval of the Municipality.

No person shall place any structure, fill, landscaping, or vegetation into a stormwater BMP, facilities, areas, structures, or within a drainage easement which would limit or alter the functioning of the BMP without the written approval of the Municipality.

### **ARTICLE XIV: Fees and Expenses**

#### **§ Section 226-1401. General**

The fee required by this Ordinance is the Municipal Review Fee. The Municipal Review Fee shall be established by the Municipality to defray review costs incurred by the Municipality and the Municipal Engineer. The Applicant shall pay all fees.

#### **§ Section 226-1402. Expenses Covered by Fees**

The fees required by this Ordinance shall, at a minimum, cover:

Administrative and Clerical Costs.

Review of the SWM Site Plan & Report by the Municipality.

Pre-construction meetings.

Inspection of stormwater management facilities/BMPs and drainage improvements during construction.

Final inspection upon completion of the stormwater management facilities/BMPs and drainage improvements presented in the SWM Site Plan.

Any additional work required to enforce any permit provisions regulated by this Ordinance, correct violations, and assure proper completion of stipulated remedial actions.

#### **§ Section 226-1403. Recording of Approved SWM Site Plan and Related Agreements**

The owner of any land upon which permanent BMPs will be placed, constructed, or implemented, as described in the SWM Site Plan, shall record the following documents in the Office of the Recorder of Deeds of Dauphin County, within (30) days of approval of the SWM Site Plan by the Municipality:

The SWM Site Plan.

Operations and Maintenance (O&M) Agreement (Appendix A).

Easements under Section 226-901.

The Municipality may suspend or revoke any approvals granted for the project site upon discovery of the failure of the owner to comply with this Section.

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Appendix A: Operation and Maintenance Agreement

**OPERATION AND MAINTENANCE (O&M) AGREEMENT**  
**STORMWATER MANAGEMENT BEST MANAGEMENT PRACTICES (SWM BMPs)**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, (hereinafter the "Landowner"), and \_\_\_\_\_, Dauphin County, Pennsylvania, (hereinafter "Municipality");

**WITNESSETH**

**WHEREAS**, the Landowner is the owner of certain real property as recorded by deed in the land records of Dauphin County, Pennsylvania, Deed Book \_\_\_\_\_ at Page \_\_\_\_\_, (hereinafter "Property").

**WHEREAS**, the Landowner is proceeding to build and develop the Property; and

**WHEREAS**, the SWM Site Plan approved by the Municipality (hereinafter referred to as the "Plan") for the property identified herein, which is attached hereto as Appendix A and made part hereof, as approved by the Municipality, provides for management of stormwater within the confines of the Property through the use of BMPs; and

**WHEREAS**, the Municipality, and the Landowner, his successors and assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that on-site SWM BMPs be constructed and maintained on the Property; and

**WHEREAS**, the Municipality requires, through the implementation of the SWM Site Plan, that stormwater BMPs as required by said Plan and the Municipal Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, successors and assigns.

**NOW, THEREFORE**, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The Landowner shall construct the BMPs in accordance with the plans and specifications identified in the SWM Site Plan.
2. The Landowner shall operate and maintain the BMPs as shown on the Plan in good working order in accordance with the specific maintenance requirements noted on the approved SWM Site Plan.
3. The Landowner hereby grants permission to the Municipality, its authorized agents, and employees, to enter upon the property, at reasonable times and upon presentation of proper credentials, to inspect the BMPs whenever necessary. Whenever possible, the Municipality shall notify the Landowner prior to entering the property.
4. In the event the Landowner fails to operate and maintain the BMPs per paragraph 2, the Municipality or its representatives may enter upon the property and take whatever action is deemed necessary to maintain said BMPs. It is expressly understood and agreed that the Municipality is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Municipality. The Landowner may be subjected to the Penalties Section of the applicable Ordinance.
5. In the event the Municipality, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Municipality for all expenses (direct and indirect) incurred within ten (10) days of receipt of invoice from the Municipality.

6. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMPs by the Landowner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
7. The Landowner, its executors, administrators, assigns, and other successors in interests, shall release the Municipality from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the BMPs by the Landowner or Municipality.
8. The Municipality may inspect the BMPs whenever necessary to ensure their continued functioning.

This Agreement shall be recorded at the Office of the Recorder of Deeds of Dauphin County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, his administrators, executors, assigns, heirs and any other successors in interests, in perpetuity.

ATTEST:

WITNESS the following signatures and seals:

(SEAL)

For the Municipality:

\_\_\_\_\_

For the Landowner:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_ (City, Borough, Township)

County of Dauphin, Pennsylvania

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, whose commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, do hereby certify that \_\_\_\_\_ whose name(s) is/are signed to the foregoing Agreement bearing date of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
(SEAL)

## Appendix B: Low Impact Development Practices

### LOW IMPACT DEVELOPMENT PRACTICES ALTERNATIVE APPROACHES FOR MANAGING STORMWATER RUNOFF

Natural hydrologic conditions may be altered radically by poorly planned development practices, such as introducing unneeded impervious surfaces, destroying existing drainage swales, constructing unnecessary storm sewers, and changing local topography. A traditional drainage approach of development has been to remove runoff from a site as quickly as possible and capture it in a detention basin. This approach leads ultimately to the degradation of water quality, as well as expenditure of additional resources for detaining and managing concentrated runoff at some downstream location.

The recommended alternative approach is to promote practices that will minimize post-development runoff rates and volumes, which will minimize needs for artificial conveyance and storage facilities. To simulate pre-development hydrologic conditions, forced infiltration is often necessary to offset the loss of infiltration by creation of impervious surfaces. The ability of the ground to infiltrate runoff depends upon the soil types and its conditions.

Preserving natural hydrologic conditions requires careful alternative site design considerations. Site design practices include preserving natural drainage features, minimizing impervious surface area, reducing the hydraulic connectivity of impervious surfaces, and protecting natural depression storage. A well-designed site will contain a mix of all those features. The following describes various techniques to achieve the alternative approaches:

**Preserving Natural Drainage Features.** Protecting natural drainage features, particularly vegetated drainage swales and channels, is desirable because of their ability to infiltrate and attenuate flows and to filter pollutants. However, this objective is often not accomplished in land development. In fact, commonly held drainage philosophy encourages just the opposite pattern - streets and adjacent storm sewers typically are located in the natural headwater valleys and swales, thereby replacing natural drainage functions with a completely impervious system. As a result, runoff and pollutants generated from impervious surfaces flow directly into storm sewers with no opportunity for attenuation, infiltration, or filtration. Developments designed to fit site topography also minimize the amount of grading on site.

**Protecting Natural Depression Storage Areas.** Depressional storage areas have no surface outlet, or drain very slowly following a storm event. They can be commonly seen as ponded areas in farm fields during the wet season or after large runoff events. Traditional development practices eliminate these depressions by filling or draining, thereby obliterating their ability to reduce surface runoff volumes and trap pollutants. The volume and release-rate characteristics of depressions should be protected in the design of the development site. The depressions can be protected by simply avoiding the depression or by incorporating its storage as additional capacity in required detention facilities.

**Avoiding Introduction of Impervious Areas.** Careful site planning should consider reducing impervious coverage to the maximum extent possible. Building footprints, sidewalks, driveways, and other features producing impervious surfaces should be evaluated to minimize impacts on runoff.

**Reducing the Hydraulic Connectivity of Impervious Surfaces.** Impervious surfaces are significantly less of a problem if they are not directly connected to an impervious conveyance system (such as storm sewer). Two basic ways to reduce hydraulic connectivity are: routing of roof runoff over lawns; and reducing the use of storm sewers. Site grading should promote increasing travel time of stormwater runoff and should help reduce concentration of runoff to a single point in the development.

**Routing Roof Runoff Over Lawns.** Roof runoff can be easily routed over lawns in most site designs. The practice discourages direct connections of downspouts to storm sewers or parking lots. The practice also discourages sloping driveways and parking lots to the street. The routing of roof drains and crowning the driveway to allow runoff to discharge to pervious areas is desirable as the pervious area essentially acts as a filter strip.

**Reducing the Use of Storm Sewers.** By reducing the use of storm sewers for draining streets, parking lots, and backyards, the potential for accelerating runoff from the development can be greatly reduced. The practice requires greater use of swales and may not be practical for some development sites, especially if there are concerns for areas that do not drain in a “reasonable” time. The practice requires educating local citizens and public works officials, who expect runoff to disappear shortly after a rainfall event.

**Reducing Street Widths.** Street widths can be reduced by either eliminating on-street parking or by reducing cartway widths. Municipal planners and traffic designers should encourage narrower neighborhood streets, which ultimately could lower maintenance and maintenance related costs.

**Limiting Sidewalks to One Side of the Street.** A sidewalk on one side of the street may suffice in low-traffic neighborhoods. The lost sidewalk could be replaced with bicycle/recreational trails that follow back-of-lot lines. Where appropriate, backyard trails should be constructed using pervious materials.

**Using Permeable Paving Materials.** These materials include permeable interlocking concrete paving blocks or porous bituminous concrete. Such materials should be considered as alternatives to conventional pavement surfaces, especially for low use surfaces such as driveways, overflow parking lots, and emergency access roads.

**Reducing Building Setbacks.** Reducing building setbacks reduces driveway and entry walks and is most readily accomplished along low-traffic streets where traffic noise is not a problem.

**Constructing Cluster Developments.** Cluster developments can also reduce the amount of impervious area for a given number of lots. The biggest savings is in street length, which also will reduce costs of the development. Cluster development “clusters” the construction activity onto less-sensitive areas without substantially affecting the gross density of development.

In summary, careful consideration of the existing topography and implementation of a combination of the above-mentioned techniques may avoid construction of costly stormwater control measures. Other benefits include: reduced potential of downstream flooding, reduced water quality degradation of receiving streams and water bodies, enhancement of aesthetics, and reduction of development costs. Beneficial results include: more stable baseflows in receiving streams, improved groundwater recharge, reduced flood flows, reduced pollutant loads, and reduced costs for conveyance and storage.

## Chapter 230: STREETS AND SIDEWALKS

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]

### ARTICLE I: Snow and Ice Removal

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. IV, Art. 12, of the 1981 Code]

#### § 230-1. Cleaning of sidewalks.

The owners, tenants, occupiers and all others having charge, control or superintendence of any lots, lands, houses, stories, buildings and all other premises fronting on any public street or highway in the Borough of Penbrook shall clean, remove or cause to be cleaned or removed from the sidewalk in front of or alongside of their respective premises all the snow, ice, hail or sleet thereon fallen or formed within 24 hours after the same shall have ceased to fall or to be formed.

#### § 230-2. Liability for damages.

Any person in default of the provisions of this article shall be liable for all damages sustained by any person by reason of their neglect or failure to comply herewith.

#### § 230-3. Failure to remove snow.

In the event that such owner, tenant, occupier and all others having charge, control or superintendence of such premises fails to remove such snow, ice, hail or sleet as provided above, the borough shall cause the same to be removed and said owner, tenant, occupier or the person in charge thereof shall reimburse the borough for the costs of removal thereof.

#### § 230-4. Removal of snow.

No person shall throw or cause to be thrown the snow or ice from their sidewalk or other part of their premises onto a street after it has been opened by the borough, unless absolutely necessary for access to their premises or to comply with this article.

#### § 230-5. Violations and penalties. <sup>126</sup>

Any person violating the provisions of this article shall, upon conviction thereof, be subject to the penalties as set forth in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

### ARTICLE II: Repair of Sidewalks and Curbs

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch VII, Art. 2, of the 1981 Code]

#### § 230-6. Drainage facilities.

Sidewalks, curbs, retaining walls, gutters and proper drainage facilities are hereby established on all streets and highways of the Borough of Penbrook.

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<sup>126</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

**§ 230-7. Repairs.**

Every owner of property in the Borough of Penbrook shall, upon 45 days' notice from the Borough Council, construct, reconstruct or repair sidewalks, curbs, retaining walls, gutters and/or drainage facilities upon or adjacent to his property in accordance with plans and specifications provided by the Borough Engineer.

**§ 230-8. Completion of work.**

It shall be the duty of every property owner to notify the borough when such work shall be done and to permit the borough to inspect the forms when they have been set and to inspect the work when the forms have been removed to determine that the plans and specifications have been complied with.

**§ 230-9. Specifications for curbing.**

- A. Specifications for curbing shall include, among other things, that they shall:
- (1) Be 18 inches high, with 10 inches below street grade.
  - (2) Be eight inches thick at the bottom and seven inches thick at the top. Curb to be constructed with one-inch bevel from street grade to top of curb and three-fourths-inch radius on the front side and one-fourth-inch radius on the back side as per Pennsylvania Department of Transportation Standard Detail.
  - (3) Be constructed of cement concrete with a compressive strength of 3,300 pounds per square inch and meet the Pennsylvania Department of Transportation requirements for Class A cement concrete.
  - (4) Contain contraction joints spaced in uniform lengths or sections of 15 1/2 feet shall be less than four feet. Contraction joints may be either hand-formed or sawed joints. They shall be 3/16 of an inch wide and two inches deep. Construction joints shall have tooled edges. Premolded expansion joint material 3/4 of an inch thick shall be cut to conform to the cross-sectional area and be placed at structures and at the end of a day's work.
  - (5) Be constructed using rigid metal forms, except wood forms may be used on sharp curves and short tangent sections when approved by the Borough Engineer.
- B. All work and materials shall be in accordance with Pennsylvania Department of Transportation Form 408 and/or be approved by the Borough Engineer.

**§ 230-10. Engineering specifications for cement concrete sidewalks.** [Amended 2-6-1984 by Ord. No. 84-1]

- A. General. All work and materials shall be in accordance with Pennsylvania Department of Transportation Form 408, except as herein provided or as approved by the Borough Engineer.
- B. Size.
- (1) Cement concrete sidewalks shall be four feet wide by four inches thick,

except at driveways where the sidewalk shall be reinforced, be a minimum of six inches thick and be constructed in accordance with the accompanying details. <sup>127</sup> The sidewalk shall be separated from the curb by a one-half-inch expansion joint for the entire thickness of the sidewalk.

- (2) Replacement cement concrete sidewalks shall be constructed to the size of the adjoining sidewalk, as directed by the borough.
- C. Concrete. Concrete shall conform to Class A concrete for cement concrete sidewalks. Class A concrete shall have a minimum compressive strength of 3,300 pounds per square inch (psi) after 28 days.
  - D. Subbase. The subbase shall be six inches of compacted aggregate. The aggregate shall be stone, gravel or slag meeting the requirements for Type C or better, No. 2A material.
  - E. Preparation of foundation. The foundation for the bed shall be formed at a depth of 10 inches below and parallel with the finished surface of the sidewalk, unless otherwise approved by the borough. Unsuitable material shall be removed and replaced with approved material, and the foundation shall be thoroughly compacted and finished to a firm, even surface; moistened if required.
  - F. Placing subbase. The aggregate subbase shall be spread on the prepared foundation to form a compacted bed six inches in depth, unless otherwise directed by the Borough Engineer. This material shall be thoroughly compacted. Satisfactory outlets for draining the bed shall be provided.
  - G. Forms. Forms shall be of wood or metal, straight, free from warp and of sufficient strength when staked to resist the pressure of the concrete without springing. If wood, they shall be nominal two-inch planks surfaced on the inside of the top; or if metal, they shall be of approved section. Forms shall have a depth equal to the depth of the concrete and shall be thoroughly cleaned and oiled before concrete is placed against them. Forms that are worn, bent or damaged shall not be used.
  - H. Joints.
    - (1) Contraction joints shall be spaced in uniform lengths or sections of five feet. Contraction joints may be either hand-formed or sawed joints. They shall be 1/8-inch-wide and one inch deep. Sawing of joints shall be done as soon as practicable after the concrete has set sufficiently to preclude traveling during the sawing and before any shrinkage cracking occurs in the concrete. The saw cut depth may be decreased at the edge adjacent to a curb or structure to obtain a maximum depth that will avoid damage to them.
    - (2) Construction joints shall have tooled edges.
    - (3) The one-half-inch premolded expansion joint material shall be cut to conform to the cross-sectional area and be placed at structures and at the end of a day's

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**127. Editor's Note: See the drawings at the end of this chapter.**



work.

- (4) Where existing light standards, poles, fire hydrants and similar structures are within the limits of the sidewalk area, the concrete around such structures shall be scored in a block eight inches wider than the maximum dimension of the structure at the sidewalk elevation. Prior to placing the concrete around such structures, premolded expansion joint filler, 3/4 inch in thickness, shall be placed around the structure for the full depth of the concrete in the sidewalk.
  - (5) Where a traffic control sign had been previously installed in the sidewalk, a three-and-one-half-inch to four-inch diameter hole shall be cast through the entire thickness of the concrete. The hole shall be cast at the exact same location as the previously installed sign.
- I. Placing concrete. The concrete shall be placed in the forms in horizontal layers. The concrete shall be four inches in depth unless otherwise indicated on the drawings <sup>128</sup> or specified. The concrete shall be struck off and have a wood float or brush finish. Unless otherwise directed, an edger having a one-fourth-inch radius shall be used for edging all joints.
  - J. Removal of forms. Side forms shall not be removed within 12 hours after the concrete has been placed. After removal of the forms, minor honeycombed areas shall be filled with mortar composed of one part of cement and two parts of fine aggregate. Major honeycombed areas will be considered as defective work and shall be removed and replaced at no expense to the borough.
  - K. Curing.
    - (1) The newly poured sidewalks shall be cured and protected. In cool weather temperatures below 35° F., sidewalks shall be cured as directed by the Borough Engineer.
    - (2) In warm weather, the sidewalks shall be kept moist for a period of not less than three days, or longer if directed, and shall be protected from the elements by a burlap covering which is not less than seven ounces per square yard in weight, in a manner satisfactory to the Borough Engineer.
  - L. Backfilling. After the concrete has cured for a period of not less than 72 hours, the space adjacent to the sidewalk shall be backfilled with approved material in layers of not more than four inches in depth, which shall be thoroughly compacted mechanically to the required elevation and cross section.
  - M. Handicapped ramps. Handicapped ramps shall be installed at locations directed by the borough.

**§ 230-11. Maintenance.**

Sidewalks, curbs, retaining walls, gutters and drainage facilities shall be built and maintained

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**128. Editor's Note: The drawings are included at the end of this chapter.**

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at the expense of the owner of the abutting premises and shall be kept in good repair and in a safe condition, free of ice and snow or other obstructions.

### § 230-12. Notice of construction.

Notice of such construction, reconstruction or repair shall be served by certified mail upon the property owner if he is a resident of the borough; upon the agent or tenant, if the owner is a nonresident; or if service cannot be made thereby, by posting the premises.

### § 230-13. Refusal to comply; collection of costs.

In the event that the owner refuses or neglects to comply with the notice so served, the Borough Secretary is hereby authorized to prepare specifications and advertise for bids for such construction, reconstruction or repairs, and the President and Secretary are authorized to enter into a contract for the same, or the Borough Council may cause the same to be done by borough employees and collect from the owners the cost of labor and materials, plus 10% thereof, in accordance with existing law.

### § 230-14. Failure to pay.

In the event of the failure of the property owner to pay the borough as provided above, the borough may, within six months of completion of the construction, reconstruction or repair of any sidewalk, curb, gutter or drain as provided herein, file a municipal claim against that property owner as provided by general law or may within six months thereof collect the same by action of assumpsit.

### § 230-15. Penalty and interest.

Bills are payable at face 30 days following the date rendered. Bills unpaid after 30 days shall have imposed thereon a penalty of 5% of the amount then due, and after 90 days, all unpaid accounts shall bear interest at the rate of 1 1/2% per month until fully paid.

## ARTICLE III: Excavations <sup>129</sup>

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. VII, Art. 3, of the 1981 Code]

### SECTION 2. Purpose

It shall be unlawful for any person, firm, association or corporation to construct, install, repair, replace, line, upgrade, abandon, any Utility or Facility located either above or below ground located within the Borough's public right-of-way, including the installation, opening, excavation, boring, bursting, compaction, paving/resurfacing (either temporary or permanent) of any improved or unimproved surface in the Penbrook Borough right-of-way, including service lines privately owned and/or maintained by individual Property Owners in the Borough without having first obtained a Permit therefore from the building code and zoning officer of the Borough.

### SECTION 3. Definitions

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<sup>129</sup> Amended Ordinance 2024-03 on Aug 5, 2024: Replace all of Article III

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**Backfill** – Material used to replace or the act of replacing material removed during construction.

**Best Management Practices (BMP's)** – Erosion, sedimentation and stormwater practices and structures installed to reduce pollution and flooding. BMPs shall conform to the Commonwealth of Pennsylvania, Department Of Environmental Protection, Storm Water Management Manual.

**Borough** – Penbrook Borough, Dauphin County, Pennsylvania.

**Borough Inspector** – The Borough Inspector may consist of the Zoning Officer, Building Code Officer, Borough Engineer, or other suitable staff member, including contract/consultant staff, as designated by the Borough Council.

**Borough Engineer** – Professional Engineer, licensed in the Commonwealth of Pennsylvania, employed or contracted by the Borough.

**Driveway** – An Improved Surface for vehicular traffic which provide access between a street and a lot. For the purposes of this ordinance, “driveway” shall be construed to mean any road, alley, lane or other entrance suitable for use by automobiles for ingress and egress onto a street maintained either by the Borough or the Commonwealth of Pennsylvania for all residential uses.

**Emergency** – An unforeseen occurrence or combination of circumstances which calls for immediate action or remedy.

**Emergency Repair** – Repair to a Facility undertaken to address damage resulting from a vehicle accident, collision, failed component or storm damage.

**Erosion and Sedimentation** – The action of water on the degradation of soil or other materials which are required to be controlled by the Clean Water Act.

**Excavation** – Removal of material within the Borough's right-of-way, including auguring for the installation of Utility poles.

**Facility** – The infrastructure owned by a Utility whether public, private, cooperative, or municipal/authority maintained lines and systems used for production, transmission, distribution, etc. (i.e. cable, gas, water, sewer, Internet, phone, storm, etc.) which provides service in or conveys services through the Borough.

**Grout** – A mixture of cement, water, and sand.

**Hazardous Materials/Waste** – All materials defined by the Commonwealth of Pennsylvania Department Of Environmental Protection as either “Hazardous Waste”, including but not limited to, wastewater, sludge, acutely or extremely hazardous chemicals and toxic chemical product (such as creosote) or “Residual Waste”, including but not limited to, contaminated

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soil, industrial equipment, electronics, pumps, piping, storage tanks, filters, waste that contains asbestos, oil and PCBs, paint etc.

Improved Surface/Impervious Surface/Impervious Material – Any area within the right-of-way covered with material other than vegetative cover. Improved surfaces include, but are not limited to, roadways, shoulders, curbs, sidewalks, Driveways, etc.

Maintenance & Protection of Traffic (MPT) – All necessary and required traffic control devices, including but not limited to, materials, (i.e. cones, barrel, guide rail, signs, post, barricades, signals, etc.) equipment (i.e. crash attenuators, changeable message boards, light plants/illumination, pilot vehicles, etc.), personnel (flaggers, etc.), in accordance with the PennDOT Publication 213, Temporary Traffic Control Guideline.

NPDES – National Pollutant Discharge Elimination System – A system for controlling discharge of pollutants into streams and rivers of the Commonwealth or the United States as defined by the Clean Water Act and controlled by the Commonwealth Department of Environmental Protection.

Non-Working Hours – Any time workers are not present in the right-of-way.

Pavement Markings – Markings installed on the Improved Surface, conforming to statutory and regulatory requirements as outlined in the Vehicle Code (Title 75) and PennDOT's Publication 212, Official Traffic Control Devices.

Permit – An authorization by Penbrook Borough to construct, install, repair, line, upgrade, abandon, any Utility or Facility located either above or below ground located within the Borough's public right-of-way.

PennDOT – The Commonwealth of Pennsylvania Department of Transportation.

Pavement Reinforcing Fabric/Paving Fabric – Tencate Geosynthetics, Mirafi MPV 600, or approved equivalent.

Pavement Structure – The sum of all lift thickness of each aggregate, asphalt, or concrete pavement layer multiplied by its individual material coefficient, as defined by PennDOT Publication 242, Pavement Policy Manual. Structural coefficients shall not be reduced. All existing and proposed asphalt pavement shall be considered to have a structural coefficient of 0.44. Full depth stone Backfill shall not be considered part of the pavement structure. Soil shall have a coefficient of zero. Full Depth Reclamation shall have a maximum coefficient of 0.20, unless otherwise substantiated by laboratory testing.

Plans – Drawings which show the location, character, type, and dimension of the proposed Facility, including limits of Excavation and restoration, pipes, manholes and appurtenances, hydrants, valves, inlets, poles, transformers, junction boxes, lines, ducts, guys, etc., including all necessary features such as plans, profiles and cross-sections. All plans shall be

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prepared and sealed by a Professional Engineer licensed in the Commonwealth of Pennsylvania.

Plowing – Direct burial of a Facility using the plow type mechanism, which breaks the ground, places the Utility, and closes the break in a single operation.

Property Owner – The owner or owners of the property on which the improved or unimproved surface is located.

Right-Of-Way – The area acquired by the Borough for roadway purposes.

Roadway – The street system of the Borough including the entire right-of-way which the Borough has assumed or legislated.

Roadway Construction Standards – PennDOT Publication 72M.

Service Line – A privately owned connection/lateral/line providing a physical connection between an individual property and the Facility (i.e. main, curb box, transmission line, transformer, etc.). The service line shall be owned and maintained by the Property Owner.

Subgrade – The underlying layer of natural soil on which the roadway is built.

Suitable Material – Soil and/or other granular materials, free of debris, vegetation, and construction debris excavated from the existing right-of-way, which may be suitably compacted to prevent subsidence.

Stormwater Management Ordinance – The Stormwater Management Ordinance of Penbrook Borough.

Structure – A building of permanent construction, typically with a roof and walls, intended to shield the interior from the elements. The structure may be residential, commercial, industrial, institutional, etc. and shall comply with the ordinances and Code of Penbrook Borough. This term shall include any man made construction. (recommend find and fix uses as necessary).

Test Boring/ Test Hole/Core Hole/Bar Hole – An exploratory opening less than 100 square inches, intended for pavement sampling, leak detection or venting of gases.

Unimproved Surface – Any area within the right-of-way covered with vegetation.

Utility – The entity, whether public, private, cooperative, or municipal/authority which provides production, transmission, distribution, etc. (i.e. gas, water, sewer, Internet, phone, storm, etc.) of services in or conveying services through Penbrook Borough.

Working Hours –6:30 AM to 9:00 PM, Monday through Saturday.

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Zoning Officer – the Zoning Officer of Penbrook Borough, Dauphin County, Pennsylvania. The Zoning Officer may also be the Borough Inspector for the purposes of this Ordinance.

Zoning Ordinance – The zoning ordinance of Penbrook Borough, Dauphin County, Pennsylvania, as amended

### **SECTION 4.** Application Procedure

Permits shall be required to construct, install, repair, replace, line, upgrade, abandon any Facility located either above or below ground located within the Borough's right-of-way, including the installation, opening, Excavation, boring, bursting, compaction, paving/resurfacing (either temporary or permanent) of any improved or unimproved surface unless an exemption pursuant to Section 10 herein shall apply.

The Permit Application shall be submitted to the Borough Office. The application shall be submitted in person or by mail to the attention of the Borough secretary.

- (1) Each Excavation location/opening/cut shall require a separate fee. For continuity, multiple locations may be listed on the same application/plan.
- (2) Upon receipt of the application, the Borough shall investigate the application to determine whether the proposed location achieves compliance with the requirements of this ordinance, as well as any relevant Zoning and/or Subdivision and Land Development Ordinance provisions.
- (3) The Borough shall have the right to review the Permit for thirty (30) days, minimum, but may take an additional 30 days if the application requires outside experts to review.
- (4) In the event of more complex projects, the Borough may require review by the Borough Engineer or another Professional Engineer, cost of such review shall be paid by the Facility owner.
- (5) The Permit application shall include the following items:
  - (i) Permit shall be signed by the Facility owner's authorized signatory (Property Owner for privately owned service lines). Applications signed by contractors or consultants shall not be accepted.
  - (ii) Submittals shall include name, phone number, mailing and email address, etc. for the applicant.
  - (iii) Submittals shall identify any consulting engineer(s) responsible for the submittal.

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- (iv) Submittals shall include four (4) sets of documents and accompanying sketch Plans. Electronic submittal of documents are preferred.
  - (v) If related to an Emergency Repair, date, time, location, and description of Emergency work.
  - (vi) Submittal shall be on either the Borough's standard forms (8 1/2 " x 11") and accompanied by Facility sketches (8.5" x 11) or full-sized Plans (24" x 36") in the event of more complex project, if not submitted electronically.
  - (vii) Sketches and Plans shall be of sufficient quality and contain sufficient information and dimensions to determine type, size, and the location of all proposed Facilities including the limits of Excavation and restoration.
  - (viii) Plans shall be drawn at a scale of 1 inch equals 20 feet, maximum.
  - (ix) Plans shall include depths and/or aerial clearances, as appropriate.
  - (x) Work affecting heavily used pedestrian areas, especially in the vicinity of parks, municipal buildings, churches, schools, etc. may require additional safeguards. The Borough may require a pedestrian access protection plan to be submitted to the Borough Engineer for review and approval as part of the Permit. The Facility owner shall be responsible to implement the pedestrian access plan as part of the Permit.
  - (xi) All Plans shall contain the seal of a Professional Engineer licensed in the Commonwealth of Pennsylvania.
  - (x) All fees.
- (6) Emergency Repairs may be conducted to temporarily repair and/or secure existing Facilities in order to reduce or eliminate further damage through the use of an Emergency Permit. Repairs conducted in this manner do not waive the applicant's responsibility to submit follow-up Permit applications and appropriate fees to the Borough. Permits must be applied for within 15 working days from the date of the occurrence of the Emergency.

Emergency Permits shall be reconciled with the Borough office on an annual basis.

- (7) If the proposed location and design are in compliance with Borough ordinances, the Borough Inspector shall issue a Permit to the applicant.
- (8) Information provided in the submittal shall be accurate. Falsification of

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documents or improperly provided information shall constitute immediate revocation of the Permit.

- (9) Unless the proposal demonstrates compliance with this ordinance, the Permit shall be refused.
- (10) The applicant has the right to appeal the decision of the Borough Inspector to the Borough Council.
- (11) Applicant's, their consultants, contractors and employees may be debarred by the Borough due to:
  1. Unsatisfactory past performance, as documented by record, reports or performance ratings.
  2. Failure to complete previously permitted work.
  3. Attempting to provide bribes or gratuities to the Borough or its employees.
  4. The length of debarment shall be 6 to 18 months for the first offense. Subsequent offenses may extend debarment up to 36 months.
- (12) No contractor debarred by the Commonwealth of Pennsylvania shall be granted a Permit and allowed to occupy Penbrook Borough's right-of-way.

### **SECTION 5.** Permit Application Requirements

All applications for a Permit under this ordinance shall be made to the Penbrook Borough Building Code Official, and if applicable the Penbrook Borough Zoning Officer, forms to be supplied by the Borough and shall be accompanied by a fee as determined by Resolution of the Penbrook Borough Council.

- (1) Scope of Permit. The Permit shall be binding upon the Facility owner, its agents, contractors, successors, and assigns.
  - (I) The Borough may, at its discretion, and at the cost of the Facility owner, photo document the limits of the right-of-way including both the improved and unimproved surface, as well as any adjoining improvement in which the work is proposed.
  - (II) The Facility owner shall be responsible for causing compliance with all terms and conditions of the Permit by its employees, agents and contractors.
  - (III) The Permit shall be located at the worksite and shall be available for inspection by any representative of the Borough.



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- (IV) The Permit shall be maintained by the Facility owner as a permanent record and shall remain in effect, subject to the Permit conditions, as long as the Utility or Facility authorized by the Permit exists.
  - (V) The Facility owner shall be principally liable to the Borough for any failure to comply with the Permit. The principal liability of the Facility owner to the Borough shall not preclude the Borough from bringing an action against the Facility owner's contractor, subcontractor, engineer, architect, or any other person.
  - (VI) The Borough, in granting a Permit, will waive **NONE** of its powers or rights to require the future change in operation, removal, relocation, or proper maintenance in accordance with the Pennsylvania Utility Commission, of any Facility within the Borough's right-of-way.
- (2) Additional Restrictions. All work authorized by the Permit shall be subject to the following:
- (I) All applicable laws, rules, and regulations, included but not limited to the following:
    - (A) Act of October 26, 1972 (P. L. 1017, No. 247) (53 P. S. Section 1611), concerning environmental control measures related to pollution and the preservation of public natural resources.
    - (B) Act of December 10, 1974 (P. L. 1017 No. 287) (73 P. S. Sections 176-182), concerning protection of the public health and safety preventing Excavation or demolition work from damaging underground Utility Facilities.
    - (C) OSHA construction safety and health regulations, 39 FR 22801 (June 24, 1974) and 29 CFR Section 1926.1 et seq.
    - (D) Title VI, Civil Rights Act of 1964.
  - (II) Any rights of any person, including Borough Property Owners. This Permit does not authorize damage or removal of private improvement within the right-of-way (i.e. mailboxes, Driveways, shrubbery, trees) nor does it authorize the diversion of water onto any portion of the right-of-way or private property in which it did not previously flow.
  - (III) The conditions, restrictions, and provisions of the Permit.
- (3) Work to conform to Borough standards. The work shall be done at such time and in such a manner as shall be consistent with the safety of the public and shall conform

to all requirements and standards of Penbrook Borough including but not limited to, PennDOT Publications 408 & 72M. If at any time it shall be found by Penbrook Borough that the work is not being done or has not been properly performed, the Facility owner, upon being notified in writing by the Borough, shall immediately take the necessary steps, at their own expense, to place the work in condition to conform to such requirements or standards. In case any dispute arises between the Facility owner and the Borough Inspector, the Borough Inspector shall have the authority to suspend work until the question at issue can be referred to and decided by the Borough Engineer.

All materials, products, equipment and/or supplies for roadway use within the right-of-way, including but not limited to aggregate, concrete and bituminous materials, as well as any guide rail, Pavement Markings, ADA compliant materials, and appurtenances, shall be included in the following Commonwealth of Pennsylvania Department of Transportation bulletins unless otherwise approved by the Borough:

- (I) Commonwealth of Pennsylvania Department of Transportation, Bulletin 15, Qualified Products List for Construction, Publication 35.

Material certifications shall be provided to the Borough Inspector for all materials for roadway use installed in the right-of-way. Commonwealth of Pennsylvania Department of Transportation Form CS-4171, Certificate of Compliance, shall be provided daily for all materials.

- (4) Facility Owner Responsibilities. Facility owner responsibility shall be as follows:
  - (I) The Facility owner shall pay all fees, costs, and expenses incident to or arising from the project. The Facility owner shall reimburse the Borough for any and all action costs within 30 days after the receipt of the Borough's invoice.
  - (II) In the event of failure or neglect of the Facility owner to perform and comply with the Permit or the provisions of this chapter, the Borough may immediately revoke and annul the Permit and order and direct the Facility owner to remove any or all structures, equipment, or property belonging to the Facility owner or its contractors from the legal limits of the rotatably and to restore the right-of-way to its former condition at the exclusive cost of the Facility owner.
  - (III) If work is stopped on a project for any reason, including the end of any normal workday, any Excavation which is intended to remain open and/or unsecured, the Facility owner, shall refill or plate the Excavation, prior to the end of the workday. Work shall not be resumed until the Facility owner is prepared to proceed immediately with the work to completion. In the event the Facility owner fails to refill or plate the Excavation or proceed to completion of the work upon notice from the Borough to do so, the Borough may perform the

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necessary and required work and shall be reimbursed for the cost by the Facility owner within 30 days after receipt of the Borough's invoice. Equipment shall not be used to barricade or secure Excavations. All plates shall be securely fastened to the roadway surface and transitioned with asphalt material. Signs shall be erected for any plates left unattended.

- (IV) If the Facility owner, after making an opening in the surface to place a repair of Facility or for any other purpose, fails to restore any portion of the right-of-way to conform with Borough specifications upon notice from the Borough to do so, the Borough may perform the work in the Facility owner shall reimburse the Borough for the cost within 30 days after receipt of the Borough's invoice.
- (V) at no time shall in excess of 1000 LF of Borough right-of-way be excavated at any time, including plated areas.
- (5) Restoration of Unimproved Areas. All disturbed unimproved areas, especially sloped or earthen areas, shall be restored to a non-erodible vegetative condition, or in a manner approved by the Borough. Restoration may include use of straw mulch, erosion control matting, hydroseeding, or other suitable method.
- (6) Altering Drainage Prohibited. Unless specifically authorized by the Permit, the Facility owner shall not:
  - (I) alter the existing drainage pattern or the existing flow of drainage water; or
  - (II) direct additional drainage of surface water onto or into the Borough or state right-of-way or roadway Facilities in a way which would have a detrimental effect on the roadway or roadway Facilities.
- (7) Disposition of Materials. Disposition of materials shall comply with the following:
  - (I) The Facility owner shall keep the improved area free of all materials which may be deposited by vehicles traveling upon or entering onto the roadway during the performance of work authorized by the Permit.
  - (II) The Facility owner shall be responsible for controlling dust conditions created by its operations.
  - (III) No excavated materials shall be reinstalled beneath an Improved Surface. All excess material and any other material that is not suitable for Backfill for use under an unimproved surface shall be removed and disposed of in conformance with the standards of the Commonwealth of Pennsylvania Department of Environmental Protection and the Dauphin County Conservation District.

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- (IV) No materials shall be stored on any Improved Surface or stockpiled within the Borough's right-of-way as the work progresses, unless approved in advance by the Permit.
  - (V) All retained suitable material shall be placed or stored outside the improved area, and in such a manner that there will be no interference with the flow of water in any gutter, drain, pipe, culvert, ditch or waterway.
  - (VI) Any excavated materials which are classified as Hazardous Materials shall be disposed of in accordance with the Commonwealth of Pennsylvania, Department of Environmental Protection.
  - (VII) As a linear project or based on the size of the Excavation, the Facility may be exempt from submitting E&S, NPDES, and/or PCSWM Plans to either the Dauphin County Conservation District, the Commonwealth of Pennsylvania, Department of Environmental Protection, or the Borough pursuant to the requirements of the Stormwater Management Ordinance. However, this does not exempt the Facility owner from having a written E & S plan on-site and installing and maintaining all necessary and required BMPs necessary to reduce the erosion potential of the project. The Borough may require submittal of both permits and Plans as part of the review process. All E & S, NPDES, and PCSWM Plans and permits shall be made part of the Borough's Permit, be available on site and shall be enforceable by the Borough.
- (8) Equipment Damaging Roadway. Equipment used for the construction of the Facility shall conform to the following conditions:
- (I) To protect the pavement and shoulders, all equipment shall have rubber wheels or runners and shall have rubber, wood or similar protective pads between the outriggers and the surface, unless otherwise authorized by the Permit.
  - (II) In the event that other than rubber equipped machinery is authorized for use by the Permit the pavement and Shoulders shall be protected by the use of matting, wood or other suitable protective material having a minimum thickness of 4 inches.
  - (III) If the equipment damages the pavement or shoulders, the Facility owner shall restore the pavement or shoulders to their former condition, at the expense of the Facility owner.
- (9) Traffic Protection and Maintenance. Maintenance and protection of traffic shall be carried out in accordance with the requirements of the Borough, as set forth in PennDOT Publication 213.
- (I) The Facility owner shall provide and maintain all necessary precautions to

prevent injury or damage to persons and property in accordance with the instructions furnished by the Borough. A traffic control manual shall be submitted as part of the Permit submittal to be reviewed and approved by the Borough before closing any portion of the lane to vehicular traffic. PATA standard figures may be acceptable.

- (II) Traffic control devices shall be provided in accordance with PennDOT Publication 213. Any open trench or hole shall be adequately barricaded to prevent possible injury to pedestrians and the motoring public during working hours. No open trenches or holes shall be left during Non-Working Hours. All traffic control devices shall be of an approved type. Signs shall conform to the requirements of Publication 213.
  - (III) Flaggers shall be provided as specified in the Permit and in accordance with Publication 213.
  - (IV) Illumination of flaggers shall be required from dusk to dawn.
  - (V) All roadways shall remain open to traffic. In the event that the Facility owner wishes to close a roadway, a fee shall be provided to the Borough. All affected residents shall be notified no less than three days prior to the closure in a manner, suitable to and approved by the Borough (i.e., mailing, doorhanger, street posting, changeable message board). Verbal notification, alone, shall not be acceptable.
- (10) Protection of Existing Facilities and Private Property. The Facility owner shall be responsible to comply with Pennsylvania's One Call System (811), as required by Pennsylvania Act 287, as enacted December 10, 1974, as amended. All existing Facilities, including any Facilities owned by other Facility owners shall be protected during construction, installation, repair and/or replacement, upgrade, or abandonment.

All Borough Facilities shall be protected, including any stormwater management or infiltration Facility within the right-of-way are situated on private property.

Issuance of a Permit does not authorize damaging, cutting, trenching, or removal of any privately owned improvement such as drives, Driveways, shrubbery, trees etc.

Any Facility which proposes to impact any privately owned improvement shall provide, as part of the submittal package, all written agreements for the restoration or removal of said improvement.

- (11) Restoration. All disturbed portions of the roadway, including slopes and all appurtenances and structures such as guide rail or drainpipes shall be restored by the Facility owner to a condition at least equal to that which existed before the start of any work. This includes resetting or upgrading guide rail, replacing, relocating

sidewalk and curb, reinforcing, weatherproofing, providing appropriate treatment on guide rail systems where such systems are affected by the Facility.

- (12) **Approved by Inspector.** Approval by the Borough Inspector, or designated personnel, of any or all permitted work shall not constitute acknowledgment that the work was performed in accordance with the Permit, nor shall such approval of the inspector act as a release of the Facility owner or waiver by the Borough of its right to seek performance or restitution by the Facility owner.
- (13) **Maintenance.** All Facilities, structures and appurtenances, and adjacent areas within the right-of-way shall be continuously maintained by the Facility owner so as to conform to the Pennsylvania Utility Commission regulation and so as not to interfere or be inconsistent with the design, maintenance and/or drainage of the roadway or the safe and convenient passage of traffic on the roadway.
- (14) **Indemnification.** The Facility owner shall fully indemnify and save harmless and defend the Borough, its agents, officers and employees, of and from all liability for damage or injury occurring to any person or persons or property through or in consequence of any act or omission of any contractor, agent, servant, employee or person engaged or employed in, about, or upon the work by, at the instance, or with the approval or consent of the Facility owner; from any failure of the Facility owner or any such person to comply with the Permit or this ordinance.
- (15) **Warranty.** For a period of five (5) years after the completion of the permitted work the Facility owner shall be responsible for any failure of the roadway in the immediate area of the work performed under the Permit where there is no similar failure of the roadway beyond the area adjacent to the area of the permitted work.
- (16) **Insurance, Bonds & Escrow.** The Facility owner shall submit to the Borough a certificate or certificates of insurance and bonds for workers compensation, public liability, property damage, restoration, and maintenance, in the form and amount set by resolution, but at no time be less than as listed below, to cover any loss that may be incurred for or on account of any matter, cause, or thing arising out of the permitted construction.
  - (I) **Commercial Liability (CGL) Insurance** including product and completed operations liability insurance covering all claims which may arise from Facility owner's performance of the work, whether such performance is by the Facility owner or by a subcontractor by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Proof of insurance shall be submitted to the Borough with the Permit. Minimum insurance coverage shall be statutory unless otherwise noted below:

\$1 million Commercial General Liability Each Occurrence  
\$3 Million Commercial General Liability Aggregate per Project  
\$1 Million Products/Completed Operations Aggregate

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\$1 Million Contractual Liability.

Facility owner shall also purchase and maintain during the life of the contract, Excess Liability/Umbrella insurance coverage in the amount not less than \$3 million.

- (II) Comprehensive Automobile Liability Insurance including Employer's Non-Ownership Liability and Hired Car Liability Insurance to protect themselves and any subcontractors performing the work covered by this Permit from claims for damages, whether such operations be by them or any subcontractor or by anyone directly or indirectly employed by either of them. Proof of insurance shall be submitted to the Borough. Minimum insurance coverage shall be statutory unless otherwise noted below:

\$2 million Combined Single Limit.

- (III) Workers Compensation Insurance including employer's liability coverage (Coverage B). Proof of insurance shall be submitted to the Borough. Minimum insurance coverage shall be statutory unless otherwise noted below:

\$100,000 Each Person  
\$500,000 Each Accident  
\$100,000 Disease-Each Employee  
\$2 Million Combined Single Limit.

The Borough shall be designated as an additional insured for all insurance coverages other than Worker's Compensation and Employer's Liability.

Certificates of Insurance acceptable to the Borough shall be filed with the Borough prior to the commencement of the work. Said certificates shall evidence that the Facility owner has all the insurance coverages required under this Permit and shall contain a provision that the coverage afforded under the policies will not be canceled until at least 30 days prior written notice has been submitted to the Borough.

- (IV) Restoration Bonds. Bonds in a form and amount acceptable to the Borough to guarantee restoration of the permitted area in compliance with the Borough's standard for a period of five years after the acknowledged completion of the work.

Restoration Bonds shall be set by resolution; \$100.00 per square yard, minimum.

Restoration Bonds may be returned upon satisfactory installation of service lines.

- (V) Maintenance Bonds. Bonds in a form and amount acceptable to the Borough to guarantee maintenance costs of the restoration within the permitted area in

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compliance with the Borough's standard for a period of five (5) years after the acknowledged completion of work.

Maintenance Bonds shall be set by resolution; \$25.00 per square yard, minimum.

Maintenance Bond may be waived for service lines.

- (VI) Escrow. Sufficient currency shall be submitted to the Borough, to be deposited in a separate interest-bearing escrow account which is sufficient to secure the obligation of the Restoration and Maintenance Bonds, specified above. Bonds may be submitted in lieu of cash, with the review and approval of the Borough Solicitor.
- (17) Damage to Roadway. Restoration of roadway shall include the following:
- (I) If there is a failure of the roadway, including slope or any other appurtenance thereto, in the immediate area of the permitted work within five (5) years after the completion of the permitted work and there is no similar failure of the roadway beyond the area adjacent to the area of the permitted work, the Facility owner shall have absolute responsibility to make all temporary and permanent restoration including restoration of the adjacent area if it has also failed.
  - (II) If the permitted work is the proximate cause of damage to the roadway, including slope or any other appurtenance thereto, beyond the adjacent area, the Facility owner shall be responsible for all remedial work and shall make all temporary and permanent restoration.
  - (III) Where the Facility owner has the responsibility to restore the roadway, including slope or any other appurtenance thereto, including instances where a presumption of responsibility has not been rebutted, the Facility owner shall have the duty to restore the improved area in accordance with the Permit. If the Facility owner fails to restore the improved area properly, the Borough will have the authority to do the work at the expense of the Facility owner. The Facility owner shall reimburse the Borough for all costs within 30 days after receipt of the Borough's invoice.
- (18) Pre-registration.
- (I) Facility owners are encouraged to preregister annually with the Borough. In doing so it may provide blanket insurances and bonds which may be applied to multiple projects throughout the year.
  - (II) Insurances and bonds may be required in excess of the minimums set forth in this Ordinance, depending on the proposed value of the project and limits of



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### Excavation

(19) *Use of Roadway Prohibited.* Prohibited use of the roadway shall be as follows:

- (I) No part of the right-of-way shall be used for servicing vehicles, displays or conducting business.
- (II) Improvements within the right-of-way shall be so located that parking, stopping, and maneuvering of vehicles on the right-of-way will not be impeded.
- (III) Storage of equipment or materials during Non-Working Hours.

(20) Working Hours.

- (I) All Permits are subject to the Borough's Working Hours.
- (II) Working Hours shall not be permitted on Sunday.
- (III) Requests work outside Working Hours shall be submitted in writing to the Borough.
- (IV) Emergency Repairs shall be exempt from Working Hours.

### **SECTION 6.** Fees.

The following fees in the amount set by resolution, but at no time be less than as listed below, shall accompany the Permit submittal:

- (1) Application Fee \$75.00 per Application. The Application Fee shall be submitted to the Borough at time of filing to offset the cost of clerical work associated with the Permit. Each Excavation location/opening/cut shall require a separate fee. For continuity multiple locations may be listed on the same Permit/plan.
- (2) Review Cost Retainer \$300.00 plus \$100.00 per sketch or drawing sheet submitted. The Review Cost Retainer shall be submitted to the Borough at time of filing to offset the cost of reviewing the application by the Borough's professional staff. Minimum Review Cost Fee of \$300.00. Any additional cost of the review shall be paid prior to Permit issuance, any unused portion of the retainer shall be returned to the applicant
- (2) Inspection Cost Retainer \$500.00 per Excavation location plus \$500.00 per 100 feet (or portion thereof) for linear Excavations. Service Line Retainer shall be \$500.00. Minimum retainer shall be \$500.00. Retainer fee for more

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complex projects shall be set by the Borough. Any additional retainer cost of the inspection shall be paid prior to Permit closure, any unused portion of the inspection retainer shall be returned to the applicant. Inspection fees will be charged hourly the Borough's inspection rate as set by Borough Council.

- (3) Excavation Fee \$25.00 per square yard in the improved portion of the right-of-way, or \$0.00 per square yard in the unimproved portion of the right-of-way.
- (4) Degradation Fee \$100.00 per square yard for any Excavation within the improved portion of the Borough's right-of-way to offset damage imposed to the Pavement Structure as a whole by the Excavation. The fee shall be submitted prior to issuance of the Permit based on Excavation limits shown on the plan. A final measurement of degradation shall be taken by the Borough prior to closure of the Permit. Any additional cost of degradation fee shall be paid prior to Permit closure. any unused portion of the degradation fee shall be returned to the applicant.

The full Degradation Fee shall be charged the entire calendar year following the substantial completion of a Borough paving project (Year 0). Reduction of the degradation fee shall be calculated on the following sliding scale, on December 31st of the subsequent calendar years. Degradation Fees may be calculated by block (intersection to intersection), for larger projects.

Year 1:100% of Base Degradation Fee  
Year 2:100% of Base Degradation Fee  
Year 3: 95% of Base Degradation Fee  
Year 4:90% Of Base Degradation Fee  
Year 5:80% of Base Degradation Fee  
Year 6:70% of Base Degradation Fee  
Year 7:60% of Base Degradation Fee  
Year 8:50% of Base Degradation Fee  
Year 9: 40% of Base Degradation Fee  
Year 10:20% of Base Degradation Fee  
Subsequent Years: Degradation Fee Waived

Degradation Fee may be waived for the installation and/or repair of service lines (water, sewer, and/or gas) for existing structures.

- (6) Test Boring Fee \$20.00 Each Location
- (7) Road Closure Fee \$500.00. A road closure fee of \$500.00 shall be charged per day or portion thereof in which any public street is closed to through traffic in the Borough. Road Closure Fee shall be utilized to offset the Borough's cost to ensure the Facility owners compliance necessary and required MPT. In the event that any public street is closed to through traffic

in the Borough for Emergency Repairs, the Road Closure Fee shall still be applicable and shall be paid within 15 days pursuant to Emergency Repair procedures provided for in Section 4 of this Ordinance.

- (8) Time Extension Fee \$75.00. Two time extensions may be granted by the Borough for projects previously permitted as outlined in Time Extension.
- (9) In the event that an applicant need to file for an Emergency Permit, as provided for under Section 4 of this Ordinance, the Applicant shall pay all applicable regular fees and costs as provided for elsewhere in this Section 6 and the Ordinance. If submissions for Emergency Permits is abused, then the Applicant of such Emergency Permit(s) shall be charged at the rates provided under "Failure to Obtain a Permit" as provided for below.
- (10) Failure to Obtain a Permit. All Permit fees shall be tripled for any Facility owner failing to obtain a Permit. Any work undertaken without a Permit in the Borough right-of-way may be required to be reopened, re-excavated and suitably reinstalled.
- (11) Any work completed on behalf of the Facility owner by the Borough due to failure to protect the public safety or complete the project shall be charged to the Facility owner, bond, retainer, etc. at cost plus 20%, including but not limited to construction, equipment, materials, traffic control, police enforcement, labor, inspection, engineering, legal, etc.
- (12) The Permit application fee is nonrefundable. In the event the applicant cancels the project, the Borough shall refund any unused portion of the fees or costs at time of cancellation.

**SECTION 7.** Time Limit

The Facility must be completed in compliance with the approved Permit.

The Permit shall be valid for no more than 12 months.

No work shall be completed, beyond the Permit term, on an expired Permit.

The Facility owner may request up to two (2) 12 month extensions, without refileing the required Permits, fees, drawings and accompanying documentation. Updated insurance, bonds, escrow etc. may be required by the Borough at the time of extension. A time extension fee is required.

The Facility shall not be considered completed until the Borough Building Codes Official and Zoning Officer have approved it as being completed, in writing.

**SECTION 8.** Construction

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All Facility Excavations shall be completed in accordance with the provisions of the application and with the following requirements:

- (1) The Facility owner shall notify the Borough a minimum of three (3) days in advance of the start of work.
- (2) All Excavation within the Borough's right-of-way shall be inspected by the designated Borough Inspector to insure that the proposed location does not impact the unimpeded flow of the Borough's roadside drainage.
- (3) The Borough reserves the right to require full-time inspection of all Excavation and Backfill.
- (4) Installation of Facilities in or across the "Waters of the Commonwealth" or "Waters of the United States" as part of the Permit require submittal of an approved Permit from the Commonwealth of Pennsylvania, Department of Environmental Protection and/or the United States Army Corps Of Engineers.
- (5) All exposed surfaces created by the installation of the Facility must be stabilized so as not to erode. An Erosion and Sedimentation plan shall be available on-site, as required.
- (6) All pavement Excavations shall be saw cut. No Improved Surface shall be removed without prior saw cutting to adequate depth, prior to the removal of any asphalt layer(s). All Excavation shall be neat. Cuts shall be parallel or perpendicular to the centerline of the road and be substantially square or rectangular. Saw cuts shall not be placed in the wheel path. Linear Excavations shall be of consistent width. Varying and fluctuating widths and odd configurations will result in removal of additional materials by the Facility owner, at their cost, as directed by the designated Borough Inspector to provide a more suitable repair. Milling may be approved by the Borough in lieu of saw cutting pavement or removal.
- (7) Any Excavation/restoration/projects which damage or disturb the Borough's Pavement Reinforcing Fabric shall be responsible to completely mill, reinstall reinforcing fabric, and repave the area to the limits of Excavation, disturbance or damage, as outlined in Additional Pavement Restoration below.
- (8) It shall be the duty of the Facility causing the Excavation to suitably Backfill or secure the Excavation in accordance with this ordinance. No exposed aggregate trenches or exposed Excavation within the Improved Surface of the Borough's right-of-way shall be left overnight with exposed PennDOT 2A or 2RC stone base, DSA, Aashto #1 (a.k.a. PA #4) ballast and screening, etc. or

equivalent material(s), at the surface. All surface material shall be asphalt unless approved in advance by the Borough.

- (9) All Excavations shall be backfilled with no greater than 6" lifts. All material shall be carefully placed within the right-of-way. Dumped Backfill or mass Backfill shall not be accepted. The Borough shall inspect all Backfill operations within the right-of-way. PennDOT 2A aggregate shall be used as full depth stone Backfill beneath all improved services within the right-of-way; previously excavated/retained materials/suitable fill shall not be used as Backfill beneath Improved Surface. Suitable Fill material, as approved by the Borough, may be used as Backfill only beneath the unimproved surface. The Borough Engineer may consider the use of flowable fill on a case-by-case basis in lieu of full depth stone Backfill, in advance, as part of the Permit review and approval process.
- (10) Backfill shall be installed as approved in advance by the Borough Engineer. Geotextile grid, grade separation fabric, full depth reclamation, soil stabilization techniques etc. may be considered, but are not required. Any proposed alternative shall have an adequate or greater Pavement Structure than currently required.
- (11) No pavement shall be placed directly on the Subgrade material unless otherwise approved by the Borough Engineer.
- (12) All vertical surfaces shall be primed as required by the Borough Engineer.
- (13) Improved Surfaces (sidewalk, curb, concrete, asphalt, etc.) shall be replaced in kind to the extent of the disturbance. All improvements shall be installed to PennDOT Publication 72M and 408.
- (14) Unimproved surfaces (vegetation) shall be replaced in kind to the extent of the disturbance. All improvements shall be installed in accordance with PennDOT Publication 72M and 408.
- (15) All finished joints shall be sealed.
- (16) Additional pavement restoration may be required, as site conditions warrant; Facility owners are responsible for these repairs. Pavement Reinforcing Fabric shall also be reinstalled, as follows:
  - (a) Excavations completed within 24 months of any Borough overlay project are not encouraged. Excavation within this time limit requires a complete mill and overlay of the entire block. No partial blocks shall be paved.
  - (b) Longitudinal (parallel to the centerline of the roadway) openings in

excess of 10 feet require the mill and overlay of the entire travel lane of the Improved Surface for the length of the opening, starting no less than 10 feet before the opening and terminating no less than 10 feet beyond the opening.

(c) Longitudinal openings which cross diagonally over the centerline of the roadway require a minimum mill and overlay of the first travel lane, as noted above, terminating no less than 10 feet after the point at which the Excavation crosses the centerline with an additional mill and overlay in the second travel lane, starting no less than 10 feet before the point at which the Excavation crosses the centerline and terminating as note above.

(d) When two (2) transverse (perpendicular to the centerline of the roadway) openings are made in the Improved Surface less than 50 feet apart, a mill and overlay of the affected lane or lanes beginning no less than 10 feet before the first Excavation and terminating no less than 10 feet beyond the second Excavation is required. When three (3) or more transverse openings are made per block, the entire block is required to be mill and overlaid.

(e) When two (2) or more openings of any size are made within 20 feet of each other, they shall be considered one opening, for the purposes of this section, but not for the purposes of applicable fees or the application process and shall require a mill and overlay of the affected lane or lanes beginning no less than 10 feet before the first Excavation and terminating no less than 10 feet beyond the last Excavation.

(f) When five (5) square type openings of any size are made: (i) within 100 feet of each other; and (ii) within any 24 month period, a mill and overlay of the affected lane or lanes beginning no less than 10 feet before the first Excavation and terminating no less than 10 feet beyond the last Excavation, is required.

(g) Milling may be waived by the Borough if site conditions warrant.

(h) An additional negotiated fee may be paid to the Borough in lieu of this work to be placed in the Borough's Paving Escrow Account.

(i) Milling shall be two (2) inches in depth, with a complete tack coat.

(17) Additional stormwater runoff generated from the installation of any new Facility which increases the Improved Surface area within the right-of-way, shall require the installation of stormwater management Facilities in compliance with the Stormwater Management Ordinance.

(18) No Facilities shall direct water toward the public right-of-way.

(19) Subsurface Facilities, including but not limited to the replacement of existing

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Facilities, shall be installed at a depth of no less than 36 inches below the finished surface of the ground.

- (20) No subsurface Facilities shall be installed utilizing Plowing.
- (21) Test holes shall be immediately backfilled and restored in accordance with the Permit.
- (22) Facilities are not encouraged to be installed in the wheel path of the Improved Surface. Underground Utilities are encouraged to locate its Facilities in the unimproved surface.
- (23) All manholes, junction boxes, valves, etc. shall be set to the same elevation as the surrounding grade.
- (24) Facility owners shall restore any existing signs or Pavement Markings damaged or removed during the installation of that Facility. All signs will have a minimum retroreflectivity as specified in the latest edition of the MUTCD (Manual of Uniform Traffic Control Devices). All Pavement Markings shall be thermoplastic. All material and installations shall be in conformity to PennDOT Publication 212 and 213.
- (25) The Borough does not own any bridges and requires no bridge licensing.
- (26) Aboveground Facilities shall be installed with an unobstructed clearance of no less than 18 feet above the finished surface of the ground.
- (27) Guy wires shall not interfere with pedestrian traffic, fire hydrants, or vehicular traffic.
- (28) Utility pole shall be installed no less than 18 inches behind the surface of curb and shall exhibit a clear accessible path around the pole. In the event that the Facility restricts the accessible path, the Facility owner shall be responsible to install all necessary improvements (curb, sidewalk, etc.) to reestablish the accessible path.
- (29) Alternate designs which are proposed to vary from the Borough's standards may be submitted to the Borough for the Borough Engineer's review and approval. All design submittals shall be signed and sealed by a Professional Engineer licensed by the Commonwealth of Pennsylvania in accordance with the "Engineer, Land Surveyor And Geologist Registration Law". The Borough Engineer may require the submittal of supporting calculations, measurement, surveys, geological/soil testing, pavement analysis, infiltration test, studies, and/or reports to substantiate the alternate design. The Facility owner shall be responsible for all review cost incurred by the Borough Engineer.

- (30) Blasting is strictly prohibited within the Borough.
- (31) For proposed boring, casing, lining, bursting, driving, or tunneling operation, the following requirements apply:
  - (a) Any Facility utilizing casing shall Grout the annular space between casing and the Facility.
  - (b) Water and jet boring is prohibited.
  - (c) Directional drilling may be utilized.
  - (d) No access point or boring pit shall be located closer than 3 feet from the Improved Surface. No access points shall be unsecured during Non-Working Hours.
- (32) As built Plans may be submitted to the Borough.
- (33) Upon the Facility being completed in accordance with the above requirements, the Borough Inspector, or designee, shall issue a final completion certificate.

**SECTION 9.** Abandonment

Facility owners, including utilities and Property Owners, intending to abandon partial or complete Facilities are not exempt from Permit. All Facilities shall be suitably removed, backfilled, Grouted, or otherwise sufficiently stabilized to insure against settlement or future failure or collapse within the Borough's right-of-way. The demolition plan shall be submitted as part of the Permit submittal package. At a minimum the following shall be included in the plan:

- (1) Type, size and location of the Facility to be abandoned
- (2) No aboveground Facilities shall be abandoned in place.
- (3) Underground cables, wires, etc. shall be deactivated/deenergized. Facility owners shall suitably prove to the Borough Inspector or designee, that such Facilities have been disconnected from their deactivation point. No less than 10 feet of the Facility shall be removed at the deactivation point; all other such Facilities may be abandoned in place.
- (4) All manholes, junction boxes, inlets, and/or any other similar below grade structure shall be removed to a depth of 36 inches below grade. Any remaining portion of the structure below 36 inches shall be backfilled in a suitable manner (aggregate, flowable fill, etc.) approved by the Borough Engineer, or designee, to avoid future settlement and/or collapse. The structure shall be suitably drilled so it does not retain subsurface water.
- (5) All underground lines, conduits, mains, laterals, services etc. 12 inches in diameter or less shall be Grouted solid to prevent collapse or be removed.
- (6) All underground lines, conduits, mains, laterals, services, etc. in excess of 12 inches in diameter shall be removed.



- (7) Facility owners are responsible for all Excavation and restoration.

**SECTION 10.** Exemptions

This ordinance is not intended to address Driveways, planting of trees, or any other improvements, other than Facility service lines constructed or maintained by individual Property Owners within the improved or unimproved right-of-way.

Modifications to parts of existing permitted Facilities without Excavation (i.e. cables within conduits, replacement of existing street lights, repair or replacement of transformers, installation of manhole riser rings or adjustment of valve boxes for roadway resurfacing etc.)

Installation, maintenance or replacement of overhead Utility lines or existing poles, including tree trimming.

Access to an existing Facility within an existing manhole.

Installation of aerial or head guy wires. Ground-based guy wires are not exempt.

This Ordinance shall in no way prevent Facility owners from conducting "maintenance activities" such as flushing of mains and hydrants, actuating valves, televising or inspecting lines etc. Maintenance activities shall be exempt from a Permit.

**SECTION 11.** Revocation

Violation of this Ordinance allows for the suspension or revocation of previously issued Permits.

Upon oral or written notice of violation from the Borough Inspector or authorized Borough Representative, or designee, including a police officer. The Facility owner, employees, and contractors shall cease to perform any further work in the area except to restore the area to a safe condition. No further work shall commence until the violation is remedied. Where the Facility owner, employees, and contractors have received an oral notification, the Borough shall have 10 working days to issue a written notice of violation.

Installation of Facilities without prior approval of the Borough may result in re-excavation, reinstallation, re-backfilling, reinspection, and/or removal of said Facilities. Any and all costs associated with the violation shall be borne by the Facility owner. See also Permit fees.

The Facility owner shall be responsible for all associated fees and costs plus 20% including but not limited to administrative, legal, engineering, inspection, police enforcement, construction, equipment, material, labor, degradation, repair, damages etc.

**SECTION 12.** Violations and Penalties

Any person, firm, partnership or corporation who shall violate any of the provisions of this

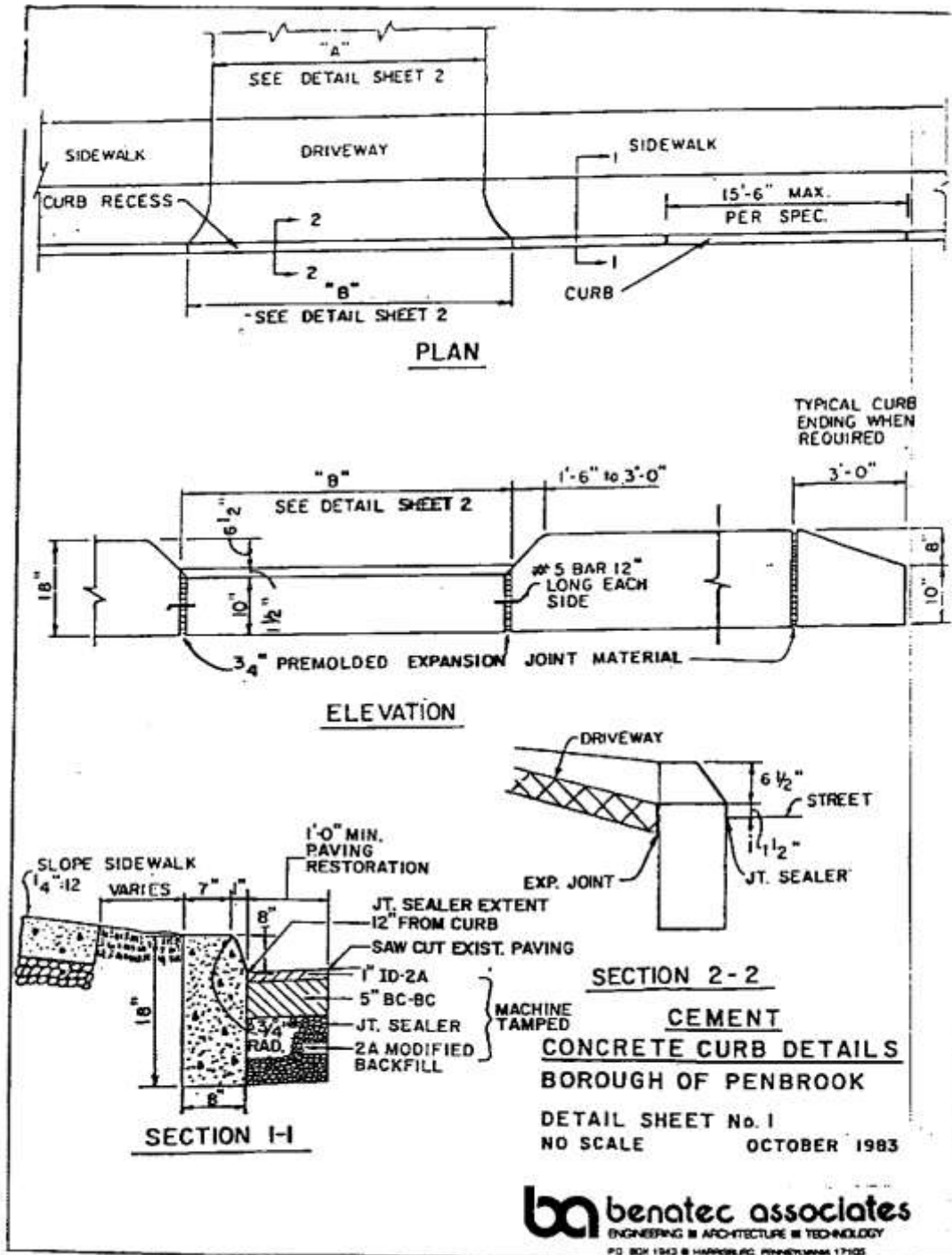
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article shall, upon conviction thereof, be subject to the penalties as set forth in Chapter 1, General Provisions, Article II, Enforcement; Penalties. Each violation and each day of violation shall constitute a separate offense.



Attachment 2: Cement Concrete Curb Details

Cement Concrete Curb Details



## Chapter 231: PARADES AND SPECIAL EVENTS

### ARTICLE I: Parades <sup>130</sup>

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]

#### § 231-1 Parades, General

The Council of the Borough of Penbrook seeks to provide a standard method for individuals and organizations to apply for permits to hold parades and similar functions in the Borough which may be held on the streets or other properties in the Borough. Further, the Borough intends to provide applicants with forms and instructions necessary to hold such events with a minimum of disruption to the residents of the Borough.

#### § 231-2 Definitions

**Applicant** – Any person or group sponsoring, organizing, or arranging and responsible for a parade by applying to the Borough for a permit and capable of being held legally responsible for such actions.

**Community Event** – Any community or neighborhood special event organized for the purpose of celebrating community arts, recreation, or culture, or to commemorate a holiday, seasonal or special event.

**First Amendment Activity** – Any public activity which includes the expressive and associative activities protected by the US or Pennsylvania Constitutions, including speeches, press assembly and/or the right to petition. Commercial advertising regulated by the Zoning Ordinance or elsewhere in the Penbrook Borough Code of Ordinances is excluded from this definition.

**Parade** – Any march, procession, organized movement of people or vehicles or any combination thereof that is (1) held with the intent to attract attention and/or (2) takes place on the streets or public property of the Borough of Penbrook, interferes with or has the intent or tendency to interfere with the normal flow or regulation of vehicular or pedestrian traffic or does not comply with the normal and usual traffic regulations or controls.

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<sup>130</sup> Adopted as Ordinance 2014-1 on September 3, 2014

**Special Event** – Any parade, public assembly, performance, meeting, contest, exhibit, athletic competition or presentation, community event, ceremony or other activity which is held wholly or partially on property owned or maintained by the Borough of Penbrook which is designated by the Borough for First Amendment Activity or is in a traditional public forum; on a street, alley or sidewalk of the Borough or will likely result in the obstruction of any street, alley or sidewalk or may compromise the ability of the Borough or the Citizen’s Fire Company #1 of Penbrook or any other firefighting or emergency agency to respond to a public safety emergency; or on any other property, which requires for its successful execution the provision or coordination of Borough services to a degree over and above that which the Borough routinely provides. A Special Event is not intended to include (1) an activity held exclusively on private property; (2) programmed activities provided or managed by the Borough; (3) any event which falls within the definition of a Special Event held in a public park, but does not interfere with the regular use of the park by the general public; (4) any First Amendment Activity on Borough streets, alleys, sidewalks, including within any park, which will not result in the obstruction of any street, alley or sidewalk nor compromise the ability of the Borough to respond to any public safety emergency.

**Sponsoring Organization** – Any individual or group applying for a parade permit.

**State Highway** – Any highway, street or bridge on the system of highways and bridges over which the Pennsylvania Department of Transportation has assumed or has been legislatively given jurisdiction.

### **§ 231-3 Applications**

A written application for a parade shall be submitted to the Borough Manager at least sixty (60) days prior to the first day of the public promotion, advertisement or commencement of the special event, whichever occurs first. Applications shall be submitted at least ninety (90) prior to the public promotion, advertisement or commencement of the special event if the event includes a proposal to close a State Highway.

All applications shall be submitted on forms provided by the Borough (See Appendix A) and shall include the following:

Full legal names, addresses, telephone numbers, and email addresses of all sponsors and, if an organization, proof of its legal existence.

Full legal names, addresses, telephone numbers and email addresses of all persons who will be in charge of the special event.

A map or layout of all public right-of-way which may be used as the route of the parade, together with the list of streets which must be closed for the event, staging areas prior to the event and areas to be used for the dispersal of participants after the event.

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The program for the parade, or if no program is prepared, a narrative statement as to the purpose for which the parade is conducted, a list of locations for such participants as judges, special guests, public officials, speakers, etc.

Evidence that all permits and licenses and insurance certificates as required by the State of Pennsylvania and local statutes, ordinances and regulations thereunder have been obtained or will be obtained. Such permits, licenses and certificates may include but are not limited to the following:

PA Department of Transportation Form TE-600

PA Department of Agriculture (Retail Food Licenses)

Penbrook Borough Transient Business Permit for peddlers.

Insurance certificates holding the Borough of Penbrook harmless for all acts or omissions of applicants, participants, guests and spectators. The certificates shall specifically show the Borough of Penbrook as a named insured and shall be in the minimum amount of \$1,000,000 for each occurrence, and \$2,000,000 general aggregate.

Provisions for emergency services, if required.

An estimate of the number of persons attending the parade.

Provisions for the sanitary clean up and disposal of all waste materials after the event and site restoration.

Provisions for traffic control before, during and after the event.

A fee must be received with the completed application for the parade at least 60 days prior to the event or the first date the event is advertised. No application for a parade will be accepted if the fee is submitted less than 60 days prior to the event. Borough Council shall from time to time set the fee by resolution of the Council. Borough Council may waive the fee, if deemed appropriate, at any time, by action of the Council.

### **§ 231-4 Conditions for Approval**

The Chief of Police and the Borough Manager together shall either grant or deny the application for permit. In the case of a denial, applicant has the right of appeal to Borough Council. Appeals shall be filed within ten (10) days of the date of the denial and shall be heard at the next regular meeting of Borough Council.

Applicants shall provide satisfactory evidence of the following no later than seven (7) days prior to the scheduled parade. Failure to do so shall constitute grounds for the immediate revocation of the permit by the Borough and cancellation of the parade.

1. **Food Preparation** – If food is being sold by the applicant, other than items prepackaged for sale to the public, the applicant shall submit a permit from the appropriate agency of the Commonwealth of Pennsylvania indicating the applicant’s plan for food preparation conforms to the applicable rules, regulations and laws regarding public health.
2. **Security** – Applicants must provide a plan and means to implement the plan to provide traffic control and crowd control acceptable to the Chief of Police or his designee. Identification of the security personnel or company or persons providing this service must be provided and proof of Traffic Control Training and Safety Certification shall be submitted with each application.
3. **Medical Service** – Applicant must provide a plan and means to implement the plan to provide sufficient medical services to the parade. Identification of the company or person supplying this service must be provided.
4. **Barricades and Obstacles** – Any area blocked off with barricades and obstacles for a special event shall not obstruct emergency and hazard vehicles responding to an emergency. All barricades and obstacles must be removed within 48 hours of the end of the special event. Applicant may arrange with the Borough to provide barricades if available.
5. **Structures** – Any temporary facilities including stages, lighting facilities, sanitary facilities and/or other utilities to be constructed or installed prior to commencement of the parade must be done so in a safe and approved way. Structures provided for the event must be removed no later than 24 hours after the end of the parade as a part of the site restoration.

**§ 231-5 Conduct of Public Assembly**

- A. The special event permit holder must maintain the sanitary and sewerage facilities, parking facilities, security and traffic control personnel, and medical service facilities and utilities provided in accordance with the plans submitted and approved, and in a safe and healthful manner.
- B. No permit holder or person having control of the special event shall condone any illegal conduct on the premises, including but not limited to disorderly conduct or illegal possession, sale or use of intoxicating beverages or drugs. Open alcoholic containers are not permitted on public property as per the Code of the Borough of Penbrook.
- C. The burden of special event security shall be solely on the permit holder Any violations of the laws of the Commonwealth of Pennsylvania, or its rules and regulations, or of the terms and conditions of this ordinance, or other Borough



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ordinances, or of the conditions of the permit granted hereunder may be cause for immediate revocation of the permit, upon notifications of the person in charge that a violation exists and the failure of the person in charge to take immediate action to correct the violation. On revocation of any permit, the permit holder shall immediately terminate the assembly and provide for the orderly dispersion of those in attendance.

- D. Penbrook Borough, its authorized agents, representatives and the Penbrook Borough Police Department shall be granted access to the public gathering at all times for the purpose of inspection and enforcement of the terms and conditions imposed herein.
- E. No programmed entertainment, amusement or recreation or use of sound amplification equipment shall be provided or permitted to be used between the hours of 10:00 PM and 7:00 AM in accordance with Chapter 174, Section 174-4 of the Penbrook Borough Noise Ordinance.
- F. At the conclusion of the special event, the permit holder shall terminate the assembly or gathering and shall supervise the orderly dispersion of those in attendance.
- G. No person participating in the parade shall throw any object at a spectator or other participant.

### **§ 231-6 Conformance with Other Laws**

- A. This ordinance shall in no way be a substitute for, nor eliminate the necessity of complying with any and all federal and state laws, rules and regulations, County and Borough ordinances which are now or may be in the future, in effect which pertain to the conduct of special events and parades.

### **§ 231-7 Penalties**

- A. Any person who initiates, organizes, promotes, permits, conducts or causes to be advertised a special event or parade without first obtaining the permit provided in this ordinance, or who knowingly conducts, permits or allows a special event with a permit but in violation of the terms and provisions of this ordinance and of the permit granted, or who shall counsel, aid or abet such violation or failure to comply, shall be subject to a fee of \$300 and all Borough-related expenses to support the special event. Should applicant fail to pay said fee within ten (10) days, the matter will be remanded to the Magisterial District Justice and the applicant shall be subject to a fine of not more than \$600.00, plus court costs and all Borough-related expenses to support the special event.

**ARTICLE II: Special Events** <sup>131</sup>

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]

**§ 231-8 Special Events, General**

WHEREAS the Council of the Borough of Penbrook seeks to provide a uniform method to allow individuals and organizations to hold small intimate gatherings for neighbors and friends in the Borough on public streets or properties, and WHEREAS the Borough seeks to provide a simple method for requesting street closures for the purpose of holding special events with a minimum of hardship on Borough residents for such gatherings.

**§ 231-9 Definitions**

**Applicant** - Any person or group organizing or arranging for a special event and able to be held legally responsible for such actions.

**Block Party** - A one-day outdoor special event organized primarily by the residents of a neighborhood and held on a Borough street and/or right-of-way for social and/or entertainment purposes. A block party may only be held between the hours of 7:00 a.m. and 10:00 p.m.

**First Amendment Activity** - Any public activity which includes the expressive and associative activities protected by the US or Pennsylvania Constitutions, including speeches, press assembly and/or the right to petition. Commercial advertising regulated by the Zoning Ordinance or elsewhere in the Penbrook Borough Code of Ordinances is excluded from this definition.

**Special Event** - Any public assembly, performance, meeting, contest, exhibit, athletic competition or presentation, community event, block party, ceremony or other activity which is held wholly or partially in one place on pre maintained by the Borough of Penbrook which is designated by the Borough for First Amendment Activity or is in a traditional public forum; on a street, alley or sidewalk of the Borough or will likely result in the obstruction of any street, alley or sidewalk or may compromise the ability of the Borough or the Citizen's Fire Company #1 of Penbrook or any other firefighting or emergency agency to respond to a public safety emergency; or on any other property, which requires for its successful execution the provision or coordination of Borough services to a degree over and above that

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<sup>131</sup> Adopted as Ordinance 2014-2 on December 1, 2014

which the Borough routinely provides. A Special Event is not intended to include (1) an activity held exclusively on private property; (2) programmed activities provided or managed by the Borough; (3) any event which falls within the definition of a Special Event held in a public park, but does not interfere with the regular use of the park by the general public; (4) any First Amendment Activity on Borough streets, alleys, sidewalks, including within any park, which will not result in the obstruction of any street, alley or sidewalk nor compromise the ability of the Borough to respond to any public safety emergency. A Special Event is not a parade or similar moving activity.

**Sponsoring Organization** - Any individual or group applying for a special event permit.

**State Highway** - Any highway, street or bridge on the system of highways and bridges over which the Pennsylvania Department of Transportation has assumed or has been legislatively given jurisdiction.

### § 231-10 Applications

- A. A written application for a special event shall be submitted to the Borough Manager at least twenty-one (21) days prior to the first day of the public promotion, advertisement or commencement of the special event, whichever occurs first. Applications shall be submitted at least ninety (90) days prior to the public promotion, advertisement or commencement of the special event if the event includes a proposal to close a State Highway in order to secure the necessary Departmental approvals.
- B. All applications shall be submitted on forms provided by the Borough and shall include the following:
- (1) Full legal names, addresses, telephone numbers, and email addresses of all sponsors.
  - (2) Full legal names, addresses, telephone numbers and email addresses of all persons who will be in charge of the special event.
  - (3) The location and address of the property to be used for the special event.
  - (4) The program for the special event, or if no program is prepared, a narrative statement as to the purpose for which the special event is conducted.
  - (5) The location where the special event is to take place, including streets to be closed, need for barricades and "No Parking" signs.
  - (6) An estimate of the number of persons expected to attend and the duration of the special event.
  - (7) A statement regarding the first day on which public announcement, promotion, or advertising is to be made.

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- (8) Specific details relating to:
  - (a) Food and drink facilities and providers thereof, if items are to be sold.
  - (b) Post-event trash and recycling removal and site restoration,
- (9) Examples of the proposed advertising for the special event, if any.
- (10) Applicants' statement that they shall abide by the terms and provisions of this ordinance and all the laws, rules and regulations of the United States, the Commonwealth of Pennsylvania, Dauphin County and the Borough of Penbrook.
- (11) A fee shall be paid for special events Said fee shall be set and may be changed by the Council of the Borough of Penbrook, from time to time, by a resolution of the Council. No application for any special event will be accepted unless accompanied by the required fee, in full. Borough Council, in their sole discretion, may way any fees. All fees are non-refundable.

### **§ 231-11 Conditions for Approval**

- A. The Chief of Police and the Borough Manager shall either grant or deny the application for permit. In the case of a denial, applicant has the right of appeal to Borough Council. Appeals shall be filed within ten (10) days of the date of the denial and shall be heard at the next regular meeting of Borough Council,
- B. Barricades and Obstacles - Any area blocked off with barricades and obstacles for a special event shall not obstruct emergency and hazard vehicles responding to an emergency. All barricades and obstacles must be removed within 48 hours of the end of the special event.

### **§ 231-12 Conduct of Public Assembly**

- A. No permit holder or person having control of the special event shall condone any illegal conduct on the premises, including but not limited to disorderly conduct or illegal possession, sale or use of intoxicating beverages or drugs. Open alcoholic containers are not permitted on public property as per the Code of the Borough of Penbrook.
- B. The burden of special event security shall be solely on the permit holder Any violations of the laws of the Commonwealth of Pennsylvania, or its rules and regulations, or of the terms and conditions of this ordinance, or other Borough ordinances, or of the conditions of the permit granted hereunder may be cause for immediate revocation of the permit, upon notifications of the person in charge that a violation exists and the failure of the person in charge to take immediate action to

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correct the violation. On revocation of any permit, the permit holder shall immediately terminate the assembly and provide for the orderly dispersion of those in attendance.

- C. Penbrook Borough, its authorized agents, representatives and the Penbrook Borough Police Department shall be granted access to the public gathering at all times for the purpose of inspection and enforcement of the terms and conditions imposed herein.
- D. No programmed entertainment, amusement or recreation or use of sound amplification equipment shall be provided or permitted to be used between the hours of 10:00 PM and 7:00 AM in accordance with Chapter 174, Section 174-4 of the Penbrook Borough Noise Ordinance.
- E. At the conclusion of the special event, the permit holder shall terminate the assembly or gathering and shall supervise the orderly dispersion of those in attendance. Site restoration shall immediately follow the conclusion of a special event and shall include clearing all trash and rubbish from the site and restoring it to its condition prior to the event.

### **§ 231-13 Conformance with Other Laws**

This ordinance shall in no way be a substitute for, nor eliminate the necessity of complying with any and all federal and state laws, rules and regulations, County and Borough ordinances which are now or may be in the future, in effect which pertain to the conduct of special events.

### **§ 231-14 Penalties**

Any person who initiates, organizes, promotes, permits, conducts or causes to be advertised a special event without obtaining the permit provided in this ordinance, or who knowingly conducts, permits or allows a special event with a permit but in violation of the terms and provisions of this ordinance and of the permit granted shall counsel, aid, or who or abet such violation or failure to comply, shall be subject to a fee of \$300 and all Borough-related expenses to support the special event. Should applicant fail to pay said fee within ten (10)

### **§ 231-15 Severability**

The provisions of this ordinance shall be severable, and if any provision, sentence, clause or portion hereof shall be held to be unconstitutional, invalid or illegal, by any court of competent jurisdiction, such decision shall have no effect on the validity of any remaining provisions of the ordinance.

**Appendix A: Parade Permit Forms**

## **Parade Application**

To apply for a parade within the Borough of Penbrook, complete and return the application on the reverse side, together with the required application fee. Applications cannot be accepted without the fee and are non-refundable.

Applications must be accompanied by the following, if applicable:

Map of the parade route with the assembly and dismissal points indicated.

Approved PennDOT TE-600 form if state roads are used.

Insurance certificate showing the Borough as a named insured and holding the municipality harmless for all actions and omissions of the applicants. Minimum values: \$1,000,000 per occurrence and \$2,000,000 general aggregate.

Traffic Control and Safety Equipment Certifications.

Licenses, insurance certificates and inspection dates for all vehicles to be used in the parade.

Licenses for all drivers in the parade.

Application for road closures, signed by Mayor or Borough Manager.

Peddlers or solicitors permits for those selling items at the event.

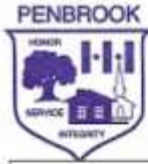
Contracts or other descriptions of those providing traffic control

Description of clean up and recycling actions after the event.

Applications must be submitted no later than 60 days prior to the event or to the date on which the parade is first advertised.

By signing the application, the applicant and the association or organization sponsoring the event agree to maintain sufficient insurance and to issue a Certificate of Insurance naming the Borough as an insured and will hold the Borough harmless from all act or omissions of the sponsor or any attendee.

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**APPLICATION FOR A PARADE**  
 MUST BE FILED AT LEAST (45) DAYS PRIOR TO THE  
 FORMATION OF THE PARADE IN ORDER TO BE  
 CONSIDERED FOR APPROVAL

**Borough of Penbrook**  
 150 S. 28<sup>th</sup> Street, Penbrook, PA 17103  
 Phone 717-232-3733  
 Fax 717-233-8589

NAME OF ORGANIZATION OR SOCIETY	ORGANIZATION ADDRESS
---------------------------------	----------------------

**NAMES AND ADDRESSES OF OFFICIALS OR ORGANIZATION RESPONSIBLE FOR CONDUCT OF THE PARADE**

PRESIDENT OR CHAIRMAN	ADDRESS	(CITY)	(PHONE)	(ZIP CODE)
SECRETARY	ADDRESS	(CITY)	(PHONE)	(ZIP CODE)
TREASURER	ADDRESS	(CITY)	(PHONE)	(ZIP CODE)

CHARACTER OF ORG. (Religious, Political, Etc.)	PURPOSE OF PARADE	LOCATION OF REVIEWING STAND
--	-------------------	-----------------------------

PLACE OF FORMATION	DATE OF PARADE	START TIME/END TIME
--------------------	----------------	---------------------

ROUTE OF PARADE (Use Additional Pages if Necessary)


DISMISSAL POINT	# PARTICIPANTS	# VEHICLES	# MEMBERS IN ORG.
-----------------	----------------	------------	-------------------

DESCRIPTIONS OF UNIFORMS & EQUIPMENT TO BE USED IN PARADE


NAME AND ADDRESS OF PARADE ORGANIZER

--

**I HEREBY CERTIFY** that the statements contained herein are true and correct to the best of my knowledge and belief. I understand that if I knowingly make any false statement herein, I am subject to such penalties as may be prescribed by law or ordinance.

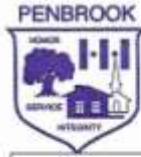
SIGNATURE OF APPLICANT	OFFICE HELD IN ORGANIZATION
------------------------	-----------------------------

ADDRESS	CITY	STATE	ZIP
---------	------	-------	-----

DAYTIME PHONE #	EVENING PHONE #	EMAIL ADDRESS
-----------------	-----------------	---------------

**OFFICE USE ONLY**

SIGNATURE & TITLE	DATE	APPROVED (Circle One) DISAPPROVED	LICENSE #
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**Parade Application Checklist**  
 Review of all Applications are required before a permit can be issued. No permit can be issued less that 14 days before the event.

**Borough of Penbrook**  
 150 S. 28<sup>th</sup> Street, Penbrook, PA 17103  
 Phone 717-232-3733  
 Fax 717-233-8589

NAME OF ORGANIZATION OR SOCIETY	ORGANIZATION ADDRESS
---------------------------------	----------------------

**Police Checklist**

- | YES                      | NO                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Parade route has been reviewed and is acceptable   |
| <input type="checkbox"/> | <input type="checkbox"/> | All necessary PennDOT forms have been submitted and approved   |
| <input type="checkbox"/> | <input type="checkbox"/> | Security provisions appear adequate  |
| <input type="checkbox"/> | <input type="checkbox"/> | Proposed traffic detours appear adequate   |
| <input type="checkbox"/> | <input type="checkbox"/> | Individuals providing traffic control are properly trained and have necessary certificates                                       |
| <input type="checkbox"/> | <input type="checkbox"/> | Equipment planned to be used for traffic and crowd control appear adequate.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Borough personnel will be used for security.   |
| <input type="checkbox"/> | <input type="checkbox"/> | Licenses, insurance and inspections for all vehicles to be used in the parade have been reviewed and are current and acceptable. |
| <input type="checkbox"/> | <input type="checkbox"/> | All drivers in the parade have current PA Driver Licenses.   |

**Borough Checklist**

- | YES                      | NO                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Parade date is available.  |
| <input type="checkbox"/> | <input type="checkbox"/> | All forms and fees have been received .  |
| <input type="checkbox"/> | <input type="checkbox"/> | The traffic Control and Safety Equipment Certifications form has been signed and notarized.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Floats displaying any open flame have at least one Type ABC (2A20BC) Fire Extinguisher.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Materials for Notification of Street Closures appear adequate.   |
| <input type="checkbox"/> | <input type="checkbox"/> | A Certificate of Insurance naming the Borough as an Additional Insured in the minimum amounts of coverage has been received.               |
| <input type="checkbox"/> | <input type="checkbox"/> | Waiver of Liability has been received from all participants.   |
| <input type="checkbox"/> | <input type="checkbox"/> | Contracts or plans for trash and recycling services appear adequate for the parade.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Portable restrooms, trash and recycling containers sufficient to meet the needs of the event have been contracted for and copies provided. |
| <input type="checkbox"/> | <input type="checkbox"/> | Plans and equipment for cleaning the entire parade route, assembly and dispersal sites have been included with the application             |

- Checklist Approved  
 Checklist Not Approved

Signature, Chief of Police

Date / / 20 \_\_\_\_

- Checklist Approved  
 Checklist Not Approved

Signature Borough Manager

Date / / 20 \_\_\_\_

**PARADE PERMIT**

Special Event # \_\_\_\_\_ Event Date \_\_\_\_/\_\_\_\_/20\_\_\_\_

Manager's Signature \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/20\_\_\_\_



## Chapter 233: SUBDIVISION AND LAND DEVELOPMENT

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 1-7-2004 by Ord. No. 2004-1. Amendments noted where applicable.]

### GENERAL REFERENCES

Planning Commission — See Ch. 41.  
Building construction — See Ch. 104.  
Sewers — See Ch. 210.  
Stormwater management — See Ch. 226.  
Streets and sidewalks — See Ch. 230.  
Zoning — See Ch. 266.

### ARTICLE I: Short Title

#### § 233-1. Short title.

These regulations shall be known and may be cited as the "Penbrook Borough Subdivision and Land Development Ordinance."

### ARTICLE II: Purpose, Authority, Application and Interpretation

#### § 233-2. Purpose.

The purpose of this Subdivision and Land Development Chapter is to provide for harmonious development of the municipality and county by:

- A. Ensuring the orderly and efficient integration of subdivisions into the development of the Borough of Penbrook.
- B. Ensuring sites suitable for building purposes and human habitation.
- C. Ensuring conformance of subdivision plans with public improvement plans.
- D. Ensuring coordination of intermunicipal public improvement plans and programs.
- E. Ensuring the protection of water resources and drainageways.
- F. Ensuring the efficient movement of traffic.
- G. Ensuring the management of stormwater runoff problem areas.
- H. Ensuring equitable handling of all subdivision plans by providing uniform standards and procedures.
- I. Ensuring the greater health, safety and welfare of the citizens of the Borough of Penbrook.
- J. Ensuring the efficient and orderly extension of community services and facilities at minimum cost and maximum convenience.
- K. Encouraging and promoting flexibility, economy and ingenuity in the layout and design of subdivisions and land developments.

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- L. Encouraging the use of renewable energy systems and energy conserving building design.

### § 233-3. Authority.

- A. The Penbrook Borough Council shall have the authority to approve or disapprove all preliminary and final subdivision or land development plat applications as required herein.
- B. The Penbrook Borough Planning Commission is hereby designated as the agency which shall review and make recommendations on all subdivisions and land use development plat applications as required herein, prior to action on same by the Borough Council.

### § 233-4. County review.

Applications for subdivision and land development, located within the Borough of Penbrook shall be forwarded upon receipt, with the appropriate review fee, to the Dauphin County Planning Commission for review and report. The Borough Council shall not approve such applications until the county review report is received or until the expiration of 30 days from the date the application was forwarded to the County Planning Commission. As evidenced of their view and report, officials of the County Planning Commission will sign final plats which had been formally approved by the municipality before such plats are presented for recording.

### § 233-5. Application of regulations.

- A. No subdivision or land development of any lot, tract or parcel of land located in the Borough of Penbrook shall be effected; no street, sanitary sewer, storm sewer, water main or other improvements in connection therewith shall be laid out, constructed, opened or dedicated for public use or travel, or for the common use of occupants of buildings thereon, unless and until a final subdivision plat has been approved by the Borough Council and publicly recorded in the manner prescribed herein; nor otherwise; except in strict accordance with the provisions of this chapter.
- B. No lot in a subdivision may be sold; no permit to erect or alter any building upon land in a subdivision or land development may be issued; and no building may be erected or altered in a subdivision or land development unless and until the final subdivision plat has been approved by the Borough Council and recorded, and until construction of the improvements required in the manner prescribed herein.

### § 233-6. Interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to be minimum requirements for the promotion of public health, safety, comfort, convenience and greater welfare. Where provisions of this chapter impose greater restrictions than those of any statute, other ordinance, restriction or regulation, the provisions of this chapter shall be controlling. Where the provisions of a statute, other ordinance, resolution or regulation impose greater restrictions than this chapter, the provisions of such statute, resolution, ordinance or regulation shall be controlling.

**ARTICLE III: Words Defined**

**§ 233-7. Definitions.**

Unless otherwise expressly stated, the following words shall, for the purpose of this chapter, have the meanings herein indicated:

**ACCESSORY BUILDING or STRUCTURE** — A subordinate structure detached from but located on the same lot as the principal structure, the use of which is incidental and accessory to that of the principal structure

**ALLEY** — A minor way, which may or may not be legally dedicated, and is used primarily for vehicular service access to the rear or side of properties abutting on a street.

**APPLICANT** — A landowner or developer, as hereinafter defined, who has filed an application for development, including his heirs, successors and assigns.

**APPLICATION FOR DEVELOPMENT** — Every application, whether preliminary, tentative or final, required to be filed and approved prior to start of construction or development, including but not limited to an application for building permit, for the approval of the subdivision plat or plan or for the approval of a development plan.

**BASE FLOOD ELEVATION** — The one-hundred-year flood elevation is indicated on the Flood Insurance Rate Map (FIRM), as revised, for the Borough of Penbrook, Dauphin County, Pennsylvania, prepared by the Federal Emergency Management Agency, Federal Insurance Administration.

**BLOCK** — An area bounded by streets.

**BOROUGH COUNCIL** — The Borough Council of Penbrook, Dauphin County, Pennsylvania.

**BOROUGH ENGINEER** — A professional engineer, as defined herein, designated by the Borough of Penbrook to perform the duties of Engineer as herein specified.

**BUILDING SETBACK LINE** — The line within the property defining the required minimum distance permitted between any principal or secondary structure and the adjacent right-of-way and the line defining side and rear yards, where required.

**CARTWAY** — The portion of a street alley which is unproved, designated or intended for vehicular use.

**CHAIRMAN** — The Chairman of the Penbrook Borough Planning Commission.

**CLEAR SIGHT TRIANGLE** — A triangular-shaped portion of land established at street intersections in which nothing is erected, placed, planted or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersections.

**COMMISSION** — The Penbrook Borough Planning Commission.

**COMMON ELEMENTS** — Land amenities, parts of buildings, central services and utilities and any other elements and facilities owned and used by all unit owners and are designated

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as common elements. These elements may include but are not limited to:

- A. The land on which the building is located in portions of the building which are not included in unit;
- B. The foundation, structural parts, supports, main walls, roofs, basements, halls, corridors, lobbies, stairways, entrances and exits of the building;
- C. The yards, parking areas and driveways;
- D. Portions of the land and building used exclusively for the management, operation or maintenance of the common elements;
- E. Installations of all central services and utilities;
- F. All other elements of the building necessary or convenient to its existence, management, operation, maintenance and safety or normally incoming use; and
- G. Such other facilities as are designated as common elements.

**COMMON OPEN SPACE** — A parcel or parcels of land or an area of water, or combination of land and water, within the development site and designed and intended for the use or enjoyment of residents of the development, not including streets, off-street parking areas and areas set aside for public facilities.

**CONDOMINIUM** — Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

**CONDOMINIUM ASSOCIATION** — The community association which administers and maintains the common property and common elements of a condominium.

**COUNTY** — The County of Dauphin, Pennsylvania.

**CROSSWALK** — A right-of-way, publicly or privately owned, intended to furnish access of pedestrians.

**CUL-DE-SAC** — A minor street opened at one end for vehicular and pedestrian access with the opposite end terminating in a vehicular turnaround.

**CULVERT** — A drain, ditch or conduit not incorporated in a closed system that carries drainage water under a driveway, roadway, railroad, pedestrian walkway or publicway.

**CURB** — A stone or concrete boundary usually marking the edge of the cartway or paved areas.

**CURB CUT** — The opening along the curblines at which point vehicles may enter or leave the roadway.

**CUT** — An excavation; the difference between a point on the original ground and designated point of lower elevation of the final grade. Also, the material removed in excavation.

**DECISION** — Final adjudication of any board or other body granted jurisdiction under any

land use ordinance of the Municipalities Planning Code, Act 247, as amended,<sup>132</sup> either by reason of the grant of exclusive jurisdiction or by reason of appeals from determination. All decisions shall be appealable to the Court of Common Pleas or the county and judicial district wherein to Borough lies.

**DEVELOPER** — Any landowner, agent of such landowner or tenant with the permission of such landowner who makes or causes to be made the subdivision of land or a land development.

**DEVELOPMENT PLANS** — The provisions for development, including a planned residential development, a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities. The phrase "provisions of development plan" when used in this chapter shall mean the written and graphic materials referred to in this definition.

**DRAINAGE**

- A. Surface water runoff.
- B. The removal of surface water or groundwater from land by drains, grading or other means which include runoff controls to minimize erosion and sedimentation during and after construction of development, the means for preserving the water supply and the prevention or alleviation of flooding.

**DRAINAGE FACILITY** — Any ditch, gutter, culvert, storm sewer or other structure designed, intended or constructed for the purpose of diverting surface waters from or carrying surface waters off streets, public rights-of-way, parks, recreational areas or any part of any subdivision or contiguous land areas.

**DRAINAGE SYSTEM** — Pipes, swales, natural features and man-made improvements designed to carry drainage.

**DRIVEWAY** — A private roadway providing access for vehicles to a parking space, garage, dwelling or other structure not including a residential access drive.<sup>133</sup>

**DWELLING** — A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**DWELLING, EARTH SHELTERED** — Any completed building or structure that was designed to be built partially or wholly underground; a completed building or structure which was not intended to serve as a substructure or foundation for building.

**DWELLING, INDUSTRIALIZED HOUSING** — Any structure designed primarily for residential occupancy, except a mobile home, which is wholly or in substantial part, made,

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<sup>132</sup>. Editor's Note: See 53 P.S. § 10101 et seq.

<sup>133</sup> Amended Ordinance 2007-1 on March 5 2007, Updated text

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fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on the building site in such manner that all concealed parts or processes of manufacture cannot be inspected at, the site without disassembly, damage or destruction.

**DWELLING, MOBILE HOME** — A transportable, single-family dwelling intended for permanent occupancy, contained in one unit, or in two or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation.

**DWELLING, MULTIFAMILY** — A building used by three or more families living independently of each other and doing their own cooking, including apartment houses, rowhouses or townhouses.

**DWELLING, SINGLE-FAMILY DETACHED** — A dwelling which is designated for and occupied by not more than one family and surrounded by open space or yards and which is not attached to any other dwelling by any means.

**DWELLING, SINGLE-FAMILY, ATTACHED (TOWNHOUSES)** — A one-family dwelling attached to two or more one-family dwellings by common vertical walls.

**DWELLING, TWO-FAMILY, DETACHED (DUPLEX)** — A building used by two families, with one dwelling unit arranged over the other and having two side yards.

**DWELLING, TWO-FAMILY, SEMIDETACHED (DOUBLE DUPLEX)** — A building used by two families, with one dwelling unit arranged over the other, having one side yard and one-party wall in common with another building.

**EASEMENT** — A right-of-way granted for the limited use of land for public or quasi-public purposes.

**ENGINEER, MUNICIPAL** — A registered professional engineer in Pennsylvania designated by the municipality to perform the duties of Engineer as herein specified.

**ENGINEER, PROFESSIONAL** — An individual licensed in and registered under the laws of the Commonwealth to engage in the practice of engineering. A professional engineer may not practice land surveying unless licensed as set forth in Public Law 534, No. 230; however, a professional engineer may perform engineering land surveys.

**ENGINEERING LAND SURVEYS** — Surveys for:

- A. The development of any tract of land, including the incidental design of related improvements, such as line and grade extension of roads, sewers and grading but not requiring independent engineering judgment; provided, however, that tract perimeter surveys shall be the function of the professional land surveyor;
- B. The determination of the configuration or contour of the earth's surface, or the position of fixed objects thereon or related thereto by means of measuring lines and angles and applying the principles of mathematics, photogrammetry or other measurement methods;
- C. Geodetic or cadastral surveys, underground survey and hydrographic survey;

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- D. Sedimentation and erosion control surveys;
- E. The determination of the quantities of materials;
- F. Tests for water percolation in soils; and
- G. The preparation of plans and specifications and estimates of proposed work as described herein.

**ENGINEERING SPECIFICATIONS** — The engineering specifications of the municipality regulating the installation of any required improvements or for any facility installed by any owner, subject to public use.

**EROSION** — The detachment and movement of soil or rock fragments, or the wearing away of the land surface by water, wind, ice and gravity.

**EXCAVATION** — Any act by which earth, sand, gravel, rock or other similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated or bulldozed. It shall include the conditions resulting therefrom.

**EXISTING GRADE** — The vertical location of the ground surface prior to excavation or filling.

**FILL** — Any act by which earth, sand, gravel, rock or any other material is placed, pushed, dumped, pulled, transported or moved to a new location above the natural surface of the ground or on top of the stripped surface and shall include the conditions resulting therefrom; the difference in elevation between a point on the original ground and designated point of higher elevation on the final grade; the material used to make a fill.

**FINISHED GRADE** — The proposed elevation of the land surface of a site after completion of all site preparation work.

**FLOOD** — A temporary inundation of normally dry land areas.

**FLOOD, BASE (ONE-HUNDRED-YEAR FLOOD)** — A flood that, on the average, is likely to occur once every 100 years (i.e., that has a one-percent chance of occurring each year, although the flood may occur in any year.

**FLOOD FRINGE** — That portion of the floodplain outside the floodway.

**FLOOD HAZARD BOUNDARY MAP (FHBM)** — An official map of Penbrook Borough, issued by the Federal Insurance Administration.

**FLOOD HAZARD, AREAS OF SPECIAL** — The land in the floodplain within the community subject to a one-percent or greater chance of flooding in any given year.

### FLOODPLAIN

- A. A relatively flat or lowland area adjoining a river, stream or watercourse which is subject to partial or complete inundation;
- B. An area subject to the unusual and rapid accumulation of runoff of surface waters from any source.

**FLOODPROOFING** — Any combination of structural and nonstructural additions, changes or adjustments to proposed or existing structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY** — The designated area of a floodplain required to carry and discharge floodwaters of a given magnitude. For the purposes of this chapter, the floodway shall be capable of accommodating a flood of the one-hundred-year magnitude.

**FUTURE RIGHT-OF-WAY**

- A. Right-of-way width required for the expansion of existing streets to accommodate anticipated future traffic loads;
- B. A right-of-way established to provide future access to or through undeveloped land.

**GOVERNING BODY** — The Borough Council of Penbrook, Dauphin County, Pennsylvania.

**GRADE, EXISTING** — See definition "existing grade."

**GRADE, FINISHED** — See definition "finished grade."

**IDENTIFIED FLOODPLAIN AREA or DISTRICT** — Those floodplain areas specifically designated in the Borough of Penbrook Zoning Ordinance as being inundated by the one-hundred-year flood. <sup>134</sup>

**IMPROVEMENTS** — Any man-made immovable item which becomes part of, placed upon or is affixed to real estate.

**LAND DEVELOPMENT** — Any of the following activities:

- A. The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
  - (1) A group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
  - (2) The division or allocation of land or space, whether initially or cumulatively, between or among two 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. The subdivision of land.
- C. Land development does not include development which involves:
  - (1) The conversion of an existing family detached dwelling or single-family semidetached dwelling into not more than two residential units, unless such

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<sup>134</sup>. Editor's Note: See Ch. 266, Zoning.



units are intended to be a condominium;

- (2) The addition of an accessory building, including farm building, on a lot or lots subordinate to existing principal building; or
- (3) The addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park. For the purposes of this subsection, an "amusement park" is defined as a tract, or area used principally as a location for permanent amusement structures or rides. This exclusion shall not apply to a newly acquired acreage by an amusement park until initial plans for the expanded area have been approved by the proper authorities.

**LANDOWNER** — The legal or equitable owner or owners of land, including the holder of an option or contract to purchase (whether or not such option or contract is subject to any conditions), a lessee if he is authorized under the lease to exercise the rights of the landowner or other person having a proprietary interest in land shall be deemed to be a landowner for the purpose of this chapter.

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

**LOT AREA** — The area contained within the property lines of a lot as shown on a subdivision plan excluding space within any rights-of-way, but including the area of any easement.

**LOT LINE** — A boundary line of a lot.

**LOTS, DOUBLE FRONTAGE** — An interior lot having frontage on two streets.

**LOTS, REVERSE FRONTAGE** — A lot extending between and having frontage on an arterial street and a minor street, and with vehicular access solely from the latter.

**MARKER** — A wood or metal stake placed to designate the boundary and corners of lots in the subdivision of land for the purpose of reference in land and property survey.

**MASTER DEED** — A legal instrument under which title to real estate is conveyed and by which a condominium is created and established.

**MOBILE HOME, DWELLING** — See definition "dwelling, mobile home."

**MOBILE HOME LOTS** — A parcel of land in a mobile home park, improved with the necessary utility connections and other appurtenances necessary for the erection thereon of a single mobile home.

**MONUMENT** — A concrete, stone or other permanent object placed to designate boundary lines, corners of property and rights-of-way of streets and utilities for the purpose of reference in land and property survey.

**OPEN SPACE, COMMON** — See definition "common open space."

**OPEN SPACE, PUBLIC** — Open space owned by a public agency and maintained by it for

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the use and enjoyment of the general public.

**PERSON** — Any individual or group of individuals, partnership, copartnership or corporations.

**PLAN, COMPREHENSIVE** — The Development Policy Plan (Master Plan) and/or future Land Use Plan and/or Official Map or other such plans, or portions thereof, as may be adopted, pursuant to statute, for the area of the municipality in which the subdivision or land development is located.

**PLAN, SKETCH** — An informal plan, not necessarily to exact scale, indicating salient existing features of a tract and its surroundings and the general layout of the proposed subdivision or land development.

**PLAN, SOIL EROSION AND SEDIMENTATION CONTROL** — A component of a subdivision and land development plan for controlling erosion and sediment during construction which shall provide all steps, including scheduling, to assure erosion and sediment control during all phases of construction, including final stabilization.

### **PLAN, STORMWATER MANAGEMENT**

- A. A component of a subdivision and/or land development plan, where required, that describes the planned control of runoff to allow water falling on a given site to be absorbed or retained on the site so that after development the peak rate of discharge leaving the site is not greater than if the site had remained undeveloped; and
- B. A plan; showing all present and proposed grades and facilities for stormwater management.

**PLANNED RESIDENTIAL DEVELOPMENT** — An area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, or combination of residential and nonresidential uses, the development plan for which does not correspond in lot size, bulk, type of dwelling or use, density or intensity, lot coverage and required open space to the regulations established by any one district created from time to time under the provisions of this chapter.

**PLANNING COMMISSION** — Penbrook Borough Planning Commission, Dauphin County, Pennsylvania.

**PLAT** — The map or plan of a subdivision or land development, whether preliminary or final.

**PLAT, PRELIMINARY** — A tentative subdivision or land development plan, in lesser detail than a final plan, showing approximate proposed street and lot layout, which is a basis for consideration prior to the preparation of a final plan.

**PRINCIPAL BUILDING or PRINCIPAL USE** — The basic purpose for which a building or land area is occupied or intended to be occupied as opposed to accessory or incidental uses, usually classified all as residential, commercial, manufacturing or public in nature.

**PRIVATE ROAD** — A legally established right-of-way, other than a public street, which provides the primary pedestrian or vehicular access to one or more lots and constructed to

the design standards contained in this chapter.

**PROFILE LINE** — The profile of the center line of the finished surface of the street, which shall be midway between the side lines of the street.

**PUBLIC GROUND** — Includes:

- A. Parks, playgrounds, trails, paths and other recreational areas and other public areas;
- B. Sites for schools, sewage treatment, refuse disposal and other publicly owned or operated facilities; and
- C. Publicly owned or operated scenic and historic sites.

**PUBLIC HEARING** — A formal meeting held pursuant to public notice by the Borough Council or Planning Commission, intended to inform and obtain public comment, prior to taking action in accordance with this chapter.

**PUBLIC MEETING** — A forum held pursuant to notice under the Act of July 3, 1986 (P.L. 388, No. 84), known as the "Sunshine Act."

**PUBLIC NOTICE** — Notice published once each week for two successive weeks in a newspaper of general circulation in the Borough. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing.

**REAL ESTATE** — Any fee, leasehold or other estate or interest in, over or underlay, including structures, fixtures and other improvements and interests which by custom, usage or law passed with a conveyance of land whether or not described in the contract of sale or instrument of conveyance. Real estate includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

**RESERVE STRIP** — A strip of land adjacent to a street intended to control access to the streets from an adjacent property.

**RESIDENTIAL ACCESS DRIVE** — A residential access drive is a paved surface, other than a street or driveway, which provides vehicular access from a street or private road to a lot containing three or more dwelling units and is subject to the design standards of a minor road.<sup>135</sup>

**REVERSE FRONTAGE LOT** — See definition "lots, reverse frontage."

**RIGHT-OF-WAY STREET** — A public thoroughfare for vehicular traffic and/or pedestrian traffic, whether designated as a street, highway, thoroughfare, parkway, road, avenue, boulevard, lane, alley or however designated.

**RUNOFF** — The surface water discharge or rate of discharge of a given watershed after fall

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<sup>135</sup> Amended Ordinance 2007-1 on March 5 2007, Added text

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of rain or snow that does not run into the soil, but runs off the surface of the land.

**SANITARY SEWER (PUBLIC)** — A sanitary sewerage collection method in which the sewage is carried from the site by a system of pipes to a central treatment and disposal plant.

**SEDIMENTATION** — The process by which mineral or organic matter is accumulated or deposited by wind, water or gravity. Once this matter is deposited (or remains suspended in water) it is usually referred to as "sediment."

**SEPTIC SYSTEM** — An underground system with a septic tank used for the decomposition of domestic wastes. Also referred to as an "on-lot system."

**SERVICE DRIVE (PRIVATE)** — A service way providing a secondary means of private access to abutting property and not intended for general traffic circulation.

**SETBACK LINE** — See definition "building setback line."

**SHADOW ANALYSIS** — A graphic representation of shadows cast by nature, landscaping, screening and structures plotted with regard to topography, slope and direction at 9:00 a.m., 12:00 noon and 3:00 p.m. on the date of the winter solstice.

**SIDEWALK** — A paved, surfaced or level area, parallel to and usually separated from the street, used as a pedestrian walkway.

**SIGHT DISTANCE** — The length of roadway visible to the driver of a passenger vehicle at any given point on the roadway when the view is unobstructed by traffic.

**SLOPE** — The face of an embankment or cut section; any ground whose surface makes an angle with the plane of the horizon. Slopes are usually expressed in a percentage based upon vertical difference in feet per 100 feet of horizontal distance.

**SOIL STABILIZATION** — Chemical or structural treatment of a mass of soil to increase or maintain its stability or otherwise to improve its engineering properties.

**SOLAR ENERGY** — Radiant energy (direct, defused or reflected) received from the sun and wavelengths suitable for conversion into thermal, chemical or electrical energy.

**SOLAR ENERGY COLLECTOR** — Any device, structure or part of a device or structure which is used primarily to transform solar energy into thermal, chemical or electrical energy, including any space or structural component specifically designed to retain heat to derive from so solar energy.

**SOLAR ENERGY SYSTEM** — A complete design or assembly consisting of a solar energy collector and energy storage facility (where appropriate) and components for the distribution of transformed energy to the extent that they cannot be used jointly with a conventional energy system. Passive solar energy systems which use the natural properties of materials and architectural components to collect and store solar energy without using any external mechanical power are included in this definition if they do not fulfill structural or other functions.

**SOLAR SKYSPACE** — The space between a given location and the sun which must remain unobstructed between the hours of 9:00 a.m. and 3:00 p.m. mean solar time on the date of

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the winter solstice in order to permit sufficient solar energy to impinge on the location to allow efficient solar utilization.

**SOLAR SKYSPACE EASEMENT** — A right, expressed as an easement, covenant or condition or other property interest in any deed or other instrument executed by or on behalf of any landowner which protects the solar sky space of an actual, proposed or designated solar energy collector at a described location by forbidding or limiting activities or land uses that interfere with access to solar energy. The solar sky space may be described as a three-dimensional space in which an obstruction is prohibited or limited, for as the times of day during which direct sunlight to the solar energy combination of the two methods.

**STORMWATER DETENTION** — Any storm drainage technique that retards or detains runoff, such as detention or retention basin, parking lot storage, rooftop storage, porous pavement, dry wells, or any combination thereof.

**STREAM** — A watercourse having a source and terminus banks and channel through which water flows at least periodically.

**STREET** — Includes street, boulevard, road, highway, freeway, parkway, lane, alley, viaduct or any other ways used or intended to be used by vehicular traffic or pedestrians, whether public or private.

**STREET GRADE** — The officially established grade of the street upon which a lot fronts or, in its absence, the established grade of the other streets upon which a lot abuts, at the midpoint of the frontage of the lot thereon. If there is no officially established grade, the existing grade of the street at such midpoint shall be taken as the street grade.

### STREET, MAJOR:

- A. **ARTERIAL STREET** — A major street or highway with fast or heavy traffic volumes of considerable continuity and is primarily a traffic artery for intercommunications among large areas.
- B. **COLLECTOR** — A major street or highway which carries traffic from minor streets to the major system of arterial streets, including principal entrance streets of a residential, commercial or industrial development and streets for major circulation within such developments.
- C. **LIMITED ACCESS HIGHWAY** — A major street or highway which carries large volumes of traffic at comparatively high speed with access at designated points and not from abutting properties.

**STREETS, MINOR** — A street used primarily for access to abutting properties.

- A. **MARGINAL ACCESS STREET** — A minor street which is parallel and adjacent to limited access highways or arterial streets and which provides access to abutting properties and protection from through traffic.
- B. **CUL-DE-SAC** — See definition "cul-de-sac."

**STREET WIDTH** — The shortest distance between the lines delineating the right-of-way of a street.

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**STRUCTURE** — Any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

**SUBDIVIDER** — The owner or authorized agent of the owner of a lot, tract or parcel of land to be subdivided for sale or development under the terms of this chapter.

**SUBDIVISION** — The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land, including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for subdivision to heirs or devisees, transfer of ownership or building or lot development; provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than 10 acres, not involving any new street or easement or access or any residential dwellings, shall be exempted.

- A. **MAJOR SUBDIVISION** — Any subdivision involving more than six lots, parcels of land or other divisions of land whether or not they involve new streets, additional utilities or other facilities, immediate or future.
- B. **MINOR SUBDIVISIONS** — The subdivision of a single lot or tract or parcel of land into five or fewer lots, tracts or parcels of land for the purpose, whether immediate or future, of transfer of ownership or a building development, providing lots, tracts or parcel of land thereby created having frontage on an improved public street or streets, and providing further that there is not created by the subdivision any new street, street easements, easements or access or need therefor.

**SUBSTANTIALLY COMPLETED** — Where, in the judgment of the Borough Engineer, at least 90% (based on the cost of the required improvements for which financial security was posted pursuant to the requirements of this chapter) of those improvements required as a condition for final approval had been completed in accordance with the approved plan, so that the project will be able to be used, occupied or operated for its intended use.

**SURFACE DRAINAGE PLAN** — A plan showing all present and proposed grades and facilities for stormwater drainage.

**SURVEYOR, PROFESSIONAL LAND** — An individual licensed and registered under the laws of this commonwealth to engage in the practice of land surveying. A professional land surveyor may perform engineering land surveys but may not practice any other branch of engineering.

**SWALE** — A low-lying stretch of land characterized as a depression used to carry surface water runoff.

**TOPOGRAPHIC MAP** — A map showing the elevations of the ground by contours or elevations.

**TOPOGRAPHY** — The configuration of the surface area showing relative elevations.

**TOP SOIL** — Surface soils and subsurface soils which presumably are fertile soils and soil material, ordinarily rich in organic matter or humus debris. Top soil is usually found in the uppermost soil layer called the "A Horizon."

UNDEVELOPED LAND — Any lot, tract or parcel of land which has not been graded or in any other manner prepared for the construction of a building.

UNIT — A part of the property, structure or building designed or intended for any type of independent use, which has direct access to a public street or way or to an easement or right-of-way leading to a public street or way, and includes a proportionate undivided interest in the common elements, which is assigned to the property, structure or building.

UTILITY, PUBLIC OR PRIVATE

- A. Any agency which under public franchise or ownership, or under certificate of convenience and necessity, provides the public with electricity, gas, heat, steam, communication, rail transportation, water, sewage collection or other similar service;
- B. A closely regulated private enterprise with an exclusive franchise for providing a public service.

WATERCOURSE — A permanent stream, intermittent stream, river, brook, creek or a channel or ditch for water, whether natural or man-made.

WATER SURVEY — An inventory of the source, quantity, yield and use of groundwater and surface water resources within the Borough.

WETLANDS — "Those areas that are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." (Definition used by the U.S. Environmental Protection Agency and U.S. Army Corps Of Engineers.)

WIND ENERGY CONVERSION SYSTEM (WECS) — A device which converts wind energy to mechanical or electrical energy.

WIND ROTOR — The blades, plus hub to which the blades are attached, that are used to capture wind for purpose of energy conversion. The wind rotor is generally used on a pole or tower and, along with other generating and electrical storage equipment, forms a wind energy conversion system.

**ARTICLE IV: Plat Specifications and Processing Procedures**

**§ 233-8. General requirements.**

Whenever a subdivision of land or land development is desired to be effected in the Borough of Penbrook, Dauphin County, Pennsylvania, a plat of the layout of such subdivision or land development shall be prepared, filed and processed according to the requirements of this chapter.

**§ 233-9. Sketch plans.**

- A. Prior to the filing of a subdivision or land development plat for review and approval, the applicant is encouraged to submit a sketch plan to the Planning Commission for advice on the requirements necessary to achieve conformity with the standards of this and other applicable municipal ordinances as well as to alert the applicant to

other factors which must be considered in the design of the subdivision or land development.

- B. The plan shall be clearly labeled "sketch plan" and should include sufficient information to clearly indicate the character and extent of the proposed subdivision or land development and its relationship to existing conditions and facilities within the area in which it is to be located. It is recommended that sketch plan submissions include a map covering sufficient area to establish the location of the site and an informal plan of any existing or proposed streets, buildings, lot arrangement, utilities, significant natural features and other elements within the subdivision or land development, including topographical contours.
- C. Prior to the preparation of any plans, the applicant should consult the Dauphin County Conservation District representative concerning the preparation of plans for erosion and sedimentation control.
- D. The applicant shall be advised of the accessibility of public sewerage and public water to the development site. If the site is located within an area planned or currently receiving public water and/or sanitary sewer services, the applicant shall consult with the appropriate utility.
- E. At this stage the Commission shall assist the applicant in determining whether or not the site is located in an identified flood hazard area, in which case compliance with applicable floodplain management provisions shall be required.
- F. If it is known that the parcels being created will be used for development requiring a special permit or for development that is considered dangerous to human life, prospective developers should check the provisions contained in the Penbrook Borough Zoning Ordinance, <sup>136</sup> which pertain specifically to such development.

**§ 233-10. Minor subdivision and land development application.**

Where five or fewer lots are proposed to be subdivided from a tract of land or where land is being transferred to be combined with an existing lot, the Borough Council, being advised by the Planning Commission, in response to a written request by the applicant, may waive the requirements of preliminary plat requirements, provided such proposal is on an existing street and no new streets are involved. In such cases the applicant shall submit a final plat as follows:

- A. The final plat shall be submitted and processed as required by § 233-13, final plats: procedure, and contain the following data and plat specifications:
  - (1) Submit a stormwater management/erosion and sedimentation control plans as required by the Pennsylvania Clean Streams Law and the Pennsylvania Department of Environmental Protection Erosion Control Rules and Regulations (Title 25, Part I, Subpart C, Article II, Chapter 102, Erosion Control). The plan content shall be prepared in accordance with the erosion

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**136. Editor's Note: See Ch. 266, Zoning.**



control measures set forth in the Erosion and Sediment Control Handbook prepared by the Cumberland, Dauphin and Perry County Conservation Districts and applicable provisions herein. The stormwater management plan shall conform to the Borough's Stormwater Management Ordinance <sup>137</sup> and Act 167 of the Pennsylvania Code.

- (2) Ten copies and one reproducible Mylar (or other reproducible material of equal quality) copy of the plat prepared by registered surveyor or engineer on sheets no larger than 24 inches by 36 inches, clearly labeled "Final Plat", shall be submitted containing the following information:
- (a) The development or property name.
  - (b) Outline of the property from which the lot or lots are being subdivided.
  - (c) Bearings and distances of the property taken from the property deed, including the primary control point.
  - (d) Adjacent landowner's names.
  - (e) Location on the property map of existing streets, streams and woods.
  - (f) A separate drawing of the proposed lot (maximum scale one-inch equals 100 feet) with lot area and minimum distances of lot lines, existing street right-of-way, cartway width and street name and number, easements, existing man-made features, building setback lines and contours, with a two-foot interval.
  - (g) A location map on the plat (Minimum scale one-inch equals 1,000 feet) showing property location, streets and other pertinent information.
  - (h) Name of the zoning district in which the site is located.
  - (i) Additional data on the plat.

[1] Name, address and telephone number of owner or applicant.

[2] Name, address and telephone number and seal of professional engineer certifying engineering aspects and professional land surveyor certifying accuracy of plat survey (as defined herein). (Example contained in Exhibit 1 herein.) <sup>138</sup>

[3] Date of plat preparation.

[4] Date the parcel being subdivided and/or developed was recorded in the deed of records in Dauphin County.

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**137. Editor's Note: See Ch. 226, Stormwater Management.**

**138. Editor's Note: Exhibit I is included at the end of this chapter.**

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- [5] Municipality where property is located.
- [6] North point and scale.
- [7] Certification of ownership and dedicatory statement signed by owner. (Example contained in Exhibit I herein.)
- [8] Notary public and recording statement. (Example contained in Exhibit I herein.)
- [9] Approval blocks to be signed by the Planning Commission and the Borough Council. (Example contained in Exhibit II herein.) <sup>139</sup>
- [10] Location and description of survey monuments shown on the plat.
- [11] Locations of existing and/or proposed public utilities.
- [12] Existing natural features such as watercourses, wetlands, marshes, rock outcrops and wooded areas.
- [13] Proposed protective covenants running with the land, if any.
- [14] Reference to recorded subdivision plats of adjoining platted land and by record name, date and number.
- [15] When applicable, a copy of the sewage module for land development or other equivalent documentation approved by the Department of Environmental Protection in compliance with the requirements of the Pennsylvania Sewage Facilities Act and Chapter 71 of Title 25 of the Pennsylvania Code.
- [16] When applicable, a statement should be included on plat regarding the presence of wetlands. The statement should note that no development is proposed within wetlands or that the necessary approvals for the disturbance of wetlands has been obtained from the appropriate federal and state regulating agencies. Disturbance of wetlands shall include but not be limited to filling, draining or building activities.
- [17] Compliance with § 233-14A(20)(g) of this chapter pertaining to applications located in flood hazard area.
- [18] Where the proposed subdivision abuts a state highway (Pennsylvania route or United States route), evidence in writing from the Pennsylvania Department of Transportation indicating the Department's concurrence with the proposed design for driveway access and drainage required for issuance of the Department's highway occupancy permits.
- [19] Such other data as may be required by the Planning Commission or Borough Council in the enforcement of this chapter.
- [20] The exact location of the existing and proposed water supply facilities.
- [21] The exact location of the existing and proposed sanitary sewers.

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**139. Editor's Note: Exhibit II is included at the end of this chapter.**

[22] The appropriate filing fee shall be submitted to the Zoning Officer or other designated official under the preliminary plat procedure.

**§ 233-11. Preliminary plats: procedure.**

- A. The applicant, 14 calendar days prior to the meeting of the Commission in which consideration is desired, shall file with the Zoning Officer 10 copies of a preliminary plat of the proposed subdivision or land development and other required data and maps. The applicant shall submit concurrently with the preliminary plat five copies of the sewage plan revision module for land development, if applicable.
- B. The Commission shall submit copies to the County Planning Commission, with the appropriate review fee, and Borough Engineer and may submit copies to the public utilities, School Board, Dauphin County Conservation District, Pennsylvania Department of Environmental Protection and other public agencies. The Borough Council, upon the recommendation of the Commission, shall act on any such preliminary plat not later than 90 days following the date of the regular meeting of the Borough Council or the Planning Commission (whichever first reviews the application) following the date the application is filed, provided that, should said next regular meeting occur more than 30 days following the filing of the application, said ninety-day period shall be measured from the 30th day following the day the application has been filed. In the event that any alteration of requirements from this chapter is requested by the applicant or is deemed necessary by the Commission for approval, the alteration and the reason for its necessity shall be entered in the records of the Commission.
- C. The Dauphin County Planning Commission shall review the preliminary plat and data and shall return one copy of a written report stating their suggestions for modifications and design changes to the Planning Commission within 30 days of their receipt of same or forfeit their right to review.
- D. The Borough Council shall determine whether the preliminary plat shall be approved, conditionally approved or disapproved, and shall notify the applicant in writing thereof, within 90 days following the date of the regular meeting of the Planning Commission which follows the date the application was filed. However, the period shall be measured from a date, which is no greater than 30 days from the application date or the final order of the court. The ruling of the Borough Council shall be in writing, specifically cite any conditions of approval and/or defects and shall be communicated to the applicant personally or mailed to him at his last known address not later than 15 days following the decision. If the Borough Council approves the preliminary plan with conditions, the applicant shall, in writing, either accept or reject the conditions and file the acceptance or rejection at the Borough administrative offices within 15 days of the receipt of the decision by the applicant. The approval of the preliminary plan shall automatically be rescinded and the plan deemed disapproved upon the applicant's failure to accept all the conditions of approval.
- E. Before acting on any subdivision plat, the Borough Council may hold a public hearing thereon after public notice.

- F. When the application is not approved in terms as filed, the decisions shall specify the defects found in the application and describe the requirements which have not been met and shall, in each case, cite the provisions of this chapter.
- G. Failure of the Borough Council to render a decision and communicate it to the applicant within the time and in the manner required herein shall be deemed an approval of the application in terms as presented unless the applicant has agreed in writing to an extension of time or change in the prescribed manner of presentation of communication of the decision, in which case, failure to meet the extended time or change in manner of presentation of communication shall have like effect.
- H. Approval of the preliminary plat constitutes approval of the proposed subdivision or land development with respect to the general design, the approximate dimensions and other planned features. Preliminary approval binds the developer to the general scheme of the plat as approved. Preliminary approval does not authorize the recording, sales or transfer of lots or the installation of improvements.
- I. Preliminary approval shall expire within five years after being granted. An extension of time may be requested by the applicant and approved by the Borough Council in accordance with Section 508 (4) of the Pennsylvania Municipalities Planning Code, Act 247, as amended. Request for extension shall be submitted to the Zoning Officer 30 days prior to any prevailing expiration date. Extensions may be granted for no more than three one-year periods.

**§ 233-12. Preliminary plat: specifications.**

- A. The following shall be submitted in application for review and approval of a preliminary plat.
  - (1) Ten copies and one reproducible Mylar (or other reproducible material of equal quality) copy of a map or series of maps or sheets not larger than 24 inches by 36 inches, drawn to scale not smaller than 100 feet to the inch, unless otherwise specified herein, clearly labeled "preliminary plat" and showing the following:
    - (a) The development or property name.
    - (b) The owner's or applicant's name, address and telephone number.
    - (c) The municipality's name in which the plat is located.
    - (d) Name, address, telephone number and seal of the professional engineer certifying engineering aspects and professional land surveyor certifying accuracy of plat survey (as defined herein). (Example contained in Exhibit I herein.) **140**
    - (e) Date the parcel being subdivided and/or developed was recorded in the deed of records in Dauphin County.

- (f) North point and scale.
- (g) Certification of ownership and dedicatory statement signed by owner. (Example contained in Exhibit I herein.)
- (h) Notary public and recording statement. (Example contained in Exhibit I herein.)
- (i) Approval blocks to be signed by the Planning Commission and the Borough Council. (Example contained in Exhibit II herein.) **141**
- (j) The diagram, at a scale not less than 1,000 feet to the inch, covering sufficient area to establish the location of the site within the municipality.
- (k) Existing natural features such as watercourses, wetlands, marshes, rock outcrops and wooded areas.
- (l) All existing buildings, sanitary and storm drains, water mains, culverts, fire hydrants and other significant man-made features on or adjacent to the tract.
- (m) Existing contours at vertical intervals of two feet or less as required by the Planning Commission. Where, due to steep slope, two-foot contours are not practical, contours shall be at five-foot intervals.
- (n) The layouts, names and widths of rights-of-way and cartway of existing and/or proposed streets, alleys and easements.
- (o) The layout of lots showing approximate dimensions, lot numbers and approximate area of each lot.
- (p) Parcels of land intended to be dedicated or reserved for schools, parks, playgrounds, parking areas, common open space or other public, semipublic or community purposes.
- (q) A map showing the location of the proposed subdivision and/or land development with respect to any identified floodplain area or district, including information on the one-hundred-year flood elevations.
- (r) When applicable, the statement should be included on plat regarding the presence of wetlands. The statement should note that no development is proposed within wetlands or that the necessary permits for the disturbance of wetlands has been obtained from the appropriate federal and state regulating agencies. Disturbance of wetlands shall include but not be limited to filling, dredging, draining or any building activities
- (s) Floodplain areas or districts.

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**141. Editor's Note: Exhibit II is included at the end of this chapter.**

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- [1] When the subdivision and/or land development lies partially or completely within any identified floodplain area or district or where such activities border on any identified floodplain area or district, the preliminary plat shall include the following information:
  - [a] Location and elevation of proposed roads, utilities and building sites, fills, flood or erosion protection facilities;
  - [b] The one-hundred-year flood elevations; and
  - [c] Areas subject to special deed restrictions.
- [2] All such maps shall show contours at intervals of two feet or five feet, depending upon the slope of the land, and identify accurately the boundaries of the identified floodplain areas or districts.
- B. The preliminary plats shall be accompanied by the following data and plans:
  - (1) A profile of each street, including grades.
  - (2) Location of existing and proposed utility mains.
  - (3) Location plans of proposed sanitary and/or stormwater sewers and of any proposed water distribution systems.
  - (4) A profile of the proposed sanitary and storm sewers and water lines, with invert elevations and connections to existing systems.
  - (5) A preliminary erosion and sedimentation control plan, together with a report of the County Conservation District indicating whether a permit for earthmoving activity is required from the Department of Environmental Protection under the Rules and Regulations, Chapter 102, Erosion Control, P.L. 1987, June 22, 1937, as amended.
  - (6) If necessary, a completed sewage plan revision module for land development to comply with the planning requirements of the Pennsylvania Sewage Facilities Act and Section 71.16 of Chapter 71 of Title 25 of the Pennsylvania Code for submission by the municipality to the Department of Environmental Resources.
  - (7) Where the proposed subdivision abuts a state highway (Pennsylvania route or United States route), evidence in writing from the Pennsylvania Department of Transportation indicating the Department's concurrence with the proposed design for driveway access and drainage required for issuance of the Department's highway occupancy permits.
  - (8) Evidence in writing, where 100 or more dwelling units are proposed in a subdivision or land development, from the school district in which the subdivision or land development is located containing the review and comments of the school district on the proposed development.
  - (9) A copy of a report, where deemed necessary by the Borough Council or

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Borough Engineer, indicating an estimated volume of vehicular traffic movement and the adequacy of the proposed and existing streets and highways to carry the traffic both within and beyond the proposed development, including possible solutions to such problems as may be thereby identified.

- (10) A copy of a report indicating the general arrangement for stormwater drainage, the estimated volume of water to be generated and the effect of such volumes on the drainageways or streams within the development and that projected volumes can be accommodated by the existing drainage facilities or streams beyond the proposed development.

### **§ 233-13. Final plats: procedures.**

- A. The applicant shall, not later than five years after the date of approval of the preliminary plat, for that portion intended to be developed, file with the Borough's Zoning Officer a final plat. Such filings shall include, as part of the formal submission, all the material and other data required under the final plat specifications as listed in § 233-14A (1) through (20) of this chapter. Failure to comply with the time limitation herein provided shall make the plat subject to all intervening ordinance changes.
- B. The final plat shall incorporate all the changes and modifications required by the Borough Council; otherwise it shall conform to the approved preliminary plat, and it may constitute only that portion of the approved preliminary plat which the applicant proposes to record and develop at the time, provided that such portion conforms with all requirements of this chapter.
- C. One reproducible Mylar (or other reproducible material of equal quality) copy of the final plat and 10 prints shall be filed by the applicant with the Borough's Zoning Officer 14 days prior to the meeting of the Planning Commission at which meeting consideration is desired. The applicant shall submit to the Borough of Penbrook the appropriate filing fees.
- D. Before approval of a final plat, the Borough Council must be assured of the completion of all improvements required by Article VI or the Borough Council. Also assurance for phased land development not intended for the immediate erection of buildings where streets, curbs, gutters, streetlights, fire hydrants, water and sewage facilities and other improvements which may not be possible to install as a condition precedent to final approval plats must be completed prior to the erection of buildings on lands included in the approved plat. Such assurance shall be by means of financial security deposited with the appropriate municipal officials in sufficient amount to cover the cost of any improvements and in the form of federal or commonwealth chartered institution irrevocable letters of credit or restrictive or escrow accounts in such lending institutions or any other type of financial security which the Borough Council may approve. Such financial security shall be posted with a bonding company or federal or commonwealth-chartered lending institution chosen by the party posting the financial security, provided such bonding company or lending institution is authorized to conduct such business within the commonwealth. Such

financial security shall provide for improvements which may be required within one year of the date fixed in the subdivision plat for completion of such improvements. Within seven working days of receipt of the final plan, the Borough of Penbrook shall forward copy of the final plan to the Dauphin County Planning Commission with the appropriate review fee. The applicant shall forward copies of the plan to any affected public utilities, school district, the Dauphin County Conservation district, emergency response agencies and other public agencies for review and report to the Borough of Penbrook. The Borough shall forward copies of the plan to the Borough Planning Commission, Borough Council and the Fire Marshal.

- E. The amount of financial security shall be equal to 110% of the cost of the required improvements for which financial security is to be posted. The cost of such improvements shall be established by submitting to the Borough Council a bona fide bid or bids from the contractor or contractors chosen by the party posting the financial security to complete the improvements. in the absence of such bona fide bids, the cost shall be established by an estimate prepared by the Borough Engineer. The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by an applicant or developer and prepared by a professional engineer licensed as such in this commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The municipality, upon the recommendation of the Municipal Engineer, may refuse to accept such estimate for good cause shown. If the applicant or developer and the municipality are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this commonwealth and chosen mutually by the municipality and the applicant or developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the municipality and the applicant or developer.
- F. If the party posing the financial security requires more than one year from the date posting of the financial security to complete the required improvements, the amounts of financial security may be increased by an additional 10% for each one-year period beyond the first anniversary date from posting of the financial security or to an amount not exceeding 110% of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one-year period by using the above bidding procedure. Where development is projected over a period of years, the Borough Council may authorize submission of final plats by sections or stages of development subject to such requirements or guarantees as to improvements in future sections or stages of development as it finds essential for the protection of any finally approved section of the development.
- G. As the work of installing the required improvements proceeds, the party posting the financial security may request the Borough Council to release or authorize release of, from time to time, such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the Borough Council who shall have 45 days from receipt of



such request in which to allow the Borough Engineer to certify, in writing, to the Borough Council that such portion of the work upon the improvements has been completed in accordance with the approved plat. Upon such certification, the Borough Council shall authorize release by the bonding company or lending institution of any amount as estimated by the Borough Engineer fairly representing the value of the improvements completed. If the Borough Council fails to act within the said forty-five-day period, it shall be deemed to have approved the release of funds as requested. The Borough Council may, prior to final release at the time of completion or certification by its Engineer, require retention of 10% of the estimated cost of the aforesaid improvements.

- H. Where the Borough Council accepts dedication of all or some of the required improvements following completion, it may require the posting of financial security to secure the structural integrity of said improvements as well as the functioning of said improvements in accordance with the design and specifications as depicted on the final plat for a term not to exceed 18 months from the date of acceptance of dedication. Said financial security shall be of the same type as otherwise required in this section with regard to installation of such improvements, and the amount of such financial security shall not exceed 15% of the actual cost of installation of said improvements.
- I. If sanitary sewer lines, along with apparatus or facilities related thereto, are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or municipal authority separate and distinct from the Borough, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or municipal authority and shall not be included within the financial security as otherwise required by this section.
- J. If financial security has been provided in lieu of the completion of improvements required as a condition for the final approval of a plat as set forth in this section, the Borough shall not condition the issuance of building, grading or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land as depicted on the final plat upon actual completion of the improvements depicted on the approved final plat. If financial security has been provided, occupancy permits for any building or buildings to be erected shall not be withheld following the improvement of the streets providing access to and from existing public roads to such building or buildings to a mud-free or otherwise permanently passable condition, as well as the completion of all other improvements as depicted on the approved plat either on the lots or lots or beyond the lot or lots in question, if such improvements are necessary for the reasonable use of or occupancy of the building or buildings.
- K. When the developer has completed all the required improvements, the developer shall notify the Borough Council, in writing, by certified or registered mail, of the completion of the aforesaid improvements and shall send a copy thereof to the Borough Engineer.

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- (1) The Borough Council shall, within 10 days after receipt of such notice, direct and authorize the Borough Engineer to inspect all of the required improvements.
  - (2) The Borough Engineer shall, thereupon, file a report, in writing, with the Borough Council and shall promptly mail a copy of the same to the developer by certified or registered mail. The report shall be made and mailed within 30 days after receipt by the Borough Engineer of the authorization for inspection by the Borough Council.
  - (3) The report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the Borough Engineer, said report shall contain a statement of reasons for nonapproval or rejection.
  - (4) The Borough Council shall notify the developer, in writing, by certified or registered mail, of its action with relation thereto.
  - (5) If the Borough Council or the Borough Engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved, and the developer shall be released of all liability, pursuant to its performance guaranty.
  - (6) If any portion of the said improvements shall not be approved or shall be rejected by the Borough Council, the developer shall proceed to complete the same and, upon completion, the same procedure of notifications listed above shall be followed.
- L. Before acting on any subdivision plat, the Borough Council may hold a public hearing thereon after public notice.
- M. The Borough Council shall approve, conditionally approve or disapprove the final plat and shall communicate said decision to the applicant within 90 days following the date of the regular meeting of the Penbrook Borough Planning Commission which follows the date the application was filed or after a final court order remanding an application. However, the period shall be measured from a date which is no greater than 30 days from the application date or the final order of the court.
- N. The ruling of the Borough Council shall be in writing, specifically cite any conditions and/or any plan defects and shall be communicated to the applicant personally or mailed to him at his last known address not later than 15 days following the decision.
- O. When the application is not approved in terms as filed or is conditionally approved, the decision shall specify the defects found in the application and describe the requirements which have not been met and shall, in each case, cite the provision of this chapter. In the event that any waiver of requirements from this chapter is deemed necessary by the Penbrook Borough Council, the waiver and the reasons for the necessity shall be entered in the minutes of the Borough Council.

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- P. Failure of the Borough Council to render a decision and communicate it to the applicant within the time and in the manner required herein shall be deemed an approval of the application in terms as presented unless the applicant has agreed in writing to an extension of time or change in the prescribed manner of presentation of communication of the decision, in which case failure to meet the extended time or change in manner of presentation of communication shall have like effect.
- Q. No changes, erasures, modifications or revisions shall be made on any final plat of a subdivision or land development after approval has been given by the Borough Council and endorsed in writing on the plat unless the plat is first resubmitted to the Borough Council.
- R. Upon the approval of a final plat, the subdivider/developer shall, within 90 days of such final approval, record such plat in the office of the Recorder of Deeds of Dauphin County. One recorded copy of the plat shall be transmitted to the Borough by the subdivider/developer.
- S. The recording of the plat shall not constitute grounds for assessment increases until such time as lots are sold or improvements are installed on the land included within the subject plat.
- T. In accordance with Section 508(4) of the Pennsylvania Municipalities Planning Code, Act 247, as amended, when an application for approval of a plat, whether preliminary or final, has been approved or approved subject to conditions acceptable to the applicant, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied to adversely affect the right of the applicant to commence and to complete any aspect of the approved development in accordance with the terms of such approval within five years from such approval.

### **§ 233-14. Final plat: specifications.**

The following shall be submitted in an application for review and approval of a final plat:

- A. Ten copies and one Mylar of the final plat in the form of a map or series of maps on sheets no larger than 24 inches by 36 inches, drawn to scale not smaller than 100 feet to the inch and clearly labeled "Final Plat." When more than one sheet is required, an index sheet of the entire subdivision or land development shall be shown on a sheet of the same size. The final plat shall be drawn in ink and shall show the following:
  - (1) Primary control points, or description and "ties" to such control points, to which all dimensions, angles, bearings and similar data on the subdivision or land development plat shall be referred; the exact name of the proposed subdivision or land development.
  - (2) Tract boundary lines, right-of-way lines of streets, easements and other rights-of-way and property lines of residential lots or parcels in unit, cooperative or condominium subdivisions, and other sites with accurate dimensions, bearings or deflection angles and radii, arcs and central angles the wall curves; the tax parcel number.

- (3) Locations and descriptions of survey monuments; all permanent reference monuments shown and described on the plat; municipality where the property is located.
- (4) Name, address, telephone number and seal of the professional engineer certifying engineering aspects and professional land surveyor certifying accuracy of plat survey. (As defined herein.) (Example contained in Exhibit I herein.) <sup>142</sup> Review blocks to be signed by the Dauphin County Planning Commission.
- (5) Certification of title showing that the applicant is the owner of land, agent of the landowner or tenant with permission of the landowner. Date of plan preparation. (Example contained in Exhibit I herein.)
- (6) Statement of the owner dedicating streets, rights of-way and any sites for public uses which are to be dedicated. (Example contained in Exhibit I herein.)
- (7) Proposed protective covenants running with the land, if any.
- (8) Name, address and telephone number of the owner/applicant.
- (9) Streetlighting facilities, as applicable.
- (10) Location map, clearly depicting the location of the tract in the Borough of Penbrook.
- (11) Number to identify each lot or parcel in unit, cooperative or condominium subdivisions and/or site.
- (12) Purpose for which sites other than residential lots or parcels in unit, cooperative or condominium subdivisions are dedicated or reserved.
- (13) Building setback lines on all lots or parcels in unit, cooperative or condominium subdivisions and/or sites.
- (14) Existing and proposed contours at vertical intervals of two feet as determined at the preliminary plat stage.
- (15) Names or record owners of adjoining unplatted land.
- (16) Reference to recorded subdivision plats of adjoining platted land by record name, date and number.
- (17) A final erosion and sedimentation control plan pursuant to the rules and regulations of the Pennsylvania Department of Environmental Protection (Title 25, Part 1, Subpart C, Article II, Chapter 102 of the Pennsylvania Code) and evidence that any required erosion and sedimentation control permit has been issued. If an erosion and sedimentation control permit is not required, the applicant shall provide evidence that erosion and sedimentation control

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**142. Editor's Note: Exhibit I is included at the end of this chapter.**

pan has been reviewed and approved by the County Conservation District office; however, if the District office does not desire to review the plan, the Borough Council may, at its discretion, have the plan reviewed by the Borough Engineer. The cost of the review shall be paid by the applicant. The stormwater management plan shall conform to the Borough's Stormwater Management Ordinance <sup>143</sup> and Act 167 of the Pennsylvania Code.

- (18) Prior to final approval of the plat, where the proposed subdivision or land development abuts a state highway (Pennsylvania route or United States route), the applicant shall provide written evidence that the plat will be submitted to the Pennsylvania Department of Transportation for their review and concurrence with the proposed design for driveway access and drainage required for issuance of the Department's highway occupancy permits. Written evidence will be a note on the plat which should read, "no plat which will require access to a highway under the jurisdiction of the Department of Transportation shall be finally approved unless the plat contains a notice that a highway occupancy permit is required pursuant to Section 420 of the Act of June 1, 1945 (P.L. 1242, No. 428) known as the State Highway Law, before driveway access to a State Highway is permitted."
- (19) Approval blocks to be signed by the appropriate officers of the Planning Commission, Borough Council and Municipal Engineer. (Example contained in Exhibit II herein.) <sup>144</sup>
- (20) Other data. The final plat shall be accompanied by the following data and plans as prescribed by the Borough Council or as required by the laws of the Commonwealth:
  - (a) Profiles of streets and alley showing grades.
  - (b) Typical cross sections of each type of street, minor streets, collector, etc., showing the width of right-of-way, width of cartway, location and width of curbs and sidewalks, if required, and location and size of utility mains.
  - (c) Plans and profiles of proposed sanitary and stormwater sewers, with grades and pipe size indicated, and a plan of any proposed water distribution system showing pipe sizes and location of valves and fire hydrants.
  - (d) Certificates of agreement to provide service from applicable utility companies.
  - (e) In the case of subdivision and land development plans proposed for sale of lots only, the subdivider shall include on the final plat a covenant with the land assuring the implementation of the erosion and

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<sup>143</sup>. Editor's Note: See Ch. 226, Stormwater Management.

<sup>144</sup>. Editor's Note: Exhibit II is included at the end of this chapter.

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sedimentation control plan by the lot owners.

- (f) A copy of the sewage plan revision module for land development approved by the Department of Environmental Protection in compliance with the requirements of the Pennsylvania Sewage Facilities Act and Section 71.16 of Chapter 71 of Title 25 of the Pennsylvania Code.
- (g) When any portion of the tract proposed for subdivision or land development is located within an identified flood district or floodplain area, the following information shall be required as part of the final plat and shall be prepared by a registered engineer or surveyor:
  - [1] The exact location and elevation of all proposed buildings, structures, roads and public utilities to be constructed within any identified floodplain area or district. All such maps shall show contours at intervals of two feet and identify accurately the boundaries of the floodplain areas, and all be verified by the Borough Engineer.
  - [2] Submission of the final plat shall also be accompanied by all required permits and related documentation from the Department of Environmental Protection and any other commonwealth agency or local municipality where any alteration or relocation of a stream or watercourse is proposed. In addition, documentation shall be submitted indicating that all affected adjacent municipalities have been notified of the proposed alteration or relocation. The Department of Community and Economic Development and the Federal Insurance Administrator shall also be notified whenever any such activity is proposed.
    - (h) A final stormwater management plan approved by the Borough Engineer.
    - (i) When applicable, a statement should be included on plat regarding the presence of wetlands. A statement should note that no development is proposed within wetlands or that the necessary permits for the disturbance of wetlands have been obtained from the appropriate federal and state regulating agencies. Disturbance of wetlands shall include but not be limited to filling, draining, dredging or any building activities.
    - (j) Such other certificates, affidavits, endorsements or dedications as may be required by the Borough Council in the enforcement of these regulations.
    - (k) The Borough must notify and supply adjacent municipalities and other pertinent governmental agencies of subdivision and/or land development plans submitted which may affect them.
    - (l) Reference to any modifications of requirements, variances, special exceptions, conditional uses and or nonconforming structures.
    - (m) All plans which are for subdivision or land development as

condominiums or similar arrangements and might contemplate the use of homeowners associations or similar arrangements to control the common elements shall include draft documents that identify the type of legal arrangement which will be used to show which parties are responsible for each of the common elements. Upon approval by the Penbrook Borough Council, the communal ownership arrangement must be maintained unless changes are approved by the Council.

Violation of this ordinance shall be considered a summary offence as defined under Article II of the General Provisions of the Borough Code. <sup>145</sup>

## **ARTICLE V: Design Standards**

### **§ 233-15. Application.**

- A. The following principles, standards and requirements will be applied by the Borough Council and Planning Commission in their review and evaluation of all subdivision and land development plat applications.
- B. The standards and requirements contained herein shall be considered the minimum for the promotion of public health, safety, convenience and general welfare.
- C. Where literal compliance with the standards and requirements contained herein is clearly impractical, the Borough Council may modify or waive such through the alteration of requirements process set forth in Article IX of this chapter.
- D. Subdivision and land development plats shall give due consideration to Official Plans of the Borough of Penbrook, Dauphin County and region or to such parts thereof as may be adopted pursuant to statute.
- E. Proposed land uses shall conform to the Penbrook Borough Zoning Ordinance, as amended. <sup>146</sup>
- F. Land subject to hazards to life, health or property such as may arise from fire, flood, disease or other causes shall not be platted for development purposes unless such hazards have been eliminated or unless the plat shall show adequate safeguards against them, which shall be approved by the appropriate regulatory agencies.
- G. Subdivision and/or land development plans should encourage and promote site designs with flexibility and economy and ingenuity layout and other practices which are in accordance with modern and evolving principles of site planning and development.

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<sup>145</sup> Amended Ordinance 2007-6 on July 2 2007, Added section (m)

<sup>146</sup> Editor's Note: See Ch. 266, Zoning.

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### § 233-16. Streets.

#### A. General standards.

- (1) Proposed streets shall be properly related to such street plans or parts thereof as have been officially adopted by Penbrook Borough and shall be coordinated with existing or proposed streets in adjoining subdivisions or land developments. Further, proposed streets shall be properly related to county, regional or state transportation plans as have been prepared and adopted as prescribed by law.
- (2) Streets shall be laid out to preserve the integrity of their design. Local access streets shall be laid out to discourage their use by through traffic and, where possible, collector and arterial streets shall be designed for use by through traffic.
- (3) Streets shall be related to the topography so as to establish usable lots in satisfactory street grades.
- (4) Proposed street arrangements shall make provisions for the continuation of existing streets in adjoining areas; the proper projection of streets into adjoining undeveloped or unplatted areas; and the continuation of proposed streets to the boundaries of the tract being subdivided.
- (5) New half or partial streets shall be prohibited except where essential to reasonable subdivision of a tract in conformance with the other requirements and standards of these regulations and where, in addition, satisfactory assurance for dedication of the remaining part of the street can be obtained; a cul-de-sac shall be constructed at the end of such half street which shall be of a permanent nature unless a temporary cul-de-sac is approved.
- (6) Names of new streets shall not duplicate existing or platted street names, or approximate such names by the use of suffixes such as "lane," "way," "drive," "court" or "avenue." In approving the names of streets, cognizance should be given to existing or platted street names within the postal delivery district served by local post office. New streets shall bear the same name or number of any continuation of alignment within existing or platted street.
- (7) Insofar as possible, streets on which structures utilizing solar access are proposed to front upon shall be oriented along and east-west axis with maximum deviations permitted up to 25°, provided that such orientations are feasible based on soil and slope conditions and are a practical means of providing safe and convenient access and circulation.
- (8) Proposed private streets (streets not offered for dedication) are subject to Borough standards and approval by the Borough Council.
- (9) Proposed private service access for purposes of providing a means of secondary access to a lot are permitted as deemed appropriate by the Borough Council and Borough Engineer.



- B. Street classification. Three functional classifications of the streets and roads classified as regional highways, major and minor collectors and local roads in the Penbrook Borough Zoning Ordinance are established as follows:
- (1) Arterial. This classification includes the regional highways or highways which provide intracounty or intermunicipal traffic of substantial volumes. Generally, these highways should accommodate operating speeds of 55 miles per hour.
  - (2) Collector. This classification is intended to include major and minor collectors or those highways which connect minor streets to arterial highways and generally serve intracounty and intramunicipal traffic. They may service as traffic corridors connecting residential areas with industrial, shopping and other services. They may penetrate residential areas. Generally, these highways will accommodate operating speeds of 40 miles per hour or under.
  - (3) Minor. This classification is intended to include local roads, streets and roads that provide direct access to abutting land and connections to higher classes of roadways. Traffic volumes will be low and travel distances generally short. The streets and roads should be designed for operating speeds of 30 miles per hour or under.
- C. Street widths.
- (1) Minimum street, right-of-way and cartway widths shall be required as presented in Table I. **147**
  - (2) Provision for additional street width (right-of-way) may be required when determined to be necessary by the Borough Council in specific cases for:
    - (a) Public safety and convenience.
    - (b) Parking in commercial and industrial areas and in areas of high-density development.
- D. Cul-de-sac or dead-end streets.
- (1) Dead-end streets are prohibited unless designed as cul-de-sac streets or designed for future access to adjoining properties.
  - (2) Any dead-end street, for access to adjoining property or because of authorized phased development, shall be provided with the temporary, all-weather turn-around within the subdivision and/or land development; and the use of such turnaround shall be guaranteed to the public until such time as the street is extended.
  - (3) Cul-de-sac streets serving residential uses, permanently designed as such, shall not exceed 800 feet in length or shall not furnish access to more than 24

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**147. Editor's Note: Table I is included at the end of this chapter.**

dwelling units upon the approval of the Borough Engineer.

- (4) Cul-de-sac streets serving commercial and/or industrial uses shall be adequate for the type of use to be serviced as approved by the Borough Engineer but, in no case, shall exceed 800 feet in length.
- (5) Unless future extension is clearly impractical or undesirable, the turnaround right-of-way shall be placed adjacent to the tract boundary with sufficient additional width provided along the boundary line to permit extension of the street at full width.
- (6) All cul-de-sac streets, whether permanently or temporarily designed as such, shall be provided at the closed end with the fully paved turnaround. The minimum radius to the pavement edge or curblin e shall be 40 feet and the minimum radius of the right-of-way line shall be 50 feet.
- (7) Drainage of cul-de-sac streets shall preferably be towards the open end. If drainage is toward the closed end, it shall be conducted away in an underground storm sewer.
- (8) The center line grade on a cul-de-sac street shall not exceed 10%, and the grade of the diameter of the turnaround shall not exceed 5%.

E. Driveways.

- (1) Private driveways on corner lots shall be located at least 40 feet from the point of intersection of the nearest street right-of-way lines.
- (2) In order to provide a safe and convenient means of access, grades on private driveways shall be so designed to allow for the unimpeded flow of stormwater runoff. In addition, driveways must be stabilized to their full width to prevent erosion. Entrances should be rounded at a minimum radius of 10 feet or should have a flare construction that is equivalent to the radius at the point of intersection with the cartway edge (curblin e). (Refer to Pennsylvania Department of Transportation Guidelines for Design of Local Roads and Streets, Publication No. 70, as revised.)
- (3) All driveways shall be located, designed and constructed in such a manner as not to interfere or to be inconsistent with the design and maintenance and drainage of or the safe inconvenient passage of traffic.

F. Horizontal and vertical curves. In order to provide adequate sight distance and ensure proper alignment of streets, horizontal and vertical curve design shall be in accordance with the Pennsylvania Department of Transportation Guidelines for Design of Local Roads and Streets, Publication No. 70, as revised.

G. Intersections.

- (1) Streets shall intersect as nearly as possible at right angles, and no street shall intersect another at an angle of less an 75°.
- (2) Intersections involving the junction of more than two streets are prohibited.

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- (3) Streets intersecting another street shall either intersect directly opposite to each other or shall be separated by at least 150 feet between center lines, measured along the center line of the street being intersected.
- (4) Intersections shall be approached on all sides by a straight leveling area, the grade of which shall not exceed 5% within 60 feet of the intersection of the nearest right-of-way lines.
- (5) Intersections with major streets shall be located not less than 800 feet apart, measured from center line to center line, along the center line of the major streets.
- (6) At intersections of streets, the curb or edge of pavement radii shall not be less than the following:

<b>Intersection</b>	<b>Minimum Simple Curve Radii of Curb or Edge of Pavement (feet)</b>
Collector with collector street	35
Collector with minor street	25
Minor Street with minor street	20

Radius corners or diagonal cutoffs must be provided on the property lines substantially concentric with or parallel to the chord of the curve radius corners.

H. Intersection sight distance and clear sight triangles. Adequate sight distances and areas of view obstructions shall be provided at all intersections of streets and for driveways intersecting a street.

I. Street grades.

- (1) The grades of streets shall not be less than the minimum or more than the maximum requirements listed below.

<b>Type of Streets</b>	<b>Minimum Grade (percent)</b>	<b>Maximum Grade (percent)</b>
All streets	1%	As determined by the governing body after consultation with the Commission and the Pennsylvania Department of Highways
Collector streets	1%	8%
Minor streets	1%	10%
Service drives	1%	12%
Street intersection	1%	5%

- (2) On minor streets and service drives, grades greater than 10% shall not be more than 400 feet in length or as determined by the Borough Council.

J. Slopes of banks along streets. The slope of banks along streets measured perpendicular to the street center line shall be no steeper than the following:

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- (1) One foot of vertical measurement for three feet of horizontal measurement for fills.
  - (2) One foot of a vertical measurement for two feet of horizontal measurement for cuts.
- K. Access roads and drives.
- (1) Direct access from residential lots to an arterial street shall be avoided whenever possible. Where such direct access cannot be avoided, adequate turnaround space shall be provided behind the right-of-way line.
  - (2) A valid highway occupancy permit shall be obtained from the Pennsylvania Department of Transportation where applicable. Driveways serving single-family residences shall intersect streets at angles of no less than 60°. All other driveways or access roads shall intersect streets at right angles, where possible, and in no instance shall such intersection be less than 75°.
  - (3) The width of access roads or driveways shall be in accordance with the following standards:
    - (a) For multifamily residential, mobile home parks and all nonresidential developments or subdivisions, access roads shall be no less than 22 feet in width at the street line and shall clearly be defined by the use of curbing.
    - (b) For single-family residential subdivisions, driveways shall be no less than 10 feet in width and no greater than 20 feet in width at the street line.
  - (4) In order to provide for safe and convenient ingress and egress points, access roads and driveway entrances shall be rounded at the following minimum radius:
    - (a) For multifamily residential, mobile home parks and all nonresidential developments or subdivisions, access road entrances shall be rounded at minimum radius of 10 feet.
    - (b) For single-family residential subdivisions, driveway entrances shall be rounded and a minimum radius of five feet.
  - (5) The grades on access roads or driveways shall not exceed the following:
    - (a) Eight percent when access is to an arterial street.
    - (b) Ten percent when access it is to a collector or minor street.

### § 233-17. Easements.

- A. Easements shall be provided for drainage facilities and overhead or underground public utility facilities in consultation with the Borough Engineer, the electrical, telephone and water utilities, the Pennsylvania Department of Transportation and the

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Borough Council.

- (1) The minimum width of such easements shall be 20 feet. Additional width may be required by the Commission depending on the purpose and use of the easements.
  - (2) Whenever possible, such easements shall be centered on the side or rear lot lines or along the front lot lines.
- B. Where the subdivision and/or land development is traversed by a watercourse, drainageway channel or stream, there shall be provided a drainage easement, width to be determined by the Borough Engineer, conforming substantially with the line of such watercourse, drainageway, channel or stream and of such width as will be adequate to preserve the unimpeded flow of natural drainage or for the purpose of widening, deepening, relocating, improving or protecting such drainage facilities or for the purpose of installing a stormwater sewer. Under no circumstances shall the easements be less than 25 feet.
- C. Where a subdivision or land development involves the use of solar access, solar sky space easements will be provided, shall be in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements. Any such easements shall be appurtenant; shall run with the land benefited and burdened; and shall be defined and limited by conditions stated in the instrument of conveyance. Instruments creating a solar sky space easement shall include but not be limited to:
- (1) A permanently identifiable description of the sky space above the burdened land into which trees, buildings and/or other obstructions as specified by the easement shall not be permitted to encroach;
  - (2) Any terms or conditions under which the solar sky space easement is granted or will be terminated; and
  - (3) Any provision for compensation by the owner of the land benefiting from the solar sky space easement or compensation of the owner of the land burdened by the solar sky space easement for maintaining the easement.
- D. Where necessary for access to public or common lands, a pedestrian easement shall be provided with a width of no less than 10 feet. Additional width may be required by the Commission depending on the purpose and use of the easement.

### **§ 233-18. Blocks.**

- A. The length, width, shape and design of blocks shall be determined with due regard to the provision of adequate sites for buildings of the type proposed, to the land use and/or zoning requirements of the municipality, the topography of the land being subdivided or developed and the requirements for safe and convenient vehicular and pedestrian circulation.
- B. Blocks shall not exceed 1,600 feet in length, nor be less than 600 feet in length. Where practical, blocks along collector or arterial streets shall be not less than 1,000 feet in length.

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- C. Residential blocks shall generally be of sufficient depth to accommodate two tiers of lots, except where reverse frontage lots bordering an arterial or collector street are used or, where due to the contour of the land or the necessary layout of the subdivision, there is insufficient depth between intersecting streets for such two-tier design.
- D. Blocks for commercial and industrial areas may vary from the elements of design contained in this section if the nature of use requires other treatment. In such cases, off-street parking for employees and customers shall be provided along with safe and convenient limited access to the street system. Space for off-street loading shall also be provided with limited access to the street system. Extension of streets, railroad access right of-way and utilities shall be provided as necessary.
- E. Crosswalks or interior pedestrian walks shall be required in blocks exceeding 1,000 feet in length to provide for pedestrian circulation or access to community facilities. Such walks shall be stabilized for a width of not less than four feet, shall be located in easements not less than 10 feet in width and shall, insofar as possible, be located in the center of any such block.

### § 233-19. Lots.

- A. General standards.
  - (1) The size, depth, width and orientation of lots shall conform to applicable zoning regulations of Penbrook Borough.
  - (2) Side lot lines shall, insofar as practical, run from due north to south where the resulting angle of incidence with the street is not less than 30°. A variation of up to 25° east or west of the north/south axis is permitted.
  - (3) Where feasible, lot lines should follow municipal boundaries rather than cross them in order to avoid jurisdictional problems.
  - (4) If, after subdividing, there exists remnants of land, they shall be either:
    - (a) Incorporated in existing or proposed lots; or
    - (b) Legally dedicated to public use, if acceptable to the municipality.
- B. Lot frontage.
  - (1) All lots shall abut a public street, existing or proposed, or a private street if it meets the requirements of these regulations.
  - (2) Double or reverse frontage lots shall be avoided except where required to provide separation of residential development from major streets or to overcome specific disadvantages of topography or orientation
  - (3) No residential lots shall be created which front upon a limited access highway. Furthermore, no major subdivisions and/or land developments shall be created which front upon an arterial street.

C. Building setbacks.

- (1) Front, side and rear setbacks shall be in conformance with the Penbrook Borough Zoning Ordinance, as amended. <sup>148</sup>
- (2) Buildings shall be oriented such that their longest axis faces within 25° of true south whenever lot size, street orientations, soil and slope conditions make this practical.
- (3) Whenever possible, plans shall incorporate the use of renewable energy systems and energy-conserving building design.

**§ 233-20. Erosion and sedimentation control.**

A. General requirements and standards.

- (1) In the event that any person shall intend to make changes in the contour of any land or engage in earthmoving activity, whether for subdivision, land development or any purpose, such person, who is required to obtain a permit, shall obtain such a permit from the Department of Environmental Protection in accordance with the requirements of the Rules and Regulations, Chapter 102, Erosion Control authorized under P. L. 1987, June 22, 1937.
- (2) Furthermore, under the requirements noted above, Penbrook Borough shall notify the Department immediately upon receipt of an application for a building permit involving earthmoving activity which affects five acres or more of land.
- (3) The Borough shall not issue a building permit to those engaged in earthmoving activities requiring a Department of Environmental Protection permit until the Department has issued the permit.
- (4) An erosion and sedimentation control plan must be prepared for a single lot or more where subdivision, land development or other earthmoving activity is proposed. The plan must be submitted:
  - (a) As required by the Rules and Regulations of the Department of Environment Resources noted above; and
  - (b) As required by the Pennsylvania Clean Streams Law, Act 222, July 31, 1970, as amended.
- (5) Such erosion and sedimentation control plan shall be submitted to the Borough Engineer and County Conservation District for review, and a copy of the plan and review comments shall be submitted to the Commission as part of the preliminary and final plat applications.
- (6) In the preparation of erosion and sedimentation control plans, the person preparing such plans shall consult with the County Conservation District to

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148. Editor's Note: See Ch. 266, Zoning.

determine the measures needed to control erosion and sedimentation. The current Soil Erosion and Sedimentation Control Handbook, prepared by the Conservation Districts of Cumberland, Dauphin and Perry Counties, shall be used in the preparation of such plans. Copies are available in the Dauphin County Conservation District office.

**§ 233-21. Stormwater management.**

- A. Stormwater management facilities shall be designed to convey the flow of stormwater runoff in a safe and efficient manner. The system shall insure drainage at all points along streets and provide positive drainage away from buildings and on-site water disposal sites. The stormwater management plan shall conform to the Borough's Stormwater Management Ordinance <sup>149</sup> and Act 167 of the Pennsylvania Code.
- B. Plans shall be subject to the approval of the Borough Council upon review by the Borough Engineer. The Borough may require a primarily underground detention system to accommodate frequent floods and a secondary surface detention system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed as to only allow a predeveloped runoff rate after development is completed onto adjacent properties.
- C. The design and construction of the stormwater management system shall comply with the following requirements:
  - (1) The minimum design criteria shall be a ten-year storm with a twenty-minute duration. Higher frequency conditions shall be used where an overflow would endanger public or private property.
  - (2) Drainage calculations for determining pipe sizes for areas under two acres shall be made by the rational method.
  - (3) Street drainage will not be permitted to cross intersections or the crown of the road.
  - (4) Maximum spacing of street inlets shall not exceed 600 feet.
  - (5) All culvert ends shall be provided with either reinforced concrete headwalls or pipe end sections.
  - (6) Minimum pipe size shall be eighteen-inch diameter.
  - (7) All street inlets shall be PennDOT Type C concrete inlets and shall have tops with a bicycle-safe grate.
  - (8) All springs and sump pump discharges shall be collected so as not to flow in the streets.
  - (9) When material for storm drain systems is not specified, PennDOT 408

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**149. Editor's Note: See Ch. 226, Stormwater Management.**



specifications will govern.

- (10) The stormwater management plan shall include both predevelopment and post development calculations for all storms up to and including the one-hundred-year storm to assure there is no increase in runoff from the site.

D. All rain conductors shall be piped to storm sewer or a natural watercourse, and all multifamily unit constructions shall follow the same plan. Storm drains shall be installed as per the following schedule:

Diameter (inches)	Square Foot Drainage Area	
	Fall 1/4 inch Per Foot	Fall 1/2 inch Per Foot
6	5,000	7,500
8	9,100	13,600
4	1,800	2,500
5	3,000	4,500
10	14,000	20,000

**§ 233-22. Natural features preservation.**

The design and development of all subdivision and land development plans shall preserve, whenever possible, natural features which will aid in providing open space for recreation and conditions generally favorable to the health, safety and welfare of the residents of the Borough. These natural features include the natural terrain of the site, woodland areas, large trees, natural watercourses and bodies of water, wetlands, rock outcroppings and scenic views.

A. Tree preservation and planting.

- (1) Trees with a caliper of six inches or more as measured at a height of 4 1/2 feet above existing grade shall not be removed unless they are located within the proposed cartway or sidewalk portion of the street right-of-way or within 15 feet of the foundation area of a proposed building. In areas where trees are retained, the original grade level shall be maintained, if possible, so as not to disturb the trees.
- (2) Where existing trees are removed along the street right-of-way, supplemental planting, in the form of appropriate street trees, shall be introduced. Such trees shall be planted at intervals of between 50 feet and 100 feet, preferably in random patterns, and shall be approved by the Borough Council.
- (3) When deemed necessary by the Borough's Planning Commission, a landscape plan will be developed for a subdivision or land development. Such plan shall indicate the vegetation or plant cover which exists and, on the same or separate sheet, the vegetation or plant cover which will exist when landscaping is completed. In addition, landscaping shall be designed, installed and maintained with the aim of allowing as great a portion of the

site to remain or become wooded without adversely affecting the availability of solar access to the south.

- (4) The location and species of trees and other landscaping elements shall be such that when grown to full maturity shall not impede solar access to neighboring structures.

B. Lake, stream and river frontage preservation.

- (1) A maintenance easement for the Borough or its designee, with a minimum width of 25 feet, shall be provided along all stream and river banks and lake edges. Such easement, in all cases, shall be of sufficient width to provide proper maintenance.
- (2) Lake, stream and river frontage shall be preserved as open space whenever possible.
- (3) Access shall be provided to the water and maintenance easement area. The width of such access points shall not be less than 50 feet.

C. Topography. The existing natural terrain of the proposed subdivision tract shall be retained whenever possible. Cut and fill operations shall be kept to a minimum.

**§ 233-23. Design standards in floodplains.**

A. General standards.

- (1) Where not prohibited by this or any other laws or ordinances, land located in any identified floodplain area or district may be platted for development with the provision that the developer construct all buildings and structures to preclude flood damage in accordance with this and any other laws and ordinances regulating such development.
- (2) Building sites for residences or any other type of dwelling or accommodation shall not be permitted in any identified floodway area or district. Sites for these uses may be permitted outside the elevated 1 1/2 feet above the regulatory flood elevation. If fill is used to raise the elevation of a site, the fill area shall extend out laterally for a distance of at least 15 feet beyond the limits of the proposed structures.
- (3) Building sites for structures or buildings other than for residential uses shall not be permitted in any identified floodway area or district. Also, such sites for structures or buildings outside the floodway shall be protected as provided for in Subsection A(2) above. However, the governing body may allow the subdivision and/or development of areas or sites for commercial and industrial uses at an elevation below the regulatory flood elevation if the developer otherwise protects the area to that height or assures that the buildings or structures will be flood-proofed at least up to that height.
- (4) If the Zoning Officer determines that only a part of a proposed plat can be safely developed, it shall limit development to that part and shall require that

development proceed consistent with this determination.

- (5) When the developer does not intend to develop the plat himself and the Borough determines that additional controls are required to insure safe development, it may require the developer to impose appropriate deed restrictions on the land. Such deed restrictions shall be inserted in every deed and noted on every recorded plat.
- B. Where any excavation or grading is proposed or where any existing trees, shrubs or other vegetative cover will be removed, the developer shall consult the County Conservation District representative concerning plans for erosion and sediment control and to also obtain a report on the soil characteristics of the site so that a determination can be made as to the type and degree of development the site may accommodate. Before undertaking any excavation or grading, the developer shall obtain a grading and excavation permit, if such is required.
  - C. Drainage facilities.
    - (1) Storm drainage facilities shall be designed to convey the flow of stormwater runoff in a safe and efficient manner. The system shall insure proper drainage along streets and provide positive drainage away from buildings.
    - (2) Plans shall be subject to the approval of the Borough. The Borough may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.
  - D. Streets. The finished elevation of proposed streets and driveways shall not be more than one foot below the regulatory flood elevation. The Borough may require profiles and elevations of streets to determine compliance with the requirements. Drainage openings shall be sufficient to discharge flood flows without unduly increasing flood heights.
  - E. Sanitary sewer facilities. All sanitary sewer systems located in any designated floodplain district, whether public or private, shall be floodproofed up to the regulatory flood elevation.
    - (1) The installation of sewage disposal facilities requiring soil absorption systems shall be prohibited where such system will not function due to high ground water, flooding or unsuitable soil characteristics or within designated floodplain areas or districts. The Borough may require that the developer note on the face of the plat and in any deed of conveyance that soil absorption fields are prohibited in any such area or district.
  - F. Water facilities. All water systems located in any designated floodplain district, whether public or private, shall be floodproofed up to the regulatory flood elevation.
  - G. Other utilities and facilities. All other public and private utilities, including gas and

electric, shall be elevated or flood-proofed to not less than 1 1/2 feet above the regulatory flood elevation.

**§ 233-24. Recreation and open space.**

- A. All residential subdivisions or land development plats submitted after the effective date of this chapter shall provide for suitable and adequate recreation in order to:
- (1) Insure adequate recreational areas and facilities to serve the future residents of the Borough;
  - (2) Maintain compliance with recreational standards as developed by the National Recreation and Parks Association;
  - (3) Reduce increasing usage pressure on existing recreational areas and facilities;
  - (4) Insure that all present and future residents have the opportunity to engage in many and varied recreational pursuits; and
  - (5) Reduce the possibility of the Borough becoming overburdened with the development and maintenance of many very small, randomly planned and widely separated recreation areas.
- B. Exemptions and requirements.
- (1) The following are exempt or partially exempt from the provisions of this chapter:
    - (a) The conversion of an existing single-family detached dwelling or single-family dwelling semidetached dwelling into not more than three residential units, unless such units are intended to be a condominium;
    - (b) The addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building; or
    - (c) The addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park. For the purpose of this subsection, an "amusement park" is defined as a tract or area used principally as a location for permanent amusement structures or rides. This exclusion shall not apply to newly acquired acreage by an amusement park until initial plans for the expanded area have been approved by proper authorities.
  - (2) The amount of land required to be provided for recreational purposes for residential subdivisions or land development plans not exempted from the provisions of this article shall be as follows:
    - (a) Single-family developments. In the case of a single-family subdivision, the developer shall provide a minimum of 1,500 square feet per lot.

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- (b) Multiple-family developments. In multiple-family developments, a minimum contiguous area of 10% of the total area shall be provided for recreation exclusive of roadways of the land being developed.
  - (3) A maximum of 25% of the total land area required by this article to be provided for recreation may consist of floodplain areas.
  - (4) Such land set aside shall be suitable to serve the purpose of active and/or passive recreation by reason of its size, shape, location and topography and shall be subject to the approval of the Borough Council.
  - (5) The developer shall satisfy the Borough Council that there are adequate provisions to assure retention and all future maintenance of such recreation areas by maintaining ownership or by providing for and establishing an organization for the ownership and maintenance of the recreation area, and such organization shall not be dissolved nor shall it dispose of the recreation area by sale or otherwise, except to an organization conceived and established to own and maintain the recreation area, without first offering to dedicate the same to the Borough.
- C. Recreation area location criteria. The Planning Commission and the Borough Council, in exercising their duties regarding the approval of subdivision and land development plans, shall consider the following criteria in determining whether to approve the proposed location of recreation areas in the developer's subdivision or land development plans:
  - (1) Site or sites should be easily and safely accessible from all areas of the development to be served, have good ingress and egress and have access to a public road; however, no public road shall traverse the site or sites.
  - (2) Site or sites should have suitable topography and soil conditions for use and development as a recreation area.
  - (3) Size and shape for the site or sites should be suitable for development as a particular type of park. Sites will be categorized by the Borough using the standards established by the National Recreation and Parks Association. (Publication No. 10005, as revised).
  - (4) When designing and developing these recreation areas, it shall be done according to the standards established by the National Recreation and Parks Association, copies of which may be obtained at the Borough's Municipal Building.
  - (5) Site or sites should, to the greatest extent practical, be easily accessible to essential utilities such as water, sewer and electric.
  - (6) Site or sites should meet minimum size requirements for usable acreage with respect to National Recreation and Parks Association standards with 75% of such area having a maximum slope of 7%.
  - (7) Recreation sites shall be located in such a manner which allows maximum

practical solar access to neighboring structures.

- (8) Where open space is being provided, it shall be located, wherever possible, to provide a buffer from the shading effects of taller structures or obstructions on existing or proposed shorter buildings.

D. Dedication to municipality.

- (1) In a case where the developer does not wish to retain the required recreation area, such area may be offered for dedication to the Borough for public use.
- (2) In addition to approving the recreation site areas to be dedicated to the Borough, the Planning Commission shall make its recommendation to the Borough Council as to whether the dedication should be accepted by the Borough.
- (3) Such area dedicated to the Borough for public use shall be suitable for recreational purposes by reason of size, shape, location, topography and access.
- (4) The Planning Commission may find dedication to be impractical because of the size, shape, location, access, topography, drainage or other physical features of the land and that such dedication would adversely affect the subdivision or land development and its future residents or occupants or that there is no land area within the proposed subdivision which is practical for dedication to the public because of size, access, topography or other physical characteristics.
- (5) When the Borough Council deems it to be in the public interest to accept dedicated land, such acceptance shall be by means of a signed resolution to which the property description of the dedicated recreation area shall be attached.

E. Parkland capital reserve fund. Where a developer elects to pay a fee in lieu of dedication of land for recreational purposes in accordance with this chapter, and the Borough Council elects to accept such fee, the Council may set such fee where it reasonably reflects the value of the land which would normally have been dedicated. Any funds collected as fees-in-lieu of dedication of open spaces shall be deposited in an interest-bearing account. This account shall be separate from the other Borough accounts and shall be clearly identified for the purpose of funding acquisitions and development of recreation facilities. Interests earned on all monies deposited in such accounts shall become funds of that account. Funds from such accounts shall be expended at the discretion of the Borough Council in properly allocable portions of the cost incurred to design, construct or acquire the specific recreation facilities that will benefit the subdivision or land development from which they were collected. Funds collected under this section shall be expended within three years of receipt (unless the developer extends the period) or the Borough shall refund such fees, plus interest accumulated thereon from the date of payment to the developer, upon presentation of a written request for refund.

**ARTICLE VI: Improvements and Construction Requirements**

**§ 233-25. General.**

No final plan shall be approved by Borough Council until the completion of all such required improvements, or posting of security for required improvements, has been certified to the Borough Council by the Borough Engineer and as-built drawings have been supplied.

**§ 233-26. Improvements required.**

The applicant shall provide all improvements required by these regulations. The specifications for the improvements contained herein shall apply.

**§ 233-27. Monuments and markers.**

- A. Monuments must be set:
  - (1) At the intersection of all street and right-of-way lines.
  - (2) There should be two monuments per lot.
  - (3) Such intermediate points as may be required by the Borough Engineer.
- B. Markers must be set:
  - (1) At all corners except those monumented.
  - (2) By the time the property is offered for sale.
- C. Monuments and markers shall be the following sizes and made of the following materials:
  - (1) Monuments shall be six inches square or four inches in diameter and shall be 30 inches long. Monuments shall be made of concrete, stone or by setting a four-inch cast iron or steel pipe filled with concrete.
  - (2) Markers shall be 3/4 of an inch square or 3/4 of an inch in diameter and 30 inches long. Markers shall be made of iron pipes or iron or steel bars.
- D. Monuments and markers must be placed so that the scored or marked point coincides exactly with the point of intersection of the lines being monumented. They must be set so that the top of the monument or marker is level with the finished grade of the surrounding around. Monuments must be marked on top with a copper or brass plate or dowel set in the concrete.
- E. Removal. Any monuments or markers that are removed must be replaced by a registered engineer or surveyor at the expense of the person removing them.

**§ 233-28. Street construction.**

- A. Pavements and construction. Streets shall be designed in accordance with Article V herein and shall be surfaced to the grades and dimensions drawn on the plans, profiles and dimensions drawn on the plans, profiles and cross-sections submitted by the applicant and approved by the Borough Council. Before paving the street surface,

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the developer shall install the required utilities and provide, where necessary, adequate underdrains and stormwater drainage for the streets, as acceptable to the Borough Council. The pavement base and wearing surface must be constructed according to the following specifications and as outlined in Table 1, § 233-16 entitled "Streets," herein.

- (1) Subgrade.
  - (a) No base course shall be placed on wet, frozen or unsuitable material. Unsuitable material is defined in the Pennsylvania Department of Transportation, Publication 408, as amended.
  - (b) Subgrade in fill area shall be compacted in not more than twelve-inch layers with a minimum roller weight of 10 tons or equivalent compaction.
  - (c) Subgrade that has been distributed by trenching shall be backfilled and compacted in eight-inch layers and inspected by the Borough Engineer or his designated agent.
  - (d) Unsuitable material in subgrade shall be removed and replaced with material acceptable to the Borough Engineer.
  - (e) The moisture content at the time of compaction and density of the finished subgrade shall be in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended.
  - (f) Any springs or spongy areas shall be provided with a proper underdrain system which is connected to the storm sewer system.
  - (g) Subgrade shall be inspected by the Borough Engineer or his designated agent prior to the placement of the base course.
- (2) Base course.
  - (a) Minor streets. Base course shall be consistent with Table 1, § 233-16 entitled "Streets" herein, in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended.
  - (b) Collector streets. Base course shall be consistent with Table 1, § 233-16 entitled "Streets" herein, in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended.
  - (c) Arterial streets. For the construction of arterial roads or highways, the applicant shall consult the Planning Commission and Borough Council and be governed by the Pennsylvania Department of Transportation for the method of construction to be used.
  - (d) Base course shall be inspected by Borough Engineer or his designated



agent prior to the placing of binder course.

- (e) Base shall have binder applied as soon as possible to avoid damage to base.
  - (f) All foreign material shall be removed from base course prior to placing binder course.
  - (g) Base shall be compacted with a vibrating tamper or vibrating roller.
  - (h) The Borough Council shall decide if a collector or arterial street is required as a direct result of the subdivision or land development in which case the developer is responsible for paving the additional width required.
- (3) Surface course.
- (a) Minor and collector streets. Surface course shall be consistent with Table 1, § 233-16 entitled "Streets" herein, in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended.
  - (b) Surface course shall be sealed wherever it comes in contact with another structure (. i.e., curb, manhole, inlet, etc.). This work shall be done in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended.
  - (c) Surface course shall be inspected by the Borough Engineer or his designated agent after completion of all work.
- (4) Shoulders. The base course shall consist of six inches of compacted stone, gravel or slag constructed in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended. The seal coat shall consist of a two-inch deep ID-2 bituminous wearing course.
- (5) Driveway entrances. Driveway entrances or aprons within the street right-of-way shall be surfaced to their full width, and in no case shall be less than 12 feet wide for residential development and eight feet wide for commercial or industrial developments. In no case shall the driveway entrance be more than two feet wider than the driveway. The type of surface to be either plain cement concrete, minimum depth of six inches, or the same as specified above. Where sidewalks are installed, the required driveway surfacing shall end at the street side of the sidewalk.
- (a) Driveway entrances along streets where curbs are not required shall be constructed to provide proper drainage along the streets and from the streets by the continuation of gutters, swales or ditches. Such continuation may be provided by having an approved pipe of not less than 15 inches in diameter across such driveway entrances.

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- (b) Driveway entrances along streets where curbs are not required shall be constructed so that the driveway meets the edge of the cartway as a continuation of at least the slope from the crown of the street for not less than five feet.
  - (c) Where proposed driveways provide access onto a state highway (Pennsylvania route or United States route), the design of such driveway access and drainage shall be prepared in accordance with the Pennsylvania Department of Transportation and shall be subject to the approval and issuance of permits by the Department. A note shall be placed on the plan, "that a Highway Occupancy Permit is required pursuant to Section 420 of the State Highway Law before driveway access to a State Highway is permitted." The Borough Council may issue a final plat approval if a permit has been secured or the notice of requirement for such a permit is placed on the plan. No building permit will be issued for affected lots until such a highway occupancy permit has been secured.
  - (d) The curb height at driveway entrances may be reduced to a minimum of 1 1/2 inches for driveway entrances along streets where curbs are required. The maximum width of reduced curb height shall be 20 feet for residential driveways and 35 feet for commercial or industrial driveways. Sidewalks across driveway entrances, where required, shall be constructed in accordance with the requirements in § 233-31 herein.
- (6) Underdrain.
- (a) Underdrain shall be constructed in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended, and as detailed on the Roadway Construction Standard Drawings (RC-30).
  - (b) Combination storm sewer and underdrain shall be constructed in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended, and as detailed on the Roadway Construction Standard Drawings (RC-30).
  - (c) Underdrain pipe shall be six-inch perforated corrugated galvanized metal pipe (CMP), helical in design, or unless otherwise specified.
  - (d) Underdrains or combination storm sewer and underdrain shall be constructed where required by the Borough Engineer or the Borough Council.
  - (e) Underdrain shall be installed and inspected by the Borough Engineer or his designated agent after completion of all work, just prior to the base course application.
- (7) Handicapped accessibility. When deemed necessary by the Borough Council,

upon recommendation of the Borough Planning Commission, intersection curb cuts shall be provided where sidewalks and curbs are required.

**§ 233-29. Sewer and water systems.**

**A. Sewers.**

- (1) Where a public sanitary sewerage system is located within 1,000 feet of or where plans approved by the Borough Council provide for the installation of such public sewer facilities to within 1,000 feet of a proposed subdivision or land development, the developer shall provide the subdivision or land development with a complete sanitary sewerage system to be connected to the existing or proposed sanitary sewerage system in accordance with Borough specifications. If such a system is not available but will, in the opinion of the Borough Council, become available within a reasonable time, then the developer shall install a complete sanitary sewerage system, including a collector main installed in the street bed or approved right-of-way; lateral installations shall be to the right-of way lines of streets, lot or parcel property lines or sewer easement right-of-way lines, whichever pertains to individual situations. All termini shall be capped in a manner which will insure that all collector mains, laterals and house connections shall be water-tight pending connections with a public sanitary sewerage system. The system shall be designed by a registered engineer and approved by the Borough Engineer. The Borough Engineer shall also inspect construction of all sanitary sewers to insure that said sewers will coordinate and have congruity with the Borough's overall comprehensive sewerage plan. All sewage pumping stations, interceptors and treatment plants to be installed by the developer shall be reviewed and approved by the Borough Engineer, who shall inspect the construction thereof.
- (2) Design, approval of design, supervision and inspection fees for services rendered on behalf of the developer by the Borough Engineer shall be paid by the developer in accordance with the fee schedule submitted to the Board by the Borough Engineer, which schedule shall be available for review in the Borough Office by any developer.
- (3) Sanitary sewers and sewage disposal systems shall not be combined with stormwater sewers and shall not be constructed to receive effluent from any stormwater collection system.

- B. Water.** Where a water main supply system is within 1,000 feet of or where plans approved by the Borough Council provides for the installation of such public water facilities to within 1,000 feet of a proposed subdivision or land development, the developer shall provide the subdivision or land development with a complete water main supply system to be connected to the existing or proposed water main supply system in accordance with Borough and/or utility specifications.

**§ 233-30. Storm sewers.**

Whenever the evidence available to the Borough Council indicates that natural surface

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drainage is inadequate, the developer shall install a stormwater sewer system in accordance with approved plans and profiles. The system shall be designed by a registered engineer and be approved by the Borough Engineer. The developer shall submit engineering calculations upon which the size of conduits, culverts and other portions of the proposed storm sewer system has been based.

### A. Pipes.

- (1) Pipes shall be constructed in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended.
- (2) Pipes shall be corrugated galvanized metal pipe (CMP), helical in design, or unless otherwise specified.
- (3) All pipe joints shall be connected with metal bands.
- (4) Pipes shall be placed on Class B bedding.
- (5) Pipe gauge shall be in accordance with approved engineering calculations. Minimum pipe gauge for CMP shall be 16 gauge.
- (6) Pipe sizes shall be in accordance with that shown on approved drawings. Minimum pipe size shall be 18 inches in diameter.
- (7) Pipes shall be constructed and set to line and grade as shown on approved drawings.
- (8) Pipes shall be inspected by the Borough Engineer or his agent prior to backfilling.

### B. Inlets.

- (1) Inlets shall be constructed in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended, and as detailed on the Roadway Construction Standard Drawings (RC-34).
- (2) Inlet tops shall conform to PennDOT Type C concrete inlet top with a bicycle-safe grate.
- (3) Inlet boxes shall be either precast concrete box units, cast-in-place cement concrete or constructed out of concrete blocks.
- (4) All inlets shall have weep holes placed at the appropriate elevations to completely drain the subgrade prior to placing the base course and surface course.
- (5) Size of concrete block shall be solid four inches by eight inches by 16 inches or unless otherwise specified.
- (6) Inlets shall be inspected by the Borough Engineer or his designated agent after completion of all work.

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(7) All inlet tops shall have bicycle-safe grates.

### C. Manholes.

(1) Manholes shall be constructed in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended, and as detailed on the Roadway Construction Standard Drawings (RC-39).

(2) Manholes shall be precast concrete units.

(3) Manholes shall be inspected by the Borough Engineer or his designated agent after completion of all work.

### § 233-31. Curbs.

Curbs shall be required for all subdivisions and land development. The Borough Council, upon recommendation by the Borough Planning Commission and Borough Engineer, may waive the requirements of curbs through the alteration of requirements procedure set forth in Article IX of this chapter.

A. Curbs shall be constructed in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended, and as detailed on the Roadway Construction Standard Drawings (RC-64) unless otherwise determined by the Borough Engineer.

B. Rolled curbs will not be acceptable.

C. Curbs shall be constructed in accordance with the cross-section details shown on approved drawings.

D. Curbs shall be set and finished to the line and grade as shown on approved drawings.

E. Backfill must be placed within 48 hours after form removal, and this backfill shall be compacted in place along the rear face to within six inches of the top of the curb.

F. When curbing is to be removed to construct a driveway, the removal shall be done on the complete curb section. The length of curbing to be removed shall be carried to the nearest expansion joint or saw cut if the joint is located more than five feet from the end of the curb removal. Curb replacement shall be formed and shaped to the reduced driveway width. The driveway shall be depressed to a height of 1 1/2 inches above the finished paving grade.

G. No partial breaking out of the curb shall be permitted without approval by the Borough Engineer or his designated agent.

H. Curbs shall be inspected by the Borough Engineer or his designated agent after the forms have been placed, just prior to the pouring of concrete and after completion of all work.

### § 233-32. Sidewalks.

Sidewalks shall be required for all subdivision and land development. The Borough Council,

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upon recommendations of the Planning Commission and the Borough Engineer, may waive the requirements of sidewalks through the alteration of requirements procedures set forth in Article V of this chapter.

- A. Sidewalks shall be constructed in accordance with the specifications as set forth in the Pennsylvania Department of Transportation, Publication 408, as amended.
- B. Four inches of 2B aggregate shall be placed under all sidewalks.
- C. Sidewalks shall be within the right-of-way of the street and shall extend in width from the right-of-way line toward the curb-line.
- D. Sidewalks shall be at least four feet wide, or unless otherwise specified.
- E. Where a sidewalk abuts a curb, wall, building or any other structure, a premolded expansion joint, 1/4 inch of thickness, shall be placed between the sidewalk and said structure for the full length of said structure.
- F. Sidewalks shall be boxed out around light standards, fire hydrants, etc., with a premolded expansion joint, 1/4 inch in thickness.
- G. Sidewalks shall be inspected by the Borough Engineer or his designated agent after the forms have been placed, just prior to the pouring of concrete and after completion of all work.

### **§ 233-33. Fire hydrants.**

Wherever a public or community water supply system is provided, fire hydrants shall be installed within 600 feet of all existing and proposed structures, measured by way of accessible streets (as specified by the Middle Department Association of Fire Underwriters).

### **§ 233-34. Trees.**

Reasonable effort should be made by the applicant to preserve existing shade trees and, in addition, deciduous hardwood trees with a minimum caliper of 1 1/2 inches should be provided in accordance with conditions as recommended by the Planning Commission and agreed upon by the Borough Council, and, if necessary, the appropriate public utility. Where provided, such trees should be planted between the sidewalk and the building setback line at least five feet from the sidewalk, provided the planting strip is a minimum of six feet wide.

### **§ 233-35. Street signs.**

The subdivision or land development shall be provided with street signs to include but not be limited to street name signs at all intersections, directional and informational signs. Such signs shall conform to Pennsylvania Department of Transportation and Borough specifications and shall be installed by the developer in a manner specified by the Borough Engineer.

### **§ 233-36. Streetlights.**

- A. Streetlights shall be provided with the construction of all new streets. A plan for streetlights, approved by the local utility company, shall be provided by the applicant upon submission of final subdivision or land development plans.

- B. Streetlights shall be provided at locations designated by the local utility company, consistent with current policy, at all street intersections and all other locations considered necessary for safety reasons as approved by Borough Council.

**§ 233-37. Electric and telephone lines.**

All electric and telephone service lines, including streetlighting, shall be placed underground within any subdivision or land development of five or more lots and/or dwelling units.

**ARTICLE VII: Manufactured Home Park Regulations**

**§ 233-38. Purpose, authority and jurisdiction.**

The purpose, authority and jurisdiction for a manufactured home park as a land development are the same as those contained in Article II of this chapter.

**§ 233-39. Plat requirements and processing procedure.**

The plat requirements and processing procedure for a manufactured home park as a land development shall be in accordance with the requirements contained in Article IV, § 233-9 through 233-14, of this chapter in addition to the following plat requirements:

- A. Number and location of each manufactured home lot, dimensions for each and proposed location of each manufactured home.
- B. Location and number of off-street parking spaces.
- C. Location of all plantings and landscaping.
- D. Location, dimensions and proposed use of all service and accessory structures.
- E. Location and type of all fire extinguishers and waste containers.
- F. Location of both sewer riser pipe and water riser pipe.
- G. Plans and specifications for refuse disposal facilities.

**§ 233-40. Design standards.**

The arrangement and other design standards of streets, easements, blocks, lots, stormwater management and erosion and sedimentation control shall be in accordance with the requirements contained in Article V herein except as specified herein.

- A. Street widths.
  - (1) All streets located within manufactured home parks shall remain private and shall be maintained by the park owner and/or legal or equitable owner. The minimum street cartway width for manufactured home park streets shall be 24 feet in width.
  - (2) Provision for additional street width (right-of-way, cartway, or both) may be required when determined necessary by the Borough Council for the following specific situations:

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- (a) Public safety and convenience.
  - (b) Where the number of manufactured homes proposed to be located in the manufactured home park exceeds 100 units.
  - (c) Widening of existing streets where the width does not meet the requirements of the preceding subsections.
- (3) Direct driveway access from a manufactured home lot to existing and/or proposed public streets shall not be permitted but shall be by way of an internal park street.
- B. Lots in manufactured home parks.
  - (1) Lots in a manufactured home park shall be served by both public water supply and sanitary sewerage collection systems or private community systems.
  - (2) Manufactured home lots shall be not less than 50 feet wide measured at the minimum required setback line nor less than 5,500 square feet in area per manufactured home unit exclusive of streets and other public areas.
- C. Building setback lines. In a manufactured home park, the minimum building setback line from the cartway line of a private street shall be 20 feet.
- D. Side and rear building lines.
  - (1) The minimum spacing between manufactured home units, including attached accessory structures, shall be no less than 20 feet. On a corner lot, the side yard abutting the street shall have a width equal to the depth of the front yard required and shall be subject to all front yard requirements of this chapter.
  - (2) The minimum rear yard shall be 10 feet measured from the rear lot line of each manufactured home lot.
  - (3) Detached accessory structures shall be located on the lot no closer than five feet from a manufactured home and shall comply with the required front, side and rear setback lines.
  - (4) Manufactured home units shall not be located closer than 25 feet from the manufactured home park property lines on the sides and rear not adjacent to a street. Manufactured home units adjacent to public streets shall not be located closer than 35 feet to the right-of-way line and shall contain a buffer yard in accordance with § 233-41A herein.
- E. Off-street parking requirements.
  - (1) Paved off-street parking areas shall be provided at the rate of at least two vehicular parking spaces for each manufactured home lot.
  - (2) Each such off-street parking space shall contain at least 200 square feet of area and shall be located on the lot it is intended to serve.
- F. Open space requirements.



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- (1) Not less than 10% of the total land area shall be provided for usable open space. Such space shall be so located as to be free of traffic hazards and should, where the topography permits, be centrally located and easily accessible to all park residents.
  - (2) Such open space shall be maintained with a durable vegetative cover that is capable of preventing soil erosion and the emanation of dust during dry weather.
- G. Stormwater management.
- (1) The ground surface in all parts of a park shall be graded and equipped to drain surface water in a safe, efficient manner. Where necessary, storm sewers, culverts and related facilities shall be provided to permit the adequate drainage of all locations within the park.
  - (2) A stormwater plan in accordance with the provisions of Borough's Stormwater Ordinance <sup>150</sup> shall be prepared and submitted prior to the granting of a plat approval or license for any manufactured home park.
  - (3) All stormwater facilities shall be kept completely separate from any sanitary waste facilities.
  - (4) All stormwater management plans shall conform to the Borough's stormwater ordinance and Act 167 of the Pennsylvania Code.
- H. Park areas for nonresidential uses. No part of the manufactured home park shall be used for a nonresidential purpose, except such uses that are specifically required for the direct servicing and well-being of park residents, for management and maintenance of the park or those uses permitted by applicable provisions of the Township's Zoning Ordinance. <sup>151</sup>

### § 233-41. Improvement and construction requirements.

All improvements, construction requirements and engineering specifications for the improvements required shall be provided in accordance with Article VI of this chapter in addition to those required herein.

- A. Buffer yard. A suitably screened or landscaped buffer yard of at least 10 feet wide, approved by the Planning Commission, shall be provided by the developer along all of the property lines separating the manufactured home park from adjacent land uses and public streets. Said buffer yard shall be planted with dense screen plantings as specified in the Penbrook Borough Zoning Ordinance. <sup>152</sup>
- B. Signs and lighting.

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<sup>150</sup>. Editor's Note: See Ch. 226, Stormwater Management.

<sup>151</sup>. Editor's Note: See Ch. 266, Zoning.

<sup>152</sup>. Editor's Note: See Ch. 266, Zoning.

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- (1) Signs may be permitted in accordance with Article XI of the Penbrook Borough Zoning Ordinance.
  - (2) All parks shall be furnished with lighting units so spaced and equipped with luminaries placed at such mounting heights as will provide the following average maintained levels of illumination for the safe movement of pedestrians and vehicles at night:
    - (a) All parts of the streets systems: an average of 0.6 foot-candle with a minimum of 0.1 foot-candle.
    - (b) Potentially hazardous locations such as major street intersections and steps or step ramps: individually illuminated with a minimum of 0.3 foot-candle.
- C. Other site improvements and requirements.
- (1) Each manufactured home site shall be provided a structurally stabilized foundation for manufactured home placement approved by the Borough Engineer.
  - (2) An enclosure of compatible design and material shall be erected around the entire base of each manufactured home. Such enclosure shall provide sufficient ventilation to inhibit decay and deterioration of the structure.
  - (3) Each manufactured home lot shall be provided with a four-inch concrete slab on a stable surface at least 10 feet by 18 feet in size for use as a terrace and so located so as to be adjoining and parallel to the manufactured home and not extend into the front, side, or rear yard.
  - (4) Individual tenants of the manufactured home park may construct attached enclosures or covered patios to individual manufactured homes, provided that such enclosures do not encroach into the front, side or rear yard areas.
  - (5) Tie downs shall be installed at strategic locations so as to prevent movement of the manufactured home by natural causes.
  - (6) Provisions shall be made by the park operator to have garbage and waste collected at least once every week and shall be deposited at an approved disposal site.
  - (7) There shall be provided such other improvements as the Borough Council may deem necessary, whereby such requirements shall at all times be in the best interests of the park residents.
- D. Water supply.
- (1) Water distribution system.
    - (a) The water system of the manufactured home park shall be connected by pipes to all manufactured homes, buildings and other facilities requiring water.

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- (b) The water piping system shall not be connected with nonpotable or questionable water supplies and shall be protected against the hazards of backflow or back siphonage.
      - (c) The system shall be so designed and maintained as to provide a pressure of not less than 20 pounds per square inch, under normal operating conditions, with a minimum pipe width of a diameter approved by the Borough Engineer.
    - (2) Individual water riser pipes and connections.
      - (a) Individual water riser pipes shall be located within the confined area of the manufactured home stand at a point where the water connection will approximate a vertical position.
      - (b) The water riser pipe shall extend at least four inches above ground elevation. The pipe shall be at least 3/4 inch. The water outlet shall be capped when a manufactured home does not occupy the lot.
      - (c) Adequate provisions shall be made to prevent freezing of service lines, valves and riser pipe and to protect risers from heaving and thawing actions of ground during freezing weather. Surface drainage shall be diverted from the location of the riser pipe.
      - (d) A shutoff valve below the frost line shall be provided near the water riser pipe of each manufactured home lot.
      - (e) Underground stop and waste valves shall not be installed on any water service.
  - E. Sewage disposal. An adequate and safe sewerage system shall be provided in all parks for conveying and disposing of sewage from manufactured homes, service buildings and other accessory facilities. All such systems shall make connection to the public sanitary sewer system upon review and approval by the Pennsylvania Department of Environmental Protection (DEP) and the Borough.
    - (1) Individual sewer connections.
      - (a) Each manufactured home lot shall be provided with at least a three-inch diameter sewer riser pipe. The sewer riser pipe shall be so located on each stand that the sewer connection to the manufactured home drain outlet will approximate a vertical position.
      - (b) The sewer connection shall have a nominal inside diameter of not less than three inches, and the slope of any portion thereof shall be at least 1/4 inch per foot. All joints shall be watertight.
      - (c) All materials used for sewer connections shall be semirigid, corrosive resistant, nonabsorbent and durable. The inner surface shall be smooth.
      - (d) Provision shall be made for plugging the sewer riser pipe when a

manufactured home does not occupy the lot. Surface drainage shall be diverted away from the riser. The rims of the riser pipe shall extend at least 1/2 inch above ground elevation.

- (2) Sewer lines. All sewer lines shall be located in trenches of sufficient depth to be free of breakage from traffic or other movements, shall be separated from the park water supply system and stormwater drainage systems and shall have watertight joints.
- F. Electrical distribution system. Every park shall contain an electrical wiring system consisting of wiring, fixtures, equipment and appurtenances which shall be installed and maintained in accordance with local electrical power company specifications regulating such systems.
- (1) Power distribution lines.
    - (a) All power lines shall be placed underground at least 18 inches below the ground surface and shall be insulated and specifically designed for such installation. Such lines shall be located not less than one-foot distance from any other utility lines, facility or installation.
    - (b) Meter poles shall have a maximum of height of six feet.
  - (2) Individual electrical connections. Each manufactured home lot shall be provided with an approved disconnecting device and over current protective equipment. The minimum service per outlet shall be 120/240 volts AC, 100 amperes.
  - (3) Required grounding. All exposed non-current-carrying metals parts of manufactured homes and all other equipment shall be grounded by means of an approved grounding conductor run with branch circuit conductors or other approved method of grounded metallic wiring. The neutral conductor shall not be used as an equipment ground for manufactured homes or other equipment.
- G. Fuel supply and storage.
- (1) Natural gas system.
    - (a) Natural gas piping systems when installed in manufactured home parks shall be maintained in conformity with the specifications of the gas company serving the area.
    - (b) Each manufactured home lot provided with piped gas shall have an approved shutoff valve installed upstream of the gas outlet. The outlet shall be equipped with an approved cap to prevent accidental discharge of gas when the outlet is not in use.
  - (2) Liquefied petroleum gas systems. Liquefied petroleum gas (LPG) systems provided for manufactured homes, service buildings or other structures when installed shall be maintained in conformity with any applicable rules and

regulations and shall include the following:

- (a) Systems shall be provided with safety devices to relieve excessive pressures and shall be arranged so that the discharge terminates at a safe location.
  - (b) Systems shall have at least one accessible means for shutting off gas. Such means shall be located outside the manufactured home and shall be maintained in effective operating condition.
  - (c) All LPG piping located outside of the manufactured home shall be well supported and protected against mechanical injury. Undiluted liquified petroleum gas in liquid form shall not be conveyed through piping equipment and systems in manufactured homes.
  - (d) Vessels of more than 12 United States gallons' and less than 60 United States gallons' gross capacity may be installed on a manufactured home lot and shall be securely but not permanently fastened to prevent accidental overturning.
  - (e) No LPG vessel shall be stored or located inside or beneath any storage cabinet, carport, manufactured home or any other structure unless such installations are specially approved by the authority having jurisdiction.
- (3) Fuel oil supply systems.
- (a) All fuel oil supply systems provided for manufactured homes, services buildings and other structures shall be installed and maintained in conformity with any applicable rules and regulations.
  - (b) All piping from outside fuel storage tanks or cylinders to manufactured homes shall be securely but not permanently fastened in place.
  - (c) All fuel oil supply systems provided for manufactured homes, service buildings and other structures shall have shutoff valves located within five inches of storage tanks.
  - (d) Storage tanks located in areas subject to traffic shall be protected against physical damage.
- H. Other utilities. Any other utility such as telephone or cable servicing a manufactured home park shall be installed underground, as applicable, and maintained in accordance with the respective utility company specifications regulating such systems.
- I. Service buildings and other park service facilities. The requirements of this section shall apply to service buildings, recreation buildings and other community service facilities as follows:
- (1) Facilities.

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- (a) Every manufactured home park shall have a structure clearly designated as the office of the manufactured home park manager.
  - (b) Service and accessory buildings located in a manufactured home park shall be used only by the residents of the manufactured home park.
- (2) Structural requirements for buildings.
  - (a) All portions of the structure shall be properly protected from damage ordinary uses and by decay, corrosion, termites and other destructive elements. Exterior portions shall be of such materials and be so constructed as to prevent entrance or penetration of moisture and weather.
  - (b) All rooms containing lavatory facilities shall:
    - [1] Have some resistant walls extending to the ceiling between male and female sanitary facilities. Walls and partitions in lavatories and other plumbing fixtures shall be constructed of dense, nonabsorbent, waterproof material or covered with moisture-resistant materials.
    - [2] Have at least one window or skylight facing directly to the outdoors. The minimum aggregate gross area of windows for each required room shall be not less than 10% of the floor area served by them.
    - [3] Have at least one window which can be easily opened or a mechanical device which will adequately ventilate the room.
      - (c) Toilets shall be located in separate compartments equipped with self-closing doors.
- J. Refuse handling. The storage, collection and disposal of refuse in the manufactured home park shall be the responsibility of the manufactured home park owner or manager and shall be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident or fire hazards or air pollution and shall comply with all applicable Borough and state regulations.
- K. Insect and rodent control. Grounds, buildings and structures shall be maintained free of insect and rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall comply with all applicable Borough and state regulations.
- L. Fire protection.
  - (1) Local regulations. The manufactured home park area shall be subject to any local fire protection rules and regulations.
  - (2) Litter control. Manufactured home park areas shall be kept free of litter, rubbish and other flammable materials.
  - (3) Fire extinguishers. Portable fire extinguishers of a type approved by the fire prevention authority shall be kept in public service buildings under park control and a sufficient number shall be maintained throughout the park in

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readily accessible and well-marked positions.

(4) Fire hydrants.

(a) Fire hydrants shall be installed in accordance with the following requirements:

[1] The water supply source shall permit the operation of a minimum of two one and one-half-inch hose streams.

[2] Each of two nozzles, held four feet above the ground, shall deliver at least 75 gallons of water per minute at a flowing pressure of at least 30 pounds per square inch at the highest point of the park.

(b) Fire hydrants shall be located within 600 feet of any home, service building or other structure in the park and shall be installed in accordance with all applicable Borough specifications.

(c) The park management shall give the Borough Zoning Officer or other authorized Borough representative free access to all manufactured home lots, service buildings and other community service facilities for inspection purposes.

### **§ 233-42. Standards for mobile home parks in floodplain areas.**

Where permitted within any identified floodplain area, all manufactured home parks and additions thereto shall be in accordance with Article V of this chapter in addition to those required in Article III, § 266-11I of the Penbrook Borough Zoning Ordinance.

### **§ 233-43. Permits, fees and licenses.**

A. Manufactured home park permits. Any person intending to develop a tract of land as a manufactured home park shall have a permit from the Borough for each such park, issued in accordance with the requirements contained in Resolution No. \_\_\_\_\_.

B. Fees. At the time of filing the preliminary plat and the final plat for the development of a tract of land for a manufactured home park, the applicant shall be required to pay to Penbrook Borough fees in accordance with the requirements of Article VIII herein.

C. Licenses. Any person intending to operate a manufactured home park within the Borough shall have a license from the Borough for each such park, issued in accordance with the requirements contained in Resolution No. \_\_\_\_\_.

### **§ 233-44. Alteration of requirements.**

The application for an alteration of requirements shall be in accordance with the provisions of Article X herein.

### **§ 233-45. Enforcement, penalties, severability and amendments.**

The enforcement, penalties, severability and amendments shall be in accordance with the provisions of Article X herein.

**ARTICLE VIII: Fees**

**§ 233-46. Filing.**

At the time of filing, all plats shall be accompanied by a check payable to Penbrook Borough, in the amount specified herein, to defray the cost of reviewing the proposed plats and required data.

**§ 233-47. Fee schedule.**

- A. The Borough Council shall establish by resolution a schedule of fees to be paid by the subdivider at the time of filing a preliminary or final plat.
- B. The schedule of fees shall be posted in the office of the Borough Zoning Officer and in such other places as the Borough may designate.
- C. No plat shall be considered by the Borough Council unless all fees and charges are paid in full.
- D. Review fees.
  - (1) Review fees shall include the reasonable and necessary charges by the Borough's professional consultants or Engineer for review and report to the Borough of Penbrook and shall be set by resolution. Such review fees shall be reasonable and in accordance with the ordinary and customary charges by the Borough Engineer or consultant for similar service in the community, but in no event shall the fees exceed the rate or cost charged by the Engineer or consultant to the Borough when fees are not reimbursed or otherwise imposed on applicants. Such review fees shall be established by resolution of the Borough Council.
  - (2) In the event the applicant disputes the amount of any such review fees, the applicant shall, within 10 days of the billing date, notify the Borough of Penbrook that such fees are disputed, in which case the Borough shall not delay or disapprove a subdivision or land development application due to the applicant's request over disputed fees.
  - (3) In the event that the Borough of Penbrook and the applicant cannot agree on the amount of review fees which are reasonable and necessary, then the fees shall be recalculated and recertified by another professional engineer licensed as such in this commonwealth and chosen mutually by the Borough and the applicant or developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the Township and the applicant or developer.

**§ 233-48. Engineering fees.**

On or before the date on which the preliminary or final plat is to be considered by the Borough Council, the applicant shall pay by a check, payable to Penbrook Borough, an amount determined or approved by the Borough Engineer sufficient to cover the costs of:



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- A. Reviewing the plat's engineering details.
- B. Inspecting the site layout for conformance with the plat.
- C. Preparing cost estimates of required improvements (as applicable).
- D. Inspecting required improvements during installation. (Shall be performed before the final plan is recorded.)
- E. Final inspection on completion of installation of required improvement. (Shall be performed before the final plan is recorded.)
- F. Other engineering verifications required by this chapter.

### § 233-49. Other fees.

- A. Fees for all other permits required for and by the Borough for opening roads, connecting to municipal sewers, building construction, etc., shall also be paid by a check payable to the Borough.
- B. The applicant at the time of application shall agree to cover the cost of advertising the ordinance accepting the deed of dedication of applicable required improvements and its recording costs.
- C. At the time of filing, all plats shall be accompanied by a check payable to the Dauphin County Planning Commission, in the amount specified by the county, to cover the costs of County Planning Commission review and report.

## ARTICLE IX: Modification of Requirements

### § 233-50. Modifications.

- A. The Borough Council may grant a modification of the requirements of one or more provisions of this chapter if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of this chapter is observed.
- B. All requests for a modification shall be in writing and shall accompany and be a part of the application for development. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of this chapter involved and the minimum modification necessary.
- C. The request for modification shall be referred to the Borough Planning Commission for advisory comments.
- D. The Borough Council shall keep a written record of all action on all requests for modifications.

## ARTICLE X: Enforcement, Remedies, Amendments and Recording

### § 233-51. Preventive remedies.

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- A. In addition to other remedies, the Borough of Penbrook may institute and maintain appropriate actions by law or in equity to restrain, correct or abate violations, to prevent unlawful construction, to recover damages and to prevent illegal occupancy of a building, structure or premises. The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.
- B. The Borough may refuse to issue any permit or grant any approval necessary to further improve or develop any real property which has been developed or which has resulted from a subdivision of real property in violation of this chapter. This authority to deny such a permit or approval shall apply to any of the following applicants:
  - (1) The owner of record at the time of such violation.
  - (2) The vendee or lessee of the owner of record at the time of such violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.
  - (3) The current owner of record who acquired the property subsequent to the time of violation without regard as to whether such current owner had actual or constructive knowledge of the violation.
  - (4) The vendee or lessee of the current owner of record who acquired the property subsequent to the time of violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.
- C. As an additional condition for issuance of a permit or the granting of an approval to any such owner, current owner, vendee or lessee for the development of any such real property, the Borough may require compliance with the conditions that would have been applicable to the property at the time the applicant acquired an interest in such real property.

### **§ 233-52. Enforcement remedies.**

- A. Any person, partnership or corporation who or which has violated the provisions of this chapter shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough of Penbrook, pay a judgment of not more than \$500, plus all court costs, including reasonable attorney fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation unless the District Justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership, or corporation violating this chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the District Justice, and thereafter each day that a violation continues shall constitute a separate violation.

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- B. The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem judgment pending a final adjudication of the violation and judgment.
- C. Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the Borough of Penbrook the right to commence any action for enforcement pursuant to this section.
- D. District Justices shall have initial jurisdiction in proceedings brought under this section.

### **§ 233-53. Effect of change in this chapter.**

Changes in this chapter shall affect plats as follows:

- A. From the time an application for approval of a plat, whether preliminary or final, is duly filed as provided in this chapter, and while such application is pending approval or disapproval, no change or amendment of this chapter, zoning or other governing ordinance or plan shall affect the decision on such application adversely to the applicant, and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly approved. The applicant shall be entitled to final approval in accordance with the terms of the approved preliminary application as hereinafter provided. However, if an application is properly and finally denied, any subsequent application shall be subject to the intervening change in governing regulations.
- B. When an application for approval of a plat, whether preliminary or final, has been approved without conditions or approved by the applicant's acceptance of conditions, no subsequent change or amendment in this chapter, zoning or other governing ordinance or plan shall be applied to affect adversely the right of the applicant to commence and to complete any aspect of the approved development in accordance with the terms of such approval within five years from such approval.
- C. Where final approval is preceded by preliminary approval, the aforesaid five-year period shall be counted from the date of the preliminary approval. In the case of any doubt as to the terms of a preliminary approval, the terms shall be construed in the light of the provisions of this chapter as they stood at the time when the application for such approval was duly filed.
- D. Where the landowner has substantially completed the required improvements as depicted upon the final plat within the aforesaid five-year limit, or any extension thereof as may be granted by the Borough Council, no change of any ordinance or plan enacted subsequent to the date of filing of the preliminary plat shall modify or revoke any aspect of the approved final plat pertaining to zoning classification or density, lot, building, street or utility location.
- E. In case of a preliminary plat calling for the installation of improvements beyond the five-year period, a schedule shall be filed by the landowner with the preliminary plat delineating all proposed sections as well as deadlines within which applications for final plat approval of each section are intended to be filed. Such schedule shall be

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updated annually by the applicant on or before the anniversary of the preliminary plat approval, until final plat approval of the final section has been granted, and any modification in the aforesaid schedule shall be subject to approval of the Borough Council in its discretion.

- F. Each section in any residential subdivision or land development, except for the last section, shall contain a minimum of 25% of the total number of dwelling units as depicted on the preliminary plan unless a lesser percentage is approved by the Borough Council in its discretion. Provided the landowner has not defaulted with regard to or violated any of the conditions of the preliminary plat approval, including compliance with landowner's aforesaid schedule of submission of final plats for the various sections, then the aforesaid protections afforded by substantially completing the improvements depicted upon the final plat within five years shall apply, and for any section or sections, beyond the initial section, in which the required improvements have not been substantially completed within said five-year period, the aforesaid protections shall apply for an additional term or terms of three years from the date of final plat approval for each section.
- G. Failure of landowner to adhere to the aforesaid schedule of submission of final plats for the various sections shall subject any such section to any and all changes in this chapter, zoning and other governing ordinance enacted by the Borough of Penbrook subsequent to the date of the initial preliminary plan submission.

### **§ 233-54. Recording plats and deeds.**

- A. Upon the approval of a final plat, the developer shall, within 90 days of such final approval or 90 days after the date of the delivery of an approved plat signed by the governing body following completion of conditions imposed for such approval, whichever is later, record such plat in the office of the Recorder of Deeds of the county. The Recorder of Deeds shall not accept any plat for recording unless such plat officially notes the approval of the Borough Council and review by the County Planning Agency.
- B. The recording of the plat shall not constitute grounds for assessment increases until such time as lots are sold or improvements are installed on the land included within the subject plat.

### **§ 233-55. Effect of plat approval on Official Map.**

After a plat has been approved and recorded as provided in this chapter, all streets and public grounds on such plat shall be and become a part of the Official Map of the Borough of Penbrook without public hearing.

**Attachment 1: Penbrook Borough Subdivision and Land Development Certification and Dedicatory Blocks**

**Exhibit I**

**Penbrook Borough  
Subdivision and Land Development  
Certification and Dedicatory Blocks**

Commonwealth of Pennsylvania  
County of Dauphin

On this the \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ before me the undersigned Personally appeared

Owner(s) \_\_\_\_\_

Owner(s) \_\_\_\_\_

Who being duly sworn according to law, depose and say that they are the owners of the property shown on this plan and that they acknowledge the same to be their act and deed and desire the same to be recorded as such according to law.

Witness my hand and notarial seal the day and date above written,

\_\_\_\_\_  
My Commission expires

\_\_\_\_\_  
Notary Public

It is hereby certified that the undersigned are the equitable owners of the property shown on this plat and that all streets or parts thereof, if not previously dedicated, are hereby tendered for dedication to public use.

Owner(s) \_\_\_\_\_

Owner(s) \_\_\_\_\_

Owner(s) \_\_\_\_\_

Owner(s) \_\_\_\_\_

I hereby certify this plan to be correct as shown.

Registered Surveyor \_\_\_\_\_

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**Penbrook Borough  
Subdivision and Land Development**

Name of Surveyor \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Phone number \_\_\_\_\_

**Attachment 2: Penbrook Borough Subdivision and Land Development Plat Approval Blocks**

**Exhibit II**

**Penbrook Borough  
Subdivision and Land Development  
Plat Approval Blocks**

This Plan reviewed by the Dauphin County Planning Commission

This \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Chairman: \_\_\_\_\_

Secretary: \_\_\_\_\_

This Plan reviewed by the Penbrook Borough Engineer

This \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Borough Engineer: \_\_\_\_\_

This Plan recommended for approval by the Penbrook Borough Planning Commission

This \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Chairman: \_\_\_\_\_

Secretary: \_\_\_\_\_

This Plan approved by the Borough Council of Penbrook Borough

This \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

President: \_\_\_\_\_

Secretary: \_\_\_\_\_

This Plan recorded in the Office of the Recorder Of Deeds in and for Dauphin County

This \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Plan Book \_\_\_\_\_ Volume \_\_\_\_\_ Page \_\_\_\_\_

**Attachment 3: Street Widths**

**Table I  
Street Widths**

Street Type	Cartway Widths				Material Specifications	
	Right-of-Way Width	Shoulders <sup>(1)</sup>	Curbs	With Curbs	Base Material	Paving
Arterial streets	As determined by the Governing Body and Planning Commission after consultation with PennDOT.					
Collector	60'	6' each	28'	34'	6"subbase  6"subbase	4" BCBC 2"-ID-2 binder course 1½"-ID-2 wearing course  Or 8" CABC 2"-ID-2 binder course 1½"-ID-2 wearing course
Minor street	50'	4' each	24'	30'	6"subbase  6"subbase	4½" BCBC 1½"-ID-2 wearing course  Or 6" CABC 2"-ID-2 binder course 1½"-ID-2 wearing course
Minor streets (industrial/commercial uses)	60'	6' each	28'	34'	8"subbase  8"subbase	4½" BCBC 2"-ID-2 binder course 1½"-ID-2 wearing course  Or 6" CABC 2"-ID-2 binder course 1½"-ID-2 wearing course
Cul-de-sac	50'	4' each	24'	30'	Same as minor (general)	Same as minor (general)
Turnaround of cul-de-sac (diameter)	100'	4' each	80'	80'	Same as minor (general)	Same as minor (general)
Alley	30'	N/A	16'	20'	Same as minor (general)	Same as minor (general)
Service drive (private)	N/A	N/A	20'	20'	Same as minor (general)	Same as minor (general)

<sup>(1)</sup> Required only in the absence of curbing.

Legend:

- BCBC - Bituminous concrete base course
- CABC - Crushed aggregate base course



## Chapter 238: TAXATION

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook as indicated in article histories. Amendments noted where applicable.]

### ARTICLE I: Per Capita Tax

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. II, Art. 1, of the 1981 Code]

#### § 238-1. Levy of tax.

A per capita tax of \$5 per annum be and the same is hereby levied and assessed under and by virtue of the provisions of Act No. 511 of the General Assembly 1965, as amended, upon each resident or inhabitant of the Borough of Penbrook who shall have become 18 years of age on or before July 1 of the taxable year, which tax shall be in addition to all other taxes levied and assessed by the Borough of Penbrook pursuant to any other laws of the Commonwealth of Pennsylvania.

- A. Any person moving into the Borough prior to July 1 of the taxable year who exhibits a paid receipt from his former municipality for per capita tax for that year, or any person moving into the Borough subsequent to July 1 of the taxable year, shall not be taxable under this section.
- B. Any person who is or has been in the Armed Forces of the United States at any time between January 1 and July 1 of the taxable year shall not be taxable under this section.
- C. Any person who has received earned income of any kind and from any source of less than \$300 for the calendar year in which a tax would be due hereunder shall not be taxable under this section.

#### § 238-2. Tax Collector.

Said tax shall be collected by the duly elected or appointed Tax Collector for the Borough of Penbrook in the same manner and at the time or times as other Borough taxes are collected, as provided by the Local Tax Collection Law of 1945, as amended and supplemented. <sup>153</sup>

#### § 238-3. Warrant for collection.

The entry of said per capita tax in the tax duplicate and issuance of said duplicate to the Tax Collector shall constitute his warrant for the collection of said per capita tax hereby levied and assessed.

#### § 238-4. Compensation of Tax Collector.

The expenses of collection and compensation of the Tax Collector shall be paid and allowed as provided in the Local Tax Collection Law of 1945, as amended and supplemented, <sup>154</sup> which compensation shall be the same as fixed from time to time by the Borough of

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153. Editor's Note: See 72 P.S. § 5511.1 et seq.

154. Editor's Note: See 72 P.S. § 5511.1 et seq.

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Penbrook for the collection of other Borough taxes.

### **§ 238-5. Notice to taxpayers.**

The Tax Collector shall give notice to the taxpayer at the same time and in the same manner as provided by the Local Tax Collection Law of 1945, as amended and supplemented. <sup>155</sup>

### **§ 238-6. Certification.**

In case the Tax Collector or a Deputy Tax Collector shall at any time find within the Borough of Penbrook any resident or inhabitant above the age of 18 years whose name does not appear on the tax duplicate, he shall report the name of such person forthwith to the Assessor, who shall thereupon certify the same unto the Borough of Penbrook, which shall promptly certify the same to the Tax Collector reporting said name, whereupon the Tax Collector shall add the name and assessment of this per capita tax against such person to the duplicate of the Borough of Penbrook and proceed to collect the same.

### **§ 238-7. Authority of Tax Collector.**

The Tax Collector shall be and is hereby empowered with the authority to collect said tax by distress and shall sell all goods and chattels of the taxpayer, as provided therefor by the Local Tax Collection Law of 1945, as amended and supplemented. <sup>156</sup>

### **§ 238-8. Authority to collect taxes.**

There is hereby conferred upon the Tax Collector the power and authority to demand, receive and collect from all corporations, political subdivision, associations, companies, firms or individuals, employing persons owing per capita taxes, or whose spouse owes per capita taxes, or if in possession of unpaid commissions or earnings belonging to any person written notice and demand containing the name of the taxable, or spouse thereof, and the amount of tax due. Upon presentation of such written notice and demand, it shall be the duty of such corporation, political subdivision, association, company, firm or individual to deduct from wages, commissions or earnings of such individual employee then owing or that shall within 60 days thereafter become due or from any unpaid commissions or earnings of any taxable in its or his possession or that shall within 60 days thereafter come into its or his possession a sum sufficient to pay the respective amount of the per capita taxes and costs shown upon the written notice or demand and to pay the Tax Collector and the Borough of Penbrook within 60 days after such notice shall have been given. The employer shall be entitled to deduct not more than 2% for his expenses for such moneys paid over to the Tax Collector.

### **§ 238-9. Remittance of taxes.**

The Tax Collector shall remit said taxes to the Treasurer of the Borough of Penbrook by a separate statement at the same time as other taxes are remitted to the Borough of Penbrook.

### **§ 238-10. Discount; penalty for late payment.**

All taxpayers subject to the payment of the per capita taxes as herein levied and assessed

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155. Editor's Note: See 72 P.S. § 5511.1 et seq.

156. Editor's Note: See 72 P.S. § 5511.1 et seq.

shall be entitled to a discount of 2% of the amount of such tax upon making payment of the whole amount thereof within two months after the date of the tax notice. All taxpayers who fail to make payment of any such taxes charged against them for a period of four months after the date of the tax notice shall be charged a penalty of 5%, which penalty shall be added to the taxes by the Tax Collector and be collected by him.

**§ 238-11. Powers of Tax Collector.**

It is the intent of this article and there is hereby conferred upon the Tax Collector all the powers, together with all the duties and obligations to the same extent and as fully provided for in the Local Tax Collection Law of 1945, as amended and supplemented. <sup>157</sup>

**ARTICLE II: Occupation Tax**

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. II, Art. 2, of the 1981 Code]

**§ 238-12. Levy of tax.**

Pursuant to the authority contained in the Local Tax Enabling Act No. 511, approved December 31, 1965, P.L. 1257, and its amendments and supplements, 53 P.S. § 6901 et seq., a tax for the purpose of providing revenue for general Borough purposes is hereby levied, assessed and imposed on the occupation of all persons physically residing within the said Borough at any time during the year 1967 and each year thereafter and having reached the age of 18 years but under the age of 65 on or before July 1 of the taxable year, at the rate of \$10 for each taxable year.

- A. Any person moving into the Borough prior to July 1 of the taxable year who exhibits a paid receipt from his former municipality for the occupation tax for that year, or any person moving into the Borough subsequent to July 1 of the taxable year, shall not be taxable under this section.
- B. Any person who is or has been in the Armed Forces of the United States at any time between January 1 and July 1 of the taxable year shall not be taxable under this section; provided, however, that said persons shall complete and submit to the Tax Collector a written request for an exemption on the form provided for said purpose.
- C. Any person who is or has become retired at any time between January 1 and July 1 of the taxable year shall not be taxable under this section; provided, however, that said persons shall complete and submit to the Tax Collector a written request for an exemption on the form provided for said purpose.
- D. Any person whose total earned income from all sources is less than \$12,000.00, or the exemption amount as then provided for under 53 P.S. § 6924.301.1 as amended, for the calendar year in which a tax would be due hereunder shall not be taxable under this section; provided, however, that said persons shall complete and submit to the Tax Collector a written request for an exemption on the form provided for said purpose. <sup>158</sup>

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<sup>157</sup> Editor's Note: See 72 P.S. § 5511.1 et seq.

<sup>158</sup> Amended Ordinance 2022-2 on July 5 2022, Updated 238-12

**§ 238-13. Tax Collector.**

This occupation tax shall be in addition to all other property, per capita, residence, personal and other taxes levied by the said Borough and shall be collected by the duly elected or appointed Tax Collector for the Borough in the same manner and at the same time as other Borough taxes are collected.

**§ 238-14. Warrant for collection.**

As soon as this occupation tax is levied and assessed by the Borough Council, the Secretary shall add the amount of tax levied hereunder to the tax duplicate furnished the Tax Collector and such entry shall constitute his warrant for collection of the same.

**§ 238-15. Liability of payment.**

Every person upon whose spouse this occupation tax is levied shall be liable for the payment of this tax. Collection thereof from said person may be made and enforced in the manner provided by law for the collection and enforcement of other taxes owing by such person, including the collection thereof from the person's employer.

**§ 238-16. Compensation of Tax Collector.**

The Tax Collector shall be entitled to the same compensation for collection of this tax as he received for the collection of other Borough taxes and shall remit such collected taxes to the Treasurer of the Borough of Penbrook by a separate statement at the same time as other taxes are remitted to the Borough.

**§ 238-17. Discount; penalty for late payment.**

All taxpayers subject to the payment of this occupation tax herein levied and assessed shall be entitled to a discount of two 2% of the amount of said tax upon making payment of the whole amount thereof within two months after the date of the tax notice. All taxpayers who fail to make payment of any such taxes for a period of four months after the date of the notice shall be charged a penalty of 5%, which penalty shall be added to the taxes by the Tax Collector and collected by him.

**§ 238-18. Collection of taxes.**

The tax imposed herein shall be collected from every natural person subject to said tax, notwithstanding the fact that the name of any such person shall not appear on the list of persons subject to taxation within the Borough furnished to the Tax Collector and notwithstanding the fact that no notice by mail or otherwise shall have been given to such person of the fact that he or she is liable for payment of said tax. The names of any such person shall be added to the duplicate of the Tax Collector in the manner now provided by law for the per capita tax of said Borough.

**ARTICLE III: Local Services Tax**

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. II, Art. 3, of the 1981 Code]

**§ 238-19. Title.**

## Penbrook Borough Codes Version 2024-5

This article shall be known and may be cited as the "Borough of Penbrook Local Services Tax Ordinance of 2007."

### **§ 238-20. Definitions.**

The following words and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context or language clearly indicates or requires a different meaning:

**POLITICAL SUBDIVISION** - The area within the corporate limits of the BOROUGH OF PENBROOK

**COLLECTOR** - The person, public employee or private agency designated by the political subdivision to collect and administer the tax herein imposed.

**DCED** - The Department of Community and Economic Development of the Commonwealth of Pennsylvania

**EARNED INCOME** - Compensation as this term is defined in Section 13 relating to earned income taxes of the Local Tax Enabling Act, the Act of Dec. 31, 1965, P.L. 1257, § 13, as amended, 53 P.S. § 6913, as amended.

**EMPLOYER** - An individual, partnership, association, limited liability corporation, limited liability partnership, corporation, governmental body, agency or other entity employing one or more persons on a salary, wage, commission or other compensation basis, including a self-employed person

**HE, HIS or HIM** - Indicates the singular and plural number, as well as male, female and neuter genders.

**INDIVIDUAL**-Any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the political subdivision.

**NET PROFITS** -The net income from the operation of a business, profession, or other activity, as this term is defined in Section 13 relating to earned income taxes of the Local Tax Enabling Act, the Act of Dec. 31, 1965, P.L. 1251, § 13, as amended, 53 P.S. § 6913, as amended.

**OCCUPATION** - Any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, earned on or performed within the corporate limits of the political subdivision for which compensation is charged or received; whether by means of salary, wages, commission or fees for services rendered.

**TAX** - The local services tax at the rate fixed in § 231-9 of this article.

**TAX YEAR** - The period from January 1 until December 31 in any year; a calendar year.

### **§ 238-21. Levy of tax.**

## Penbrook Borough Codes Version 2024-5

For specific revenue purposes, an annual tax is hereby levied and assessed, commencing January 1, 2008; upon the privilege of engaging in an occupation with a primary place of employment within the Borough of Penbrook during the tax year. Each natural person who exercises such privilege for any length of time during any tax year shall pay the tax for that year in the amount of \$52.00, assessed on a pro rata basis, in accordance with the provisions of this article. This tax may be used solely for the following purposes as the same may be allocated by the Borough Council from time to time: (1) emergency services, which shall include emergency medical services, police services and/or fire services; (2) road construction and/or maintenance; (3) reduction of property taxes; or (4) property tax relief through implementation of a homestead and farmstead exclusion in accordance with 53 Pa.C.S. Ch. 85, Subch. F (relating to homestead property exclusion). The political subdivision shall use no less than twenty-five percent of the funds derived from the tax for emergency services. This tax is in addition to all other taxes of any kind or nature heretofore levied by the political subdivision. The tax shall be no more than \$52.00 on each person for each calendar year, irrespective of the number of political subdivisions within which a person maybe employed.

### **§ 238-21.1. Exemption and Refunds**

- A. Exemption. Any person whose total earned income and net profits from all sources within the political subdivision is less than twelve thousand (\$12,000) dollars for any calendar year in which the tax is levied is exempt from the payment of the tax for that calendar year, In addition, the following persons are exempt from payment of the tax:
- (1) Any person who has served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service if as a result of military service, the person is blind, paraplegic or a double or quadruple amputee or has a service-connected disability declared by the United States Veterans' Administration or its successor to be a total one hundred percent disability.
  - (2) Any person who serves as a member of a reserve component of the armed forces and is called to active duty at any time during the taxable year. For the purposes of this subparagraph, "reserve component of the armed forces" shall mean the United States Army Reserve, United States Navy Reserve, United States Marine Corps Reserve, United States Coast Guard Reserve, United States Air Force Reserve, the Pennsylvania Army National Guard or the Pennsylvania Air National Guard.
- B. Procedure to claim Exemption
- (1) A person seeking to claim an exemption from the local services tax may annually file an exemption certificate with the political subdivision and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the political subdivision

of less than twelve thousand dollars (\$12,000) in the calendar year for which the exemption certificate is filed. In the event the political subdivision utilizes a tax collection officer, it shall provide a copy of the exemption certificate to that officer. The exemption certificate shall have attached to it a copy of all the employee's last pay stubs or W-2 forms from employment within the political subdivision for the year prior to the fiscal year for which the employee is requesting to be exempted from the tax. Upon receipt of the exemption certificate and until otherwise instructed by the political subdivision or except as required by clause (2), the employer shall not withhold the tax from the person during the calendar year or the remainder of the calendar year for which the exemption certificate applies. Employers shall ensure that the exemption certificate forms are readily available to employees at all times and shall furnish each new employee with a form at the time of hiring. The exemption certificate form shall be the uniform form provided by the political subdivision,

- (2) With respect to a person who claimed an exemption for a given calendar year from the tax, upon notification to an employer by the person or by the political subdivision that the person has received earned income and net profits from all sources within the political subdivision equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year or that the person is otherwise ineligible for the tax exemption for that calendar year, or upon an employer's payment to the person of earned income within the municipality in an amount equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year, an employer shall withhold the local services tax from the person under clause (3).
- (3) If a person who claimed an exemption for a given calendar year from the tax becomes subject to the tax for the calendar year under clause (2), the employer shall withhold the tax for the remainder of that calendar year. The employer shall withhold from the person, for the first payroll period after receipt of the notification under clause (2), a lump sum equal to the amount of tax that was not withheld from the person due to the exemption claimed by the person under this subsection, plus the per payroll amount due for that first payroll period. The amount of tax withheld per payroll period for the remaining payroll periods in that calendar year shall be the same amount withheld for other employees. In the event the employment of a person subject to withholding of the tax under this clause is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due, and the political subdivision may pursue collection under this article.
- (4) Except as provided in clause (2), it is the intent of this subsection that employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from the local services tax.

- C. Refunds. The Borough Council, in consultation with the Collector and DCED, shall establish procedures for the processing of refund claims for any tax paid by any person who is eligible for exemption, which procedures shall be in accord with provisions of the general municipal law relating to refunds of overpayments and interest on overpayments. Refunds made within seventy-five days of a refund request or seventy-five days after the last day the employer is required to remit the tax for the last quarter of the calendar year, whichever is later, shall not be subject to interest. No refunds shall be made for amounts overpaid in a calendar year that do not exceed one dollar (\$1): The Borough Council or the Collector shall determine eligibility for exemption and provide refunds to exempt persons.

**§ 231-22. Duty of employers to collect.**

- A. Each employer within the political subdivision, as well as those employers situated outside the political subdivision but who engage in business within the political subdivision, is hereby charged with the duty of collecting the tax from each of his employees engaged by him or performing for him within the political subdivision and making a return and payment thereof to the Collector. Further, each employer is hereby authorized to deduct this tax for each employee in his or her employ, whether said employee is paid by salary, wage or commission and whether or not all such services are performed within the political subdivision.
- B. A person subject to the tax shall be assessed by the employer a pro rata share of the tax for each payroll period in which the person is engaging in an occupation. The pro rata share of the tax assessed on the person for a payroll period shall be determined by dividing the rate of the tax levied for the calendar year by the number of payroll periods established by the employer for the calendar year. For purposes of determining the pro rata share, an employer shall round down the amount of the tax collected each payroll period to the nearest one-hundredth of a dollar. Collection of the tax shall be made on a payroll period basis for each payroll period in which the person is engaging in an occupation, except as provided in Paragraph D of this Section, For purposes of this paragraph, combined rate shall mean the aggregate annual rate of the tax levied by the school district and the municipality.
- C. No person shall be subject to the payment of the local services tax by more than one political subdivision during each payroll period.
- D. In the case of concurrent employment, an employer shall refrain from withholding the tax if the employee provides a recent pay statement from a principal employer the name of the employer, the length of the payroll period and the amount of the tax withheld and a statement from the employee that the pay statement is from the employee's principal employer and the employee will notify other employers of a change in principal place of employment within two weeks of its occurrence. The employee's statement shall be provided on the form approved by DCED.



- E. The tax shall be no more than fifty-two dollars (\$52) on each person for each calendar year, irrespective of the number of political subdivisions within which a person maybe employed. The political subdivision shall provide a taxpayer a receipt of payment upon request by the taxpayer.
- F. No employer shall he held liable for failure to withhold the tax or for the payment of the withheld tax money to the political subdivision if the failure to withhold taxes arises from incorrect information submitted by the employee as to the employee's place or places of employment, the employee's principal office or where the employee is principally employed. Further, an employer shall not be liable for payment of the local services tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of paragraph B of Section 231-9.1 of this article and this section and remits the amount so withheld in accordance with this article.
- G. Employers shall be required to remit the local services taxes thirty days after the end of each quarter of a calendar year.

**§ 238-23. Returns.**

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to the employer by the Collector. If an employer fails to file the return and pay the tax, whether or not the employer makes collection thereof from the salary, wages or commissions paid by him or her to an employee, except as provided hereafter in this article, the employer shall be responsible for the payment of the tax in full as though the tax had been originally levied against the employer.

**§ 238-24. Dates for determining tax liability and payment.**

In each tax year, each employer shall use his or her employment records to determine the number of employees from whom such tax shall be deducted and paid over to the Collector on or before the thirtieth day following the end of each calendar quarter of each such tax year.

**§ 238-25. Self-employed individuals.**

Each self-employed individual who performs services of any type or kind or engages in any occupation or profession within a primary place of employment within the political subdivision shall be required to comply with this article and pay the pro rata portion of the tax due to the Collector on or before the thirtieth day following the end of each quarter.

**§ 238-26. Individuals engaged in more than one occupation or employed in more than one political subdivision**

- A. The situs of the tax shall be the place of employment on the first day the person becomes subject to the tax during each payroll period. In the event a person is engaged in more than one occupation, that is, concurrent employment, or an occupation which requires the person working in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be in the following order:

- (1) First, the political subdivision in which a person maintains his or her principal office or is principally employed;
- (2) Second, the political subdivision in which the person resides and works if the tax is levied by that political subdivision;
- (3) Third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home. In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment constitutes prima facie certification of payment to all other political subdivisions

**§ 238-27. Nonresidents subject to tax.**

All employers and self-employed individuals residing or having their places of business outside of the political subdivision but who perform services of any type or kind or engage in any occupation or profession within the political subdivision do, by virtue thereof, agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this article with the same force and effect as though they were residents of the political subdivision. Further, any individual engaged in an occupation within the political subdivision and an employee of a nonresidential employer may, for the purpose of this article, be considered a self-employed person, and in the event his or her tax is not paid, the political subdivision shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

**§ 238-28. Administration of tax**

- A. The Collector shall be appointed by resolution of the political subdivision. It shall be the duty of the Collector to accept and receive payments of this tax and to keep a record thereof showing the amount received by him from each employer of self-employed person, together with the date the tax was received.
- B. The Collector is hereby charged with the administration and enforcement of this article and is hereby charged and empowered, subject to municipal approval, to proscribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the examination of payroll records of any employer subject to this article, the examination and correction of any return made in compliance with this article and any payment alleged or found to be incorrect or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Collector shall have the right to appeal consistent with the Local Taxpayers Bill of Rights under Act 50 of 1998.
- C. The Collector is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer or, if no return was made, to ascertain the tax due. Each employer is hereby directed and required to give the Collector the means, facilities and opportunity for such examination.

**§ 238-29. Suits for collection**

- A. In the event that any tax under this article remains due or unpaid 30 days after the due dates above set forth, the Collector may sue for the recovery of any such tax due or unpaid under this article, together with interest and penalty.
- B. If for any reason the tax is not paid when due, interest at the rate of 6% on the amount of such tax shall be calculated beginning with the due date of the tax and a penalty of 5% shall be added to the flat rate of such tax for nonpayment thereof. Where suit is brought for the recovery of this tax or other appropriate remedy undertaken the individual liable therefore shall, in addition, be responsible and liable for the costs of collection.

**§ 238-30. Violations and penalties.**

Whoever makes any false or untrue statement on any return required by this article, or whoever refuses inspection of the books, records or accounts in his or her custody and control setting forth the number of employees subject to this tax who are in his or her employment, or whoever fails or refuses to file any return required by this article shall be guilty of a violation and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$600 and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than 30 days. The action to enforce the penalty herein prescribed may be instituted against any person in charge of the business of any employer who shall have failed or who refuses to file a return required by this article.

**§ 238-31. Interpretation.**

- A. Nothing contained in this article shall be construed to empower the political subdivision to levy and collect the tax hereby imposed on any occupation not within the taxing power of the political subdivision under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.
- B. If the tax hereby imposed under the provisions of this article shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, the decision of the court shall not affect or impair the right to impose or collect said tax or the validity of the tax so imposed on other persons or individuals as herein provided.<sup>159</sup>

**ARTICLE IV: Real Estate Transfer Tax**

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. II, Art. 4, of the 1981 Code]

**§ 238-34. Definitions.**

The following words or phrases, when used in this article, shall have the meanings ascribed to them in this section except when the context indicates a different meaning:

CONSIDERATION — The amount paid for the interest or title transferred or conveyed, which shall include the value of property or anything of value paid for the interest or title

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<sup>159</sup> Amended Ordinance 2007-13 on Dec 26 2007, Replace Chapters 238-19 thru 238-33

transferred, and shall include purchase money obligations assumed and the actual amount of all liens, mortgages or other encumbrances subject to which the sale or transfer is made.

**PERSON** — Every natural person, partnership or corporation; whenever used in any clause imposing a penalty, the term as applied to partnership shall mean the partners and as applied to corporation or association shall mean the officers.

**TRANSFER** — Any transaction whereby any interest or transfer of lands, tenements, hereditaments or any real property or any interest therein situate wholly or in part within the boundaries of the district shall be transferred or conveyed by deed or other conveyance for value, but shall not include leasehold interests.

**§ 238-35. Levy of taxes.**

A tax for general revenue purposes is hereby levied, assessed and imposed on the transfer of title of real property situate in the Borough of Penbrook, Dauphin County, Pennsylvania, at the rate of 1% of the amount of consideration involved in the transaction or the assessed market value, whichever is greater, upon the grantee or purchaser in such transaction.

**§ 238-36. Land in more than one township.**

In case of any land, tenements, hereditaments or interest therein partly within and partly without the boundaries of said Borough, such tax shall be computed only on the consideration paid for that portion lying within the boundaries of said Borough.

**§ 238-37. Exemptions.** [Amended 2-5-1981 by Ord. No. 81-3]

This tax shall not apply to or be imposed upon transfers specifically exempt by the Realty Transfer Tax Act of the Commonwealth of Pennsylvania. **160**

**§ 238-38. Payment of tax.**

Payment of tax imposed by this article shall be evidenced on the deed by stamp or stamps to be affixed to every deed and canceled with ink. The tax shall be due and payable, at the time of delivery, by the grantee or grantees or purchasers in the instrument. The Secretary of the Penbrook Borough Council is hereby charged with the collection of this tax and the enforcement of its provisions. Said Secretary is authorized and directed to have the necessary transfer stamps manufactured and placed in the hands of an agent or agents, duly appointed by the Secretary, from whom stamps may be purchased by persons required to pay the tax. The Secretary is authorized to make the necessary rules and regulations for the collection of the tax.

**§ 238-39. Unpaid tax to be lien.**

All taxes imposed by this article which are not paid when due shall bear interest thereon at the rate of 1/2 of 1% per month until paid. This tax, when due and unpaid, shall become a lien on the lands, tenements, hereditaments or any interest therein which are described in a deed, transfer or conveyance upon which this tax is due and shall be collected as other taxes

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**160. Editor's Note: See 53 P.S. § 6901 et seq.**

are collected.

**§ 238-40. Violations and penalties. <sup>161</sup>**

Any person who shall fail, neglect or refuse to comply with any of the terms or provisions of this article or any regulation or requirement pursuant thereto and authorized thereby shall, in addition to other penalties provided by law, be subject to the penalties as set forth provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties. Such fine imposed by this section shall be in addition to any other penalty imposed by any other section of this article.

**ARTICLE V: Earned Income Tax**

[Adopted 5-2-1994 by Ord. No. 94-1]

**§ 238-41. Title; effective date.**

This article is enacted by the Borough of Penbrook pursuant to the authority granted by Act No. 511 of 1965, approved December 31, 1965 (known as "The Local Tax Enabling Act"), as amended, <sup>162</sup> and shall be known as the "Earned Income Tax Ordinance." The provisions hereof shall become effective on January 1, 1995.

**§ 238-42. Incorporation of statute.**

The provisions of Section 13 of The Local Tax Enabling Act (Act No. 511 of 1965) <sup>163</sup> are incorporated herein by reference, as required by law. Where options are provided in said Section 13, this article designates the option selected, except that Borough of Penbrook reserves the right to change the options regarding filing of returns and times of payment by action duly taken by Borough Council of the Borough of Penbrook by regulation, resolution or ordinance, as the case may require.

**§ 238-43. Imposition of tax.**

- A. A tax for general revenue purposes is hereby imposed at the rate of 1% on the following:
- (1) Earned income received or earned on and after January 1, 1995, by residents of the Borough of Penbrook.
  - (2) Earned income received or earned on and after January 1, 1995, by nonresidents of the Borough of Penbrook within the Borough of Penbrook.
  - (3) Net profits received or earned on and after January 1, 1995, by residents of the Borough of Penbrook.
  - (4) Net profits received or earned on or after January 1, 1995, in the Borough of Penbrook by nonresidents of the Borough of Penbrook from businesses,

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**161. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

**162. Editor's Note: See 53 P.S. § 6901 et seq.**

**163. Editor's Note: See 53 P.S § 6913.**

professions or other activities conducted in the Borough of Penbrook.

- B. The tax levied upon earned income shall relate to and be imposed upon that earned income paid by an employer or on his behalf to a taxpayer who is employed by or renders service to him. The tax levied upon net profits herein shall relate to and be imposed on the net profits of any business, profession or other activity carried on by any taxpayer.
- C. The tax hereby levied and assessed shall be applicable to earned income received and to net profits earned on and after January 1, 1995, through December 31, 1995, and shall continue in full force and effect for each calendar year thereafter, as provided in The Local Tax Enabling Act, Act No. 511 of the Session of 1965 of the General Assembly, as amended. **164**

**§ 238-44. Declaration, return and payment of tax.**

- A. Net profits. Every taxpayer making net profits in any year beginning with the year 1995 shall file on or before April 15 a declaration of his estimated net profits for the current year; shall pay the tax due thereon in quarterly installments, on or before April 15, June 15, September 15 of the current year and January 15 of the succeeding year; and shall file a final return and pay to the officer or bureau the balance of the tax due on April 15 of the succeeding year, all as provided in Section 13, III, A(3), of The Local Tax Enabling Act. **165**
- B. Earned income. For each year beginning with the year 1995, every taxpayer shall make and file a final return on or before April 15 and pay the tax due, all as provided in Section 13, III, B, first paragraph, of The Local Tax Enabling Act. **166**
- C. Earned income not subject to withholding. Every taxpayer who is employed for a salary, wage, commission or other compensation and who received any earned income not subject to the provisions relating to collection at source shall, beginning with the year 1995, make and file with the officer on a form prescribed or approved by the officer a quarterly return on or before April 30 of the current year, July 31 of the current year, October 31 of the current year and January 31 of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding by him during the three-month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year and December 31 of the current year, respectively, and subject to the tax, together with such other information as the officer may require. Every taxpayer making such return shall, at the time of filing thereof, pay to the officer the amount of tax shown as due thereon, all as provided in Section 13, (III) (B) (2), of The Local Tax Enabling Act. **167**

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**164. Editor's Note: See 53 P.S § 6901 et seq.**

**165. Editor's Note: See 53 P.S § 6913.**

**166. Editor's Note: See 53 P.S § 6913.**

**167. Editor's Note: See 53 P.S § 6913.**

**§ 238-45. Collection at source.**

- A. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the geographical area of the Borough of Penbrook shall deduct the tax imposed by this article on the earned income payable by him to his employee or employees. Said employers shall file quarterly returns and final returns and pay quarterly to the officer the amount of taxes deducted, all as set forth in Section 13, IV(b), of The Local Tax Enabling Act. <sup>168</sup> The returns shall be for calendar quarters and shall be returned and the tax paid on or before April 30, July 31 and October 31 of the current year and January 31 of the succeeding year.
- B. On or before February 28, 1996, and on each February 28 thereafter, every employer shall file with the officer:
- (1) An annual return showing the total amount of earned income paid, the total amount of tax deducted, and the total amount of tax paid to the officer for the period beginning January 1 and ending December 31 of the prior year.
  - (2) A return withholding statement for each employee employed during all or any part of the period beginning January 1 of the prior year and ending December 31 of the prior year, setting forth the employee's name, address and social security number, the amount of earned income paid to the employee during said period, the amount of tax deducted, the political subdivisions imposing the tax upon such employee and the amount of tax paid to the officer. Every employer shall furnish two copies of the individual return to the employee for whom it is filed.
- C. Every employer who discontinues business prior to December 31 of any year shall, within 30 days after discontinuance of business, file returns and withholding statements hereinabove required and pay the tax due.
- D. No employer shall be required to register, deduct taxes, file returns or pay taxes in the cases of domestic servants.

**§ 238-46. Administration.**

The income tax officer or bureau shall be selected from time to time by action of the Borough of Penbrook. Such officer or bureau shall have the powers and duties and be subject to the penalties provided in The Local Tax Enabling Act, Act 511 of the 1965 Session of the General Assembly, as amended. <sup>169</sup>

**§ 238-47. Applicability.**

The tax imposed in § 238-43 of this article shall not be levied on the net profits of any person, institution or organization as to whom it is beyond the power of the the Borough of Penbrook to impose said tax under existing law, the Constitution and laws of the Commonwealth of Pennsylvania.

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<sup>168</sup>. Editor's Note: See 53 P.S § 6913.

<sup>169</sup>. Editor's Note: See 53 P.S § 6901 et seq.

**§ 238-48. Effective date; repealer.**

The provisions of this article shall take effect January 1, 1995. Nothing contained herein shall be considered to be a repealer by implication or otherwise of the provisions of Ordinance No. 68-4, enacted December 2, 1968, as amended and reenacted thereafter, as it may apply to earned income and net profits of taxpayers in calendar years ending December 31, 1994, or in fiscal years commencing prior thereto and ending prior to December 31, 1995, which shall remain in full force and effect with respect to such earned income and net profits. Subject to valid enactment of this article without appeal effective January 1, 1995, all prior ordinances or parts thereof inconsistent herewith are hereby modified, amended and repealed by the provisions of this article which shall thereafter govern the taxation of such earned income or net profits.

**ARTICLE VI: Annual Tax Rate**

[Adopted 6-1-1981 by Ord. No. 81-5 as Ch. II, Art. 6, of the 1981 Code, as last amended 12-29-2004 by Ord. No. 2004-6]

**§ 238-49. Levy of tax.**

A tax be and the same is hereby levied on all real property within the Borough of Penbrook subject to taxation for the current fiscal year as follows:

- A. The current tax rate for general purposes is on file in the Borough offices.
- B. The current tax rate for fire protection purposes is on file in the Borough offices.

**ARTICLE VII: Real Estate Tax Payments**

[Adopted 8-1-1983 by Ord. No. 83-6]

**§ 238-50. Payment discount.**

All property owners subject to the payment of real estate taxes to the Borough of Penbrook as may be hereafter levied shall be entitled to a discount of 2% of the amount of such tax upon making payment of the whole amount thereof within two months after the date of the tax notice. All taxpayers who make payment of such taxes charged against them thereafter shall pay as follows:

- A. Within the 3rd and 4th month from date of said bill: the full amount thereof.
- B. Within the 5th and 6th month from date of said bill: the full amount, plus a penalty of 5% thereof.
- C. After the 6th month from date of said bill: the full amount, plus a penalty of 10% thereof.

**ARTICLE VIII: Business Privilege Tax**

[Adopted 11-9-1983 by Ord. No. 83-8]

**§ 238-51. Definitions.**

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



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**BOROUGH** — The Borough of Penbrook.

**BUSINESS** — Any activity carried on or exercised for gain or profit in the Borough of Penbrook, including but not limited to the sale of merchandise or other tangible personality or the performance of services.

**LICENSE FEE** — The annual filing or registration fee to administer the regulatory provisions of this article. The payment of the license fee shall not relieve the holder from payment of the tax imposed by this article.

**LICENSE YEAR** — The period January 1 to December 31, inclusive.

**PERSON** — Any individual, partnership, limited partnership, association, firm or corporation. Whenever used in any clause prescribing or imposing a penalty, the term "person" as applied to associations shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

**SECRETARY** — The Secretary of the Borough of Penbrook.

**TAX COLLECTOR** — The Secretary of the Borough of Penbrook.

**TAX YEAR** — The period from January 1 to December 31, inclusive.

**TAXPAYER** — A person subject to the payment of the tax imposed by this article.

### **§ 238-52. Levy of tax.**

There is hereby levied for the tax year 1984, and annually thereafter, a tax for general revenue purposes on the privilege of doing business, as herein defined, by persons in the Borough of Penbrook, as follows:

- A. **Rate and basis of tax.** The rate of the tax on each and every dollar of the whole or gross volume of business transacted within the territorial limits of the Borough of Penbrook shall be one mill. One mill shall mean \$1 per \$1,000 of gross volume of business. Each person engaged in a business temporary, seasonal or itinerant by its nature shall pay at the rate of one mill on each dollar of the whole or gross volume of business transacted. There shall be no tax if the whole or gross volume of business transacted is less than \$10,000.
- B. **Limit of tax.** No taxpayer, however, shall be obligated to pay more than \$1,000 on account of the gross volume of a taxpayer's business.
- C. **Persons, businesses and receipts exempted.**
  - (1) **Persons and businesses.** Persons employed for a wage or salary, nonprofit organizations or associations organized for religious, charitable or educational purposes, agencies of the United States or of the Commonwealth of Pennsylvania and the business of any political subdivision or of any authority created or organized under and pursuant to any Act of Assembly are exempt from the provisions of this article.
  - (2) No such tax shall be assessed and collected on a privilege, transaction, subject or

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occupation which is subject to a state tax.

- (3) Utilities. No such tax shall be assessed and collected on the gross receipts from utility service of any person or company whose rates of service are fixed and regulated by the Pennsylvania Public Utility Commission; or on any public utility service rendered by any such person or company or on any privilege or transaction involving the rendering of any such public utility service.
  - (4) State tax on tangible property. No such tax shall be assessed and collected on the privilege of employing such tangible property as is subject to a state tax except on sales of admission to places of amusement or on sales or other transfers of title or possession of property.
  - (5) Production and manufacture. No such tax shall be assessed and collected on goods, articles and products, or on by-products of manufacture, or on minerals, timber, natural resources and farm products manufactured, produced or grown in the Borough of Penbrook, or on any privilege, act or transaction related to the business of manufacturing, the production, preparation or processing of minerals, timber and natural resources or farm products by manufacturers, by producers and by farmers with respect to the goods, articles and products of their own manufacture, production or growth, or any privilege, act or transaction relating to the business of processing by-products of manufacture, or on the transportation, loading, unloading or dumping or storage of such goods, articles, products or by-products.
  - (6) Incidental use of residential property. No such tax or fee shall be assessed and collected on rental received by an owner from a building originally erected as a private dwelling house and occupied as a residence by such owner during the tax year.
- D. Determination of whole or gross volume of business.
- (1) Whole or gross volume of business upon which the tax hereunder is computed shall include the gross consideration credited or received for or on account of sales made and/or services rendered, subject only to the following allowable deductions and exemptions:
    - (a) The dollar volume of business transacted by wholesale and retail dealers derived from the resale of goods, wares and merchandise taken by any dealer as trade-in or as part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance.
    - (b) Refunds, credits or allowances given by a taxpayer to a purchaser on account of defects in goods, wares or merchandise sold or on account of goods, wares or merchandise returned.
    - (c) Any commissions paid by a broker to another broker on account of a purchase or sales contract initiated, executed or cleared with such other broker.

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- (d) Bad debts, where the deduction is also taken in the same year for federal income taxation purposes.
  - (e) Taxes collected as agent for the United States of America, Commonwealth of Pennsylvania or the Borough of Penbrook.
- (2) Every person subject to the payment of the tax herein imposed who engaged in a business temporary, seasonal or itinerant by nature shall compute his estimated gross amount of business to be transacted by him for the period said person engaged in such temporary, seasonal or itinerant business within the Borough of Penbrook by a method to be determined by the Tax Collector.
- E. Partial exemptions. Where whole or gross volume of business in its entirety cannot be subjected to the tax imposed by this article by reason of the provisions of the Constitution of the United States or any other provisions of law, the Tax Collector shall establish rules and regulations and methods of allocation and evaluation so that only that part of the whole or gross volume of business which is properly attributable and allowable to doing business in the Borough shall be taxed hereunder.
- F. Rate when same tax is imposed by two taxing bodies. If any person is liable for the same tax on the same subject imposed under the Local Tax Enabling Act of 1965, December 31, P.L. 1257 (53 P.S. § 6901 et seq.), and its amendments, to the Borough and one or more political subdivisions of the state, then and in that event the tax shall be apportioned by such percentage as may be agreed upon by such political subdivisions, but in no event shall the combined taxes of both subdivisions exceed the maximum rate of tax as fixed by said Enabling Act permitting the imposition of such taxes.
- G. Records. The taxpayer, to obtain the foregoing enumerated exclusions and deductions, shall keep books and records of his business so as to show clearly, accurately and separately the amount of such sales and services as are excluded from the tax and the amounts of such sales and services which he is entitled to deduct from the gross volume of business as hereinbefore provided.

### § 238-53. Returns and payment.

- A. Filing of return.
  - (1) Every person subject to the payment of the tax imposed by this article shall, on or before the date hereinafter specified, file returns on a form prescribed and furnished by the designated Tax Collector and shall concurrently therewith pay to the Tax Collector the tax due upon the actual whole or gross volume of business transacted by him during the applicable period.

<b>Period</b>	<b>Return and Tax Due</b>
January 1 to August 31	September 30
September 1 to December 31	April 15

- (2) After 1984, the return filed April 15 of each year shall be accompanied by a copy of the tax papers (federal income tax return) for the prior year.

- B. The Tax Collector is hereby authorized to accept payment under protest of the amount of business privilege tax claimed by the Borough in any case where the taxpayer disputes the validity or amount of the Borough's claim for tax. If it is thereafter judicially determined by a court of competent jurisdiction that the Borough has been overpaid, the amount of the overpayment shall be refunded to the taxpayer. The provisions of this section shall be applicable to cases in which the facts are similar to those in a case litigated in a court of competent jurisdiction.
- C. Every person subject to the payment of the tax imposed by this article who engages in a business temporary, seasonal or itinerant by its nature shall, at the time application is made for the business privilege license, file a return with the Tax Collector setting forth his name, his business, his business address and such information as may be necessary in arriving at the estimated gross amount of business to be transacted by him as calculated in accordance with Section II(d). **170**
- D. Any person going out of or ceasing to do business shall, within seven days from the date of ceasing to do business, file a return with the Tax Collector showing the actual gross volume of business conducted and done by such person ceased doing business and pay the tax due as computed thereon at the rate herein provided for at the time of filing said return.
- E. Payment of tax and penalties for late payment. The business privilege tax levied pursuant to this article shall be due and payable on the date on which the taxpayer is required to file a return as set forth above, and if the same is not paid on said date, 5% shall be added thereto, plus an additional 1% per month or fractional part of a month until paid.
- F. Receipt. The Tax Collector shall, upon payment to him of the business privilege tax, give the person paying the same a receipt therefor.

**§ 238-54. Business license.** [Amended 12-28-1987 by Ord. No. 87-4; 1-11-1989 by Ord. No. 89-1]

After the effective date of this article, any person desiring to conduct or to continue to conduct any business subject to the business privilege tax, as herein defined, within the Borough of Penbrook shall file with the Tax Collector an application for a business privilege license and shall pay a fee of \$20 for the initial license and \$20 for each renewal thereof. The license issued shall be conspicuously posted in the place of business for which such license is issued and shall remain in effect for the license year or fraction of year for which said license was issued. In cases where more than one place of business is conducted, a separate license shall be issued for each place of business. Any taxpayer who is in default in payment of tax due hereunder shall be refused a license until such tax is paid in full. Persons desiring to conduct or continue to conduct any business not subject to the business privilege tax, as herein defined, within the Borough of Penbrook shall file with the Tax Collector an

application for a business privilege license and shall pay a fee of \$100 for the initial license and \$100 for each renewal thereof. <sup>171</sup>

**§ 238-55. Violations and penalties. <sup>172</sup>**

Any person who shall conduct, transact or engage in any of the businesses subject to the tax imposed by this article without having first secured a business privilege license for the year or any person who shall fail to file a tax return as required by the provisions of this article or any person who shall willfully file a false return shall be subject to the penalties as set forth in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

**§ 238-56. Continuing offense.**

Each day on which such person violated this article may be considered as a separate offense and punishable as such as aforeprovided.

**§ 238-57. Duties of the Tax Collector.**

- A. The Tax Collector is charged with the duties of collecting and receiving the license fees, taxes, fines and penalties imposed by this article. It shall be his duty to keep a record showing the amount received by him from each person paying the tax and the date of such receipt.
- B. The Tax Collector and his duly appointed deputies are hereby empowered with the approval of the Borough Council of the Borough of Penbrook to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the examination and correction of returns and payments alleged or found to be incorrect or as to which an overpayment is claimed or found to have occurred, and any rules and/or regulations promulgated pursuant hereto.
- C. In the event that the person to be assessed neglects or refuses to make a return, then in such case, the designated Tax Collector shall assess said person or persons on such an amount of whole or gross volume of business as said designated Tax Collector deems reasonable and appropriate. In all cases of assessment, the designated Tax Collector shall give the parties assessed a notice in which shall be stated the trade, business, occupation or class and the amount of the business privilege tax imposed or levied.
- D. The taxpayer shall maintain such records and books of account as will enable him to make a true and accurate return in accordance with the provisions of the ordinance. Such accounts and records must disclose in detail the gross receipts and other data pertaining to the taxpayer's gross volume of business and must be sufficiently complete to enable the designated Tax Collector to verify all transactions. The Tax Collector is hereby authorized to examine the books, papers and records of any person or persons subject to or supposed to be subject to the tax imposed by this article, in order to verify

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<sup>171</sup> Amended Ordinance 2019-1 on Jan 7 2019, Update section 238-54

<sup>172</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

the accuracy of the return made or, if no return was made, to ascertain the tax due.

- E. Any person aggrieved by any decision of the Tax Collector shall have the right to appeal to the Court of Common Pleas, as in other cases.

**§ 238-58. Confidential nature of returns.**

Any information gained by the Tax Collector or any other official, agent or employee of the Borough as a result of any returns, investigation, hearing or verifications required or authorized by this article shall be confidential except in accordance with proper judicial order or as otherwise provided by law.

**§ 238-59. Suit on collection and penalty.**

- A. The Tax Collector or his appointed deputies shall have the power in the name of the Borough to institute proceedings against any and all persons who violate the provisions of this article.
- B. If, for any reason, the tax is not paid when due and suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection and interest and penalties herein imposed.

**§ 238-60. Savings and severability clauses.**

- A. Nothing contained in this article shall be construed to empower the Borough to levy and collect the taxes hereby imposed on any person or any business or any portion of any business not within the taxing power of the Borough under the Constitution of the United States and the laws and Constitution of the Commonwealth of Pennsylvania.
- B. If the tax or any portion thereof imposed upon any person under the provisions of this article shall be held by any court of competent power or jurisdiction to be in violation of the Constitution of the United States or of the Commonwealth of Pennsylvania or any other provisions of the law, the decisions of the court shall not affect or impair the right to impose the taxes or the validity of the taxes so imposed upon other persons as herein provided.

**§ 238-61. Statutory authorization; effective date.**

This article is enacted pursuant to the authority of the Local Tax Enabling Act, 1965, December 31, P.L. 1257 (53 P.S. § 6901 et seq.), and its amendments and shall become effective January 1, 1984, after the passage thereof and the giving of public notice by advertisement of that fact. This article shall continue in force and effect from year to year thereafter without further action on the part of the Borough Council.

## Chapter 241: REGISTRATION OF FORECLOSING MORTGAGE PROPERTY AND VACANT PROPERTY

[History: Updated by Borough Council on April 5, 2021 by Ord 2021-1]

### GENERAL REFERENCES

See Chapter 1, General Provisions  
Chapter 113, Buyer Notification and Rental Inspections  
Chapter 200, Property Maintenance  
Chapter 242, Tenants, Registration of  
Chapter 243, Residential Rental Unit Occupancy

### § 241-1. Purpose and Intent.

It is the purpose and intent of the Council to establish a process to address the deterioration, crime, and decline in value of Borough neighborhoods caused by property with foreclosing or foreclosed mortgages located within the Borough, and to identify, regulate, limit, and reduce the number of these properties located within the Borough. It has been determined that Owner-occupied structures are generally better maintained when compared to vacant structures, even with a diligent off-site property owner. Vacant structures or structures owned by individuals who are economically strained and unable to meet their mortgage obligations are often not properly or diligently maintain, which contribute to blight, declined property values, and have an impact on social perception of the residential area where they are located. It is the Council's further intent to establish a registration program as a mechanism to help protect neighborhoods from becoming blighted through the lack of adequate maintenance of properties that are in Foreclosure or Foreclosed and to provide a mechanism to avert foreclosure actions through timely intervention, education, or counseling of property owners.

### § 241-2. Definitions.

In this section the following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning

**Default** shall mean that the mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.

**Enforcement Officer** shall mean any law enforcement officer, building official, zoning inspector, code enforcement officer, fire Inspector, building inspector, or other person authorized by the Borough to enforce the applicable code(s).

**Evidence of Vacancy** shall mean any condition that on its own, combined with other conditions present, would lead a reasonable person to believe the property is vacant. Such conditions may include, but are not limited to: overgrown and/or dead vegetation; abandoned

vehicles, parts and/or materials, the absence of furnishings and personal items consistent with habitation or occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation of newspapers, circulars, flyers and/or mail; statements by papers, passersby, delivery agents or government agents; and/or the presence of boards over doors, windows or other openings in violation of applicable codes.

**Foreclosure or Foreclosure Action** shall mean the legal process by which a Mortgagee or other lien holder, terminates or attempts to terminate a property owner's equitable right of redemption to obtain a legal and equitable title to the real property subject to the lien. The legal process is not concluded until the property obtained by and mortgagee, lien holder or the designee, by certificate of title, or any other means, is sold to a non-related bona fide purchaser in him arm's-length transaction to satisfy the debt or lien.

**Mortgagee** shall mean the creditor, including but not limited to, trustees mortgage servicing companies; letters in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee creditors rights, interest, or obligations under the mortgage agreement; or any other person or entity with legal right to foreclose on the real property, excluding governmental entities as the assignee or owner.

**Owner** shall mean every person, entity, or mortgagee, who alone or severally with others, has legal or equitable title to real property is defined by this chapter, has legal care, charge, or control of any such property; is in possession or control of any such property; and/or is vested with possession or control of any such property. The Property Manager shall not be considered the owner.

**Property Manager** shall mean any party designated by the owner as responsible for inspecting, maintaining, and securing the property as required in this chapter.

**Real Property** shall mean any residential and commercial land and/or buildings, leasehold improvements and anything affixed to the land, or portion thereof identify by a property parcel identification number, located in the Borough limits.

**Registrable Property** shall mean Any Real Property located in the Borough, whether vacant or occupied, that is encumbered by a mortgage subject to an ongoing foreclosure action by the mortgagee or trustee, has been the subject of a foreclosure action by a mortgagee or trustee and a judgment has been entered, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any property transferred under a deed in lieu of foreclosure/sale. The designation of a "foreclosure" property as "registrable" shall remain in place until such time as the property is sold to a nonrelated bona fide purchaser in an arm's length transaction or the foreclosure action has been dismissed; or Any property that is vacant for more than thirty (30) days or a cancellation of utility or service whichever occurs first.

**Registry** shall mean a web based electronic database of searchable real property records,



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used by the Borough to allow mortgagees and owners the opportunity to register property and pay applicable fees as required in this chapter.

**Semi Annual Registration** shall mean six (6) months from the date of the first action that requires registration, as determined by the Borough, or its designee, and every subsequent six (6) months. The date of the initial registration may be different than the date of the first action that required registration.

**Utilities and Services** shall mean any utility and/or service that is essential for building to be habitable and/or perform a service necessary to comply with all Borough codes. This includes, but is not limited to, gas, electrical, water, sewer, lawn maintenance, pool maintenance, and snow removal.

**Vacant** shall mean any parcel of land in the Borough that contains any building or structure that is not lawfully occupied.

**§ 241-3. APPLICABILITY AND JURISDICTION.** This chapter applies to foreclosing, foreclosed and vacant property within the Borough.

**§ 241-4. Establishment of a Registry.** Pursuant to the provisions of this section, the Borough, or its designee, shall establish a registry cataloging each registrable property within the Borough, containing the information by this chapter.

### **§ 241-5. Inspection and Registration of Real Property under Foreclosure**

- A. Any mortgagee who holds a mortgage on real property located within the Borough shall perform an inspection of the property upon default of a mortgagor as evidenced by the filing of a foreclosure action.
- B. Property inspected pursuant to subsection (a) above that remains in foreclosure shall be inspected every thirty (30) days by the mortgagee or the mortgagee's designee. If an inspection shows a change in the properties occupancy status the mortgagee shall, within ten (10) days of that inspection, update the occupancy status of the property registration.
- C. Within ten (10) days of the date any mortgagee files in your closure action, the mortgagee shall register the real property with the Borough registry, and, at the time of registration, indicate whether the property is vacant, and if so, shall designate in writing a property manager to inspect, maintain, and secured the real property subject to the mortgage under a foreclosure action when legally possible. A separate

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registration is required for each property under a foreclosure action regardless of whether it is occupied or vacant.

- D. Initial registration pursuant to this section shall contain at a minimum the name of the mortgagee, the mailing address of the mortgagee, e-mail address, telephone number and name of the property manager and said person's address, e-mail address, and telephone number
- E. At the time of initial registration each registrant shall pay a nonrefundable semi-annual registration fee of three hundred dollars (\$300.00) for each property. Subsequent nonrefundable semi-annual registration of properties and fees in the amount of three hundred dollars (\$300.00) are due within ten (10) days of the expiration of their previous registration. Said fees shall be used to offset the cost of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to default properties, (3) post-closing, counseling and foreclosure intervention limited to owner-occupied persons in default, which may not include cash and mortgage modification assistance, and (4) for any related purposes as may be adopted in the policy set forth in this chapter. Said fees shall be deposited to a special account in the Borough's department dedicated to the cost of implementation and enforcement of this ordinance and fulfilling the purpose and intent of this chapter. None of the funds provided for in this section shall be utilized for the legal defense of foreclosure actions.
- F. Each individual property on the registry that has been registered for twelve (12) months or more prior to the effective date shall have thirty (30) days to renew the registration and pay the non-refundable three hundred dollar (\$300.00) semi-annual registration fee. Properties registered less than twelve (12) months prior to the effective date shall renew the registration every six (6) months from the expiration of the original registration renewal date and shall pay the non-refundable three hundred dollars (\$300.00) semi-annual registration fee.
- G. If the mortgage and/or servicing on a registrable property is sold or transferred, the new mortgagee is subject to all the terms of this chapter. Within ten (10) days of the transfer, the new mortgagee shall register the property or update the existing registration. The previous mortgagee(s) will not be released from the responsibility of paying all previous unpaid fees, fines and penalties accrued during the mortgagee's involvement with the registrable property.
- H. If the mortgagee sells or transfers the registrable property in the non-arm's length transaction to a related entity or person, the transferee is subject all the terms of this chapter. Within ten (10) days of the transfer, the transferee shall register the property or update the existing registration. And all previous unpaid fees, fines and penalties, regardless of who the mortgagee was at the time the registration was required, including, but not limited to, unregistered periods during during the foreclosure process, are the responsibility of the transferee and are due and payable with the

updated registration. The previous mortgagee will not be released from the responsibility of paying all previous unpaid fees, fines and penalties accrued during the mortgagee's involvement with the foreclosed property.

- I. If the foreclosing or foreclosed property is not registered, or the registration fee is not paid within thirty (30) days of when the registration renewal is required pursuant to this section, a late fee equivalent to ten percent (10%) of the semi-annual registration fee shall be charged for every thirty-day period (30), or portion thereof, the property is not registered and shall be due and payable with the registration.
- J. This section shall also apply to properties that have been the subject of a foreclosure sale where the title is transferred to the mortgagee as well as any properties transferred to the mortgagee under a deed in lieu of foreclosure or by any other legal means.
- K. Properties subject to this section shall remain subject to the semi-annual registration requirement, and the inspection, security, and maintenance standards of this section as long as the property remains registrable property.
- L. Failure of the mortgagee and/or property owner of record to properly register or to modify the registration through a change of circumstances as required by this ordinance is a violation of this chapter and shall be subject to enforcement by any of the enforcement means available to the Borough.
- M. If any property is in violation of this chapter the Borough may take the necessary action to ensure compliance with and/or place a lien on the property for the cost of the outstanding obligation and any additional cost incurred to bring the property into compliance.
- N. Registration of foreclosure property does not alleviate the mortgagee and/or owner from obtaining all required licenses, permits and inspections required by applicable code or state statutes. Acquisition of required licenses, permits and inspections or registration of rental property does not alleviate the requirement for the property to be registered under this section. Mortgagee and/or owner is expected to update the status of the property in the event of a mortgagee managed rental.

**§ 241.6 - INSPECTION AND REGISTRATION OF REAL PROPERTY THAT IS NOT SUBJECT TO A MORTGAGE IN FORECLOSURE**

- A. Any owner of vacant property located within the Borough shall within ten (10) days after the property becomes vacant, register the real property with the Borough registry.

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- B. Initial registration pursuant to this section shall contain at a minimum the name of the owner, the mailing address of the owner, e-mail address, and telephone number of the owner, and if applicable the name and telephone number of property manager and said person's address, e-mail address and telephone number.
- C. At the time of initial registration each registrant shall pay a non—refundable semi-annual registration fee of three hundred dollars (\$300.00) for each vacant property. Subsequent non-refundable semi-annual renewal registrations of vacant properties and fees are due in the amount of three hundred dollars (\$300.00) are due within ten (10) days of the expiration of the previous registration. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to vacant properties, and (3) for any related purposes as may be adopted in the policy set forth in this chapter. Said fees shall be deposited to a special account in the Borough's Department dedicated to the cost of implementation and enforcement of this ordinance and fulfilling the purpose and intent of this chapter.
- D. If the property is sold or transferred, the new owner is subject to all the terms of this chapter. Within ten (10) days of the transfer, the new owner shall register the vacant property. The previous owner(s) will not be released from the responsibility of paying all previous unpaid fees, fines and penalties accrued during that owner's involvement with the vacant property.
- E. If the vacant property is not registered, or either the registration fee for the semi-annual registration fee is not paid within thirty (30) days of when the registration or semi-annual registration is required pursuant to this section, a late fee shall be equivalent to ten percent (10%) of the semi-annual registration fee shall be charged for every thirty (30) days period, or portion thereof, the property is not registered and shall be due and payable with the registration. This section shall apply to the initial registration and the registrations required by subsequent owners of the vacant property.
- F. Properties subject to this section shall remain subject to the semi-annual registration requirements and the inspection, security, and maintenance standards of this section as long as property is vacant.
- G. Failure of the owner to properly register or to modify the registration to reflect a change in circumstances as required by this ordinance is a violation of this chapter and shall be subject to enforcement by any means available to the Borough.
- H. If any property is in violation of this chapter the Borough may take the necessary action to ensure compliance with and place a lien on the property for the cost of the outstanding obligation and any additional cost incurred to bring the property into compliance.

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- I. Properties registered as a result of this section are not required to be registered again pursuant to the foreclosure mortgage property section.

### § 241-7. Maintenance Requirements

- A. Properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper circulars, flyers, notices, except those required by federal, state or local law, discarded personal items, including but not limited to, furniture, clothing, large and small clients is, printed material, or any other items that give the appearance that the property is abandoned.
- B. Registrable Property shall be maintained free of graffiti or similar markings by removal or painting over within exterior grade paints that matches the color of the exterior structure.
- C. Front, side, and rear yards including landscaping, of property shall be maintained in accordance with the applicable code(s) at the time registration is required.
- D. Yard maintenance for any Registrable Property shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod. Acceptable maintenance and yard and award landscape shall not include we, gravel, broken concrete, asphalt, or similar material.
- E. Maintenance shall include, but not be limited to, watering, irrigation, cutting and the watering of required groundcover or landscape and removal of all trimmings.
- F. Pools and spas shall be maintained so that water remains free and clear of pollutants and debris and shall comply with the regulations set forth in the applicable code(s), or drained. Any pool or spa must be secured against unauthorized access by individuals.
- G. Failure of the mortgagee, owner, and transferees to properly maintain the property as required by this chapter may result in a violation of the applicable code(s) and issuance of a citation or notice of violation in accordance with the applicable code of the Borough. Pursuant to a finding and determination by the Borough Codes Officer, magistrate, or a court of competent jurisdiction, the Borough may take the necessary action to ensure compliance with this section.
- H. In addition to the above, the property is required to be maintained in accordance with the applicable code(s) off the Borough.

### § 241-8. SECURITY REQUIREMENTS

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- A. Properties subject to the section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
- B. A “secure manner” shall include, but not be limited to, the closure and blocking the windows, doors, gates, and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows, doors, gates, and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by re-glazing of the window.
- C. If a property is registrable, and the property has become vacant or blighted, a property manager shall be designated by the mortgagee and/or owner to perform the work necessary to bring the property into compliance with the applicable code(s), and the property manager must perform regular inspections to verify compliance with the requirements of this chapter, and any other applicable laws.
- D. In addition to the above, the property is required to be secured in accordance with the applicable code(s) of the Borough.
- E. When a property subject to this chapter becomes vacant, it shall be posted with the name and twenty-four (24) hour contact telephone number of the property manager. A property manager shall be available to be contacted by the Borough Monday through Friday between 9 AM and 5 PM, legal holidays excepted. The sign shall be placed in a window facing the street and shall be visible from the street. The posting shall be no less than eighteen (18) inches by twenty-four (24) inches and shall be in a font that is legible from a distance of forty-five (45) feet. The posting shall contain the following language with supporting information:
- ***THIS PROPERTY IS MANAGED BY*** \_\_\_\_\_
  - ***AND IS INSPECTED ON A REGULAR BASIS BY*** \_\_\_\_\_
  - ***THE PROPERTY MANAGER CAN BE CONTACTED AT***
  - ***(Address)*** \_\_\_\_\_
  - ***BY TELEPHONE AT*** \_\_\_\_\_
  - ***OR BY E-MAIL AT*** \_\_\_\_\_
- F. The posting required in subsection (e) above shall be placed on the interior of the window facing the street to the front of the property so that it is visible from the street or secured to the exterior of the building/structure facing the street to the front of the property so that is visible from the street or if no such area exists, on a stake of sufficient size to support posting in a location that is at all times visible from the street to the front of the property but not readily accessible to vandals. Exterior posting shall be constructed of and printed with weather resistant materials.
- G. Failure of the mortgagee and/or property owner of record to properly inspect and secure a property subject to this chapter and post and maintain the signage noted in

this section is a violation and shall be subject to the enforcement by any of the enforcement means available to the Borough. The Borough may take the necessary action to ensure compliance with this section and recover costs and expenses in support thereof.

**§ 241-9. PROVISIONS SUPPLEMENTAL**

The provisions of this chapter are cumulative with and in addition to other available remedies. Nothing contained in this chapter shall prohibit the Borough from collecting on fees, fines and penalties in any lawful manner, or enforcing its codes by any other means, including, but not limited to, injunction, abatement, or as otherwise provided by law or ordinance.

**§ 241-10. PUBLIC NUISANCE**

All registrable property is at risk of being a public nuisance and a vacant or blighted can constitute a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare, and safety of the residents of the Borough.

**§ 241-11. ADDITIONAL AUTHORITY**

- A. If the enforcement officer has reason to believe that property subject to the provisions of this chapter is posing a serious threat to the public health, safety, and welfare the code enforcement of short may temporarily secure property, at the expense of the mortgagee or owner, and may bring the violations before the code enforcement board, Borough Council, or court of competent jurisdiction as soon as possible to address the conditions of the property. Nothing herein shall limit the Borough from abating any nuisance or unsafe condition by any other legal means available to it and charging all associated costs to the mortgagee or owner.
- B. The Code Enforcement Officer, Borough Council, or court of competent jurisdiction shall have the authority to require the mortgagee or owner affected by this section, to implement additional maintenance and/or security measures including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.
- C. If there is a finding that the condition of the property is posing a serious threat to the public health, safety, and welfare, then the Code Enforcement Officer, Borough Council, or court of competent jurisdiction may direct the Borough to abate the violations and charge the mortgagee or owner with the cost of the abatement.

- D. If the mortgagee or owner does not reimburse the Borough for the cost of temporarily securing the property, or any abatement directed by the Code Enforcement Officer, Borough Council, or court of competent jurisdiction within thirty (30) days of the Borough sending the mortgagee or owner to invoice then Borough may lien the property with such cost, along with the administration fee as determined by the Borough's fee ordinance to recover the administrative personnel services. In addition to filing a lien the Borough may pursue financial penalties against the mortgagee or owner.
- E. The Borough may contract with an entity to implement this chapter and, if so, any reference to the enforcement officer herein shall include the entity that the Borough contracted with for that purpose.

**§ 241-12. OPPOSING, OBSTRUCTING ENFORCEMENT OFFICER: PENALTY**

Whoever opposes, obstructs, or resist any enforcement officer or any person authorized by the enforcement office the discharge of duties as provided in this chapter shall be punishable as provided in the applicable code(s) or in a court of competent jurisdiction.

**§ 241-13. IMMUNITY OF ENFORCEMENT OFFICER**

Any enforcement officer or any person authorized by the Borough to enforce this section here within shall be immune from prosecution, civil or criminal, for reasonable, good-faith entry upon real property while in the discharge of duties imposed by this chapter.

**§ 241-14. PENALTIES**

Unless otherwise provided for in this chapter, a violation of this chapter is declared unlawful.

**§ 241-15. AMENDMENTS**

Registration fees and penalties outlined in this article may be modified by resolution, administrative order, or an amendment to this article, passed and adopted by the Council.



## Chapter 242: TENANTS, REGISTRATION OF

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. V, Art. 4, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Real estate registry — See Ch. 204.

#### § 242-1. Definitions.

The following words when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

LESSEE — That person or persons who has the use of real estate of a lessor and is responsible for the giving of any type of consideration therefor, but excluding those who are lessees for a period of less than 30 days.

LESSOR — Any person who grants a lease or otherwise permits the use of his real estate or portion thereof for a consideration, monetary or otherwise.

PERSON — Any natural person, partnership, association, firm or corporation.

#### § 242-2. Occupancy report required.

All lessors, within 30 days of the effective date of this amendment or in the case of real estate thereafter acquired or thereafter rented or becoming available for rental, within 30 days after the acquisition, rental or availability for rental thereof, as the case may be, shall report to the Borough Secretary, in writing on the form prescribed by him, addressed to him at the Borough Office, the number of parcels and units of real estate presently or hereinafter rented and available for rental, a description (by address, number and/or some other meaningful method which shall identify each individual parcel and/or unit within a parcel) of said parcels, or units and the names of each lessee, and all other persons 18 years of age or older living within the unit whether or not named on the lease contract at the time of such report, together with a description of which unit or parcel is occupied by each. Such report shall also be provided to the Borough Secretary before the 10<sup>th</sup> day of January of each year, whether or not there has been a change in occupancy of any unit since the previous report.<sup>173</sup>

#### § 242-3. Changes in report.

Any change in the occupancy of real estate rented or leased or in the identity of the lessee from that shown in the report of the lessor as required in § 242-2 hereof shall be reported by lessor to the Borough Secretary within 10 days after such change. It is intended hereby that lessors shall report a new lessee or a lessee who rents or leases a different unit or parcel of lessor's real estate and when a unit or parcel of their real estate becomes vacant.

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<sup>173</sup> Amended, Ordinance 2006-1, July 3 2006, Replaced Paragraph

**§ 242-4. Preparation of form report.**

The Borough Secretary may prepare a form report entitled "Status of Occupancy Report," which form report may require that information set forth above and such other pertinent information that the Council by resolution may direct the Borough Secretary to incorporate into said report form. The failure to have such report forms, however, shall not excuse the obligation of lessors to provide the information required herein.

**§ 242-5. Violations and penalties. 174**

Any lessor violating any of the provisions of this chapter or who furnishes false information to the borough or who uses a false name or address in any report required by this chapter shall be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

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**174. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

## Chapter 243: RESIDENTIAL RENTAL UNIT OCCUPANCY

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 9-8-2009 by Ord. No. 2009-3. Amended by Ordinance 2015-1 dated March 2, 2015]

### GENERAL REFERENCES:

See Ch. 1, General Provisions  
Ch. 113, Buyer Notification and Rental Inspections  
Ch. 200, Property Maintenance  
Ch. 242, Tenants, Registration of  
Ch. 266, Zoning

### § SECTION 243-1. TITLE

This chapter shall be known as the Borough of Penbrook “Residential Rental Unit Occupancy Ordinance.”

### § SECTION 243-2 GENERAL

It is the purpose of this ordinance and the policy of the Council of the Borough of Penbrook, in order to protect and promote the public health, safety and welfare of its citizens, to establish rights and obligations of landlords and tenants relating to the rental of certain residential rental units in the Borough Penbrook and to encourage landlords and tenants to maintain and improve the quality of rental housing within the community.

### § SECTION 243-3. Definitions:

**BOROUGH**– The Borough of Penbrook, Dauphin County, Pennsylvania

**CODE** – Any code or ordinance adopted, enacted and/or in effect in and for the Borough of Penbrook concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or residential unit. Included within, but not limited by, this definition are the following which are in effect as of the date of the enactment of this ordinance: Uniform Construction Code (hereinafter “UCC”) the International Property Maintenance Code, the International Plumbing Code, the International Fire Prevention Code, the International Electrical Code, the National Electrical Code, the International Building Code, the International Residential Code and any duly enacted amendment or supplement to any of the above and any new enactment falling within this definition.

**CODE ENFORCEMENT OFFICER** - the duly appointed Code Enforcement Officer(s) having charge of the Office of Code Enforcement of the Borough of Penbrook and any assistants or agents. The Borough Secretary shall act as the Code Enforcement Officer whenever the officer is absent from the Borough

**GUEST** - a person on the premises with the actual or implied consent of a landlord or tenant.

**LANDLORD** - with regard to a residential rental unit, one or more persons or entities, jointly or separately, in whom is vested all or part of the legal title to the premises or all or part of

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the beneficial landlordship of the premises, including a mortgage holder in possession of a residential rental unit.

TENANT - an individual who resides in a residential rental unit, whether or not he or she is the landlord thereof, with whom a legal relationship with the landlord is established by a lease or by the laws of the Commonwealth of Pennsylvania.

PERSON - a natural person, partnership, corporation, unincorporated association, limited partnership, trust or any other entity.

PREMISES - any parcel of real property in the Borough, including the land and all the buildings and appurtenant structures or elements, on which one or more rental units are located.

RENTAL AGREEMENT - a written agreement between landlord/landlords and the tenant/occupant and embodying the terms and conditions concerning the use and occupancy of a specified residential rental unit or premises.

RESIDENTIAL RENTAL UNIT - any structure within the Borough of Penbrook which is occupied by someone other than the landlord of the real estate as determined by the most current deed and for which the landlord of the said parcel of real estate received any value, including but not limited to money, or the exchange of services. Each apartment within a building is a separate structure requiring inspection and a license.

REVIEW BOARD – The Penbrook Property Maintenance Code Board of Appeals as described in Section 111 of the current International Property Maintenance Code.

STRUCTURE - Any human-made object, the use of which requires an ascertainable stationary location on land, whether or not it is affixed to the land. Each apartment within a building is a separate structure.

### **§ SECTION 243-4 LANDLORD RESPONSIBILITIES**

It shall be the duty of every landlord to keep and maintain all residential rental units in compliance with all state laws and regulations and local ordinances and to keep such property in good and safe condition. The landlord shall be responsible for regularly performing all maintenance, including lawn mowing and ice and snow removal, and for making any and all repairs in and around the premise, as required by law.

### **§ SECTION 243-5 DESIGNATION OF POINT OF CONTACT**

Every landlord shall provide to the Borough a physical address and telephone number where a responsible individual can be reached during regular business hours to make decisions regarding the residential rental property. Post office boxes and similar types of mail drops shall not be considered physical addresses. Such telephone numbers will be retained by the Borough for its own use, and shall not be provided to any other person unless required by

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law or for emergency responders in an emergency. Where a landlord does not reside within 25 miles of the Borough or cannot be reasonably expected to be reached for emergency purposes, the landlord shall identify another individual or entity by name, physical address and telephone number, who can be reached 24 hours a day when required for emergencies.

### **§ SECTION 243-6 DISCLOSURE**

The landlord shall disclose to the occupant, in writing, on or before the commencement of the tenancy:

- (1) The name, address and telephone number of the landlord or the agent of the landlord.
- (2) The name, address and telephone number of the secondary contact for emergency purposes, if any.

### **§ SECTION 243-7 MAINTENANCE OF PREMISES**

The landlord shall maintain the residential rental premises in compliance with the applicable codes of the Borough and shall regularly perform all routine maintenance, including lawn mowing and ice and snow, removal required by law and shall promptly make all and any repairs necessary to fulfill the legal obligation of landlord. The landlord and occupant may agree that the landlord is to perform specified repairs, maintenance task, alteration or remodeling but the agreement does not diminish or affect the obligation of the landlord. In no case shall the existence of any agreement between landlord and tenant/occupant relieve any landlord of any responsibility under the law, for maintenance of the residential rental premises.

### **§ SECTION 243-8 REGISTRATION.**

- A. All landlords shall register all occupants as required by Borough Code Chapter 242. In addition, all landlords of residential rental property shall register each unit with the Borough of Penbrook.
- B. It shall be the responsibility of the grantee of any residential rental property to notify the Borough within seven (7) calendar days of any purchase or transfer of a rental unit.
- C. The landlord of a residential rental unit must update the registration information on record with the Borough of Penbrook as required by Borough Code Chapter 242.
- D. Notwithstanding any other provisions of this chapter, the names and addresses of occupants of residential rental units shall not be disclosed by any Borough personnel for any reason, except as required by law or, in an emergency, to emergency responders.

### **§ SECTION 243-9 LANDLORD CONTROL COMMON AREAS.**

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The landlord shall maintain control over the common areas of residential rental premises and shall be responsible for ensuring that they are properly maintained, adequately lit, and free from any trash or debris. The landlord shall ensure that no occupant is permitted to use the common areas in such a way as to prevent other occupants or Borough residents from the quiet enjoyment of their property.

### **§ SECTION 243-10 ENFORCEMENT.**

- A. Landlords are responsible for determining whether a particular individual is suitable as an occupant of a residential rental unit. Adults living in residential rental units in the Borough shall be named on the rental agreement. Where no lease or rental agreement is used, the landlord shall keep an accurate listing of all individuals by name and rental unit.
- B. Landlords shall provide copies of rental agreements within 48 hours of a request from the Codes Enforcement Officer or Penbrook Borough police. Where a rental agreement is not used, the landlord shall provide the names and other information required by Borough Code Chapter 242 in lieu of copies of rental agreements or leases.

### **§ SECTION 243-11 OCCUPANT REGISTRATION.**

Occupants shall be registered in accordance with Chapter 242 of the Penbrook Borough Code each time a occupant enters into a new rental agreement, or when no rental agreement is used, at the time the occupant takes possession of the property.

### **§ SECTION 243-12 OCCUPANT DUTIES**

- A. General. The occupant shall comply with all obligations imposed upon landlord by this ordinance and all applicable codes and ordinances of the Borough and all applicable provisions of state law.
- B. Trash. The occupant shall deposit all rubbish, garbage and other waste from his or her residential rental unit into containers in a clean and safe manner and shall separate and place for collection all recyclable materials. In compliance with the Borough's recycling ordinance and all other applicable ordinances, laws and regulations.
- C. Peaceful Enjoyment. The occupant shall conduct himself or herself and require other persons including, but not limited to, guests on the premises and within his or her rental unit with his or her consent, to conduct themselves in a manner that will not disturb the peaceful enjoyment of the premises by others, and that will not disturb the peaceful enjoyment of adjacent or nearby dwellings by the persons occupying the same.
- D. Residential Use. The occupant shall, unless otherwise permitted by applicable law or ordinances, occupy or use his or her residential rental unit for no other purpose than as a residence.

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### § SECTION 243-13 LICENSE REQUIREMENTS.

- A. As a prerequisite to entering into a rental agreement or permitting the occupancy of any residential rental unit, the landlord of every such residential rental unit shall be required to apply for and obtain a license from the Borough for each rental unit.
- B. A license shall be required for each residential rental unit
- C. The following categories of rental properties shall not require licenses, and shall not, therefore, be subject to the permitting provision of this ordinance:
  - (1) Landlord-occupied dwelling units; provided, that not more than two unrelated individuals, in addition to the immediate members of the landlord's family, occupy the dwelling unit at any given time.
  - (2) Hotels and motels.
  - (3) Hospitals and nursing homes.
  - (4) Bed and breakfast units as defined in the Borough's Zoning Ordinance.
- D. The application for the license shall be in a form determined by the Borough.

### § SECTION 243-14 ANNUAL LICENSE TERM, FEE AND OCCUPANCY LIMIT.

- A. Each license shall have an annual term running from January 1 of a particular year through December 31 of that year.
- B. Upon application for a license and prior to issuance or renewal thereof, each landlord/applicant shall pay to the Borough an annual license fee, in an amount to be established from time to time by resolution of the Borough council. The initial fee for a license shall be Fifteen Dollars (\$15.00) for each residential rental unit. The annual fee shall be paid by January 10th of each year
- C. No license shall be issued if the landlord has not paid any fines and costs arising from enforcement of this ordinance or any of the ordinances of the Borough of Penbrook relating to land use and/or code enforcement or if any licensing fees under this ordinance are due and owing to the Borough.

### § SECTION 243-15 NOTICES.

For the purposes of this ordinance, any notice required hereunder given the contact designated by the landlord shall be deemed as notice given to the landlord

### § SECTION 243-16 CHANGES IN LANDLORDSHIP OCCUPANCY.

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It shall be the duty of each landlord of a residential rental unit to notify the Code Enforcement Officer, in writing, within seven (7) calendar days, of any change in landlordship of the premises or of the number of residential rental units on the premises. It shall also be the duty of the landlord to notify the Code Enforcement Officer in writing, of any change in the number of tenants in any rental unit or the changing of a unit from landlord-occupied to non-landlord occupied residential rental unit, which thereby transforms the structure into a residential rental unit for the purposes of this ordinance.

### **§ SECTION 243-17 LANDLORDS SEVERALLY RESPONSIBLE.**

If any residential rental unit is owned by more than one person, in any form of tenancy, as a partnership or otherwise, each person shall be jointly and severally responsible for the duties imposed under the terms of this Ordinance and shall be severally subject to the prosecution for the violation of this ordinance.

### **§ SECTION 243-18 CONFIDENTIALITY.**

All registration and contact information shall be maintained in a confidential manner by the Code Enforcement Officer and shall only be utilized for the purpose of enforcement of this ordinance by the Code Enforcement Officer and the Borough Manager or as set forth by law, or be given to emergency responders in responding to an emergency.

### **§ SECTION 243-19 PENALTIES.**

Any person, firm, corporation or other entity who or which will directly or indirectly or by its agents violate any of the provisions to this chapter shall, upon conviction, be subject to the penalties provided in Chapter 1 General Provisions Article II. Enforcement; Penalties.

### **§ SECTION 243-20 SEVERABILITY**

Any paragraph, sentence, portion of a sentence or any other part of this ordinance found by a court of competent jurisdiction to be unconstitutional shall have no effect on any other paragraph, sentence, portion of a sentence or any other part of this ordinance.

### **§ SECTION 243-21 ENFORCEMENT**

This ordinance shall be in full force and effect 30 days after adoption of the Borough Council.

## **Chapter 244: SHORT-TERM RENTAL LICENSE**

### **SECTION 1:**



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### Short-Term Rental License.

Purpose and Intent. The purpose of this Section is to require the owner or owners of a residential Dwelling that is used or is proposed to be used as a Short-Term Rental, as defined under Chapter 266 of the Code of the Borough of Penbrook, to apply for and secure a license authorizing such use in the manner provided by this Section in order to protect and promote the public health, safety, and welfare.

#### A. Application.

1. In addition to all other requirements pursuant to Chapter 266 of the Code, the commencement of Short-Term Rental activity of a Dwelling shall not occur without the property owner first applying for, and receiving approval of a Short-Term Rental license. {02320677/3}2
2. A separate Short-Term Rental license is required for each Dwelling being rented as a Short-Term Rental and each Dwelling in a Two-Family or Multi-Family Dwelling being rented as a Short-Term Rental.
3. Short-Term Rental licenses shall be renewed on an annual basis and with any change in ownership of the Dwelling. An inspection will be conducted by the Borough on an annual basis as part of license renewal.
4. Short-Term Rental licenses shall not be granted for a property located outside of the Commercial or Village Zones.
5. The Short-Term Rental license application shall be filed by the property owner at least 30 days prior to the start of any Short-Term Rental activity, or within 60 days of the effective date of this Ordinance. The application shall be on a form prescribed by the Borough and shall contain as part of a Short-Term Rental license application, the following:
  - a. A complete written application as provided by the Borough.
  - b. A copy of the current recorded Deed for the Property establishing ownership.
  - c. Copies of: (i) current Dauphin County Hotel Room Excise Tax Certificate and current Pennsylvania Sales and Use Tax License; or (ii) proof of third-party booking agent collecting and remitting state and local taxes on behalf of owner.
  - d. Signatures of both the owner and the local managing agent or local contact Person, if applicable.
  - e. If the building is a Multi-Family Dwelling, the total number of Dwellings in entirety, the number of Dwellings being used as Short-Term Rental, and the designation of which units are Short-Term Rentals.
  - f. If an owner does not occupy the Short-Term Rental, and the owner is not within thirty (30) miles of the property, the applicant shall designate a local contact Person who shall have access and authority to assume management of the Short-Term Rental and take remedial measures. The local contact Person shall reside within thirty (30) miles of the property if a LLC is involved. An applicant who resides

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within the Borough or within thirty (30) miles of the Short-Term Rental may designate himself/herself as the local contact person. {02320677/3}3

6. An initial inspection will be conducted by the Borough at the time of Short-Term Rental license application. Annual inspections shall be performed with costs covered by the property owner. Smoke detectors and fire extinguishers shall be inspected to ensure they are operating correctly (and proof of certification that fire extinguishers are current shall be provided).

7. Short-Term Rental license applications shall be accompanied by administrative and inspection fees to defray the costs of processing and managing the application. The fees shall be as set by Resolution of the Council as part of the Borough's overall schedule of fees.

8. Upon approval and issuance of any Short-Term Rental license by the Borough, the property owner shall conspicuously display the current Short-Term Rental license within each Dwelling and in each Dwelling window that faces a public street or public alley way.

### B. Registered Short-Term Rentals.

1. Upon approval of the Short-Term Rental license application by the Borough, and payment of any required fees, a license shall be issued for each Dwelling from which a Short-Term Rental use is to be conducted or operated in the Borough.

2. Short-Term Rental licenses cannot be transferred or assigned or used by any person or property owner other than the one to whom it is issued or any location or Dwelling other than the one it is issued to.

3. The Short-Term Rental license number shall be published in every print, digital, or internet advertisement and any property or Dwelling listing in which the Short-Term Rental is advertised.

4. Failure to obtain a Short-Term Rental license and advertise a property or Dwelling without publishing the Short-Term Rental license number in every print, digital, or internet advertisement will result in a fine to the property owner.

a. First Violation: Warning letter shall be sent to the property owner. The property owner has 14 days to apply for a Short-Term Rental license or otherwise comply with the requirements of this Ordinance. Once a license is obtained, if applicable, the property owner must begin immediately using the license number in all advertisements.

b. Second Violation: Upon a second or subsequent violation, the Borough may fine the property owner for the violation. The fine shall be in the amount as defined within this Ordinance.

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C. Short-Term Rental License Expiration. A license for a Short-Term Rental use shall expire a year from the date of issuance by the Borough for said Dwelling and may be renewed on an annual basis by application of the property owner.

D. Short-Term Rental License Activity Limitation.

1. Short-Term Rental Activity Limitation. Use of the licensed Dwelling as a Short-Term Rental is limited to no more than 120 days per year. "Year" is defined as the annual term of the Short-Term Rental license.

2. Short-Term Rental Activity Documentation. An owner of a property with a Short-Term Rental license must maintain an activity log of all short-term rental activity at the property occurring for, at a minimum, the previous twelve-month period. This activity log must include the number of nights rented for short-term rental activity, the number of individuals occupying the property for each rental, and the number of cars parked at the property by the short-term rental tenants for each rental. The activity log must be made available to the Borough upon request. The activity log for the previous twelve-month period must be submitted to the Borough as part of the annual short-term rental license renewal. In addition to the activity log, operators of licensed properties must download rental activity information from all short-term rental platforms where they list the licensed property and provide such information to the Borough upon request. The rental activity information from the short-term rental platforms must also be submitted to the Borough as part of the annual license renewal.

E. Short-Term Rental License and Other Requirements. Approval of a short-term rental license does not remove, override or abrogate any property owner from any other requirements of Borough Code or ordinances, such as the Borough Zoning Code and Building Safety and Property Maintenance Code.

### SECTION 2: Violations and Repeat Offenses.

A. Occupancy Without a License. It shall be unlawful to rent, offer to rent, or advertise for rent a Dwelling unit located on any property within the Borough as a Short-Term Rental without a license and Zoning Permit authorizing such use that has been approved and issued in the manner required by the Code. The Borough may waive penalties if the failure to register was due to no fault of the property owner. Until such time as the property owner pays the penalty and obtains the required permit and license, the property owner may not continue to offer such property or Dwelling for as a Short-Term Rental.

B. Nuisance Complaints. Properties or Dwelling with a Short-Term Rental license are subject to the all other requirements of the Code and may be subject to license suspension for nuisance or criminal violations. The Short-Term Rental license shall be suspended whenever 5 or more offenses have accumulated individually or collectively at the property or Dwelling within a one-year period. The one-year (twelve-month) period is a rolling year and shall be counted as the twelve-month period that immediately precedes the date of the most recent offense.

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C. Short-Term Rental License Activity Violations. Violations of any provision of this Ordinance are subject to penalties and fines as defined within Chapter 1 of the Code of the Borough of Penbrook.<sup>175</sup>

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<sup>175</sup> Added Chapter 244 Ordinance 2023-05 on Dec 18,2023

## Chapter 246: TREES

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. V, Art. 1, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Shade Tree Commission — See Ch. 63.  
Brush, grass and weeds — See Ch. 200.  
Streets and sidewalks — See Ch. 230.

#### § 246-1. Removal of trees. <sup>176</sup>

Any person desiring to remove any trees within the right-of-way of the borough streets shall first secure permission from the borough.

#### § 246-2. Removal of stumps.

Any person removing any trees in the right-of-way of the borough streets shall also remove the stumps to at least six inches below the surface of the ground.

#### § 246-3. Failure to comply.

The Borough Secretary shall, upon failure of such person to remove said stumps after 15 days' notice, proceed to remove the same by the borough employees.

#### § 246-4. Costs of removal.

Any person failing to so remove the stumps as aforesaid shall pay to the borough the cost of removal, and such costs may be collected by the borough by suit in assumpsit or by filing municipal claim as provided by law for collection of other claims.

#### § 246-5. Violations and penalties. <sup>177</sup>

Any person who shall violate any of the provisions of this chapter shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

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176. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

177. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

## Chapter 254: VEHICLES AND TRAFFIC

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 1-6-2003 by Ord. No. 2002-6. Amendments noted where applicable.]

### GENERAL REFERENCES

Speed-timing devices — See Ch. 222.  
Off-road vehicles — See Ch. 258.

### ARTICLE I: General Provisions

#### § 254-1. Definitions and interpretation.

- A. Words and phrases, when used in this chapter, except for sections or articles to which different or additional definitions apply, shall have the meanings ascribed to them in the Vehicle Code, 75 Pa.C.S.A. § 101 et seq. (the Act of June 17, 1976, P.L. 162, No. 81), as amended, except that in this chapter the word "street" may be used interchangeably with the word "highway" and shall have the same meaning as the word "highway" as defined in the Vehicle Code.
- B. The term "legal holidays," as used in this chapter, shall mean and include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- C. In this chapter, the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine.

#### § 254-2. Manner of adopting permanent traffic and parking regulations.

All traffic and parking regulations of a permanent nature shall be enacted as ordinances or as parts of ordinances or as amendments to ordinances of the Borough of Penbrook.

#### § 254-3. Temporary and emergency regulations.

- A. The Chief of Police or the Officer in Charge (OIC) shall have the following powers to regulate traffic and parking temporarily and in time of emergency:
  - (1) In the case of fire, flood, storm or other emergency, to establish temporary traffic and/or parking regulations.
  - (2) In the case of emergency public works or public events of limited scope or duration, to restrict or prohibit traffic and/or parking in limited areas for periods of not more than 72 hours.
- B. These temporary and emergency regulations shall be enforced by the police in the same manner as permanent regulations. Any person who drives or parks a vehicle in violation of any such regulation or who shall move, remove, destroy, injure or deface any sign or marking erected, posted or made to give notice of any such regulation shall, upon conviction thereof, be liable to the penalty set forth in the law or elsewhere in this chapter for a violation of such nature.

**§ 254-4. Experimental regulations.**

- A. The Borough Council may, from time to time, designate places upon and along the streets in the Borough where, for a period of not more than 90 days, specific traffic and/or parking regulations, prohibitions and restrictions shall be in force and effect and shall designate those locations by proper signs and markings. Such regulations, prohibitions and restrictions shall be effective just as if they had been specified in this chapter. No person shall drive or park a vehicle in violation of any such regulation, prohibition or restriction, and no person shall move, remove, destroy or deface any sign or marking erected, posted or made by authority of this section. Any person who violates any provision of this section shall, upon conviction, be liable to the penalty set out in the law or elsewhere in this chapter for a violation of such nature.
- B. The purpose of this section is to allow for test and experimental determination of the feasibility and desirability of permanent changes in the ordinances of the Borough relative to traffic and parking.

**§ 254-5. Streets closed or restricted for construction, maintenance or special events.**

- A. The Borough Council shall have authority to close any street or specific part of a street to vehicular traffic and to place barriers or station police officers at each end of the closed portion, while construction or maintenance work is under way or a special event is being conducted on the closed portion. It shall be unlawful for any person to drive a vehicle upon any such closed portion.
- B. The Borough Council shall have authority to establish a restricted traffic area upon any street where construction or maintenance work is under way and to station flagmen at each end of the restricted portion. It shall be unlawful for any person to drive a vehicle upon any such restricted traffic area at any time when the flagman is displaying a sign directing that vehicle to stop or is signaling that vehicle, by a flag or other device, not to proceed.

**§ 254-6. Authority of police officers.**

The police shall have authority to direct traffic on the streets in the Borough, at intersections in public and in other places where the Vehicle Code or this chapter applies.

**§ 254-7. Damages to signs.**

Upon installation thereof, no persons shall remove, injure or destroy the appropriate signs and, upon conviction thereof, shall, in addition to the fine and costs imposed, pay for the damage incurred.

**ARTICLE II: Traffic Regulations**

**§ 254-8. Speed limits.**

The speed limit for both directions of traffic along the streets or parts thereof described in Schedule I (§ 254-40), attached to and made a part of this chapter, is hereby established at the rate of speed indicated in said schedule. It shall be unlawful for any person to drive a

vehicle at a higher speed than the maximum prescribed for that street or part of a street.

**§ 254-9. Traffic control signals.**

Traffic control signals shall be installed and operated at the intersection of those streets described in Schedule II (§ 254-41), attached to and made a part of this chapter.

**§ 254-10. Prohibited right turns on red signal.**

No person shall make a right turn (or a left turn from a one-way street into another one-way street) when facing a steady red signal at any of the locations described in Schedule III (§ 254-42), attached to and made a part of this chapter.

**§ 254-11. Prohibited turns at intersections.**

It shall be unlawful for the driver of any vehicle to make a turn of the kind designated (left, right, all) at any of the intersections described in Schedule IV (§ 254-43), attached to and made a part of this chapter.

**§ 254-12. U-turns.**

It shall be unlawful for the driver of any vehicle to make a U-turn on any of the streets or parts of streets described in Schedule V (§ 254-44), attached to and made a part of this chapter.

**§ 254-13. One-way streets.**

The streets or parts of streets described in Schedule VI (§ 254-45), attached to and made a part of this chapter, are hereby designated as one-way streets in the direction indicated, and it shall be unlawful for any person to drive a vehicle on any one-way street other than in the direction established for traffic on that street.

**§ 254-14. No-passing zones.**

No-passing zones are hereby established along those streets or parts of streets described in Schedule VII (§ 254-46), attached to and made a part of this chapter, and it shall be unlawful for the driver of any vehicle to overtake or pass another vehicle or to drive on the left side of the roadway in any no-passing zone described in said schedule.

**§ 254-15. Stop intersections.**

The intersections described in Schedule VIII (§ 254-47), attached to and made a part of this chapter (in addition to intersections with the through streets established by this chapter), are hereby established as stop intersections, and official stop signs shall be erected in such a position upon the first-named street as to face traffic approaching the second-named street in the direction or directions indicated in said schedule. Every driver of a vehicle approaching any such intersection upon the first-named street, in the direction or directions indicated in each case, shall come to a full stop before entering any such intersection.

**§ 254-16. Yield intersections.**

The intersections described in Schedule IX (§ 254-48), attached to and made a part of this chapter (in addition to intersections with the through streets established by this chapter), are



hereby established as yield intersections, and official yield signs shall be erected in such a position upon the first-named street as to face traffic approaching the second-named street in the direction or directions indicated. Every driver of a vehicle approaching any such intersection upon the first-named street, in the direction or directions indicated in each case, shall slow down or stop the vehicle and then yield the right-of-way to any vehicle in the intersection or approaching on the second-named street so closely as to constitute a hazard during the time that the driver is moving across or within such intersection.

**§ 254-17. Vehicle weight limits.**

It shall be unlawful for any person to drive any commercial vehicle or other tractor, trailer or tractor-trailer combination, having a gross weight in excess of that respectively prescribed, upon any of the streets or bridges, or portions thereof, described in Schedule X (§ 254-49), attached to and made a part of this chapter, except for the purpose of making local deliveries on said streets.

**§ 254-18. Lane use reservations.**

It shall be unlawful for the driver of any vehicle to move except as provided in Schedule XI (§ 254-50), attached to and made a part of this chapter.

**§ 254-19. Bus stops.**

It shall be unlawful for any person to park or leave standing a vehicle, whether attended or unattended, at any duly marked bus stop in the Borough of Penbrook as provided in Schedule XII (§ 254-51), attached to and made a part of this chapter.

**ARTICLE III: Parking Regulations**

**§ 254-20. Vehicles to be parked within marked spaces.**

Wherever a space is marked off on any street for the parking of an individual vehicle, every vehicle parked there shall be parked wholly within the lines bounding that space, and it shall be a violation of this article for any person to park a vehicle or allow it to remain parked otherwise.

**§ 254-21. Parking and standing in general.**

- A. Whenever any vehicle has stopped at a marked crosswalk or intersection to permit a pedestrian to cross the highway, no operator of any other vehicle approaching from the rear shall pass such stopped vehicle.
- B. No person shall park or stand a vehicle at any time in front of, opposite to, or in such a position as to block entrance to or exit from a garage or driveway (public or private) by a vehicle.
  - (1) This includes the drive approach apron or the alley radius. The phrase "in front of" includes all that area wherein the presence of a parked vehicle would obstruct free, safe exit from or entrance to such driveway. It is found as a fact that a completely unobstructed and safe exit from the entrance to such

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driveway requires that there be no parking within three (3) feet on both sides thereof.

- (2) Parking is prohibited in front of a driveway which includes an area along the curb or cartway of the street or alley within three (3) feet on both sides of the driveway. The resident owner (or tenant in possession with the owner's written permission) may paint the curb yellow in accordance with precise measurement of said three (3) foot section and directions provided by the Penbrook Code Enforcement Officer. The above owner or tenant may notify the police of violations; and in the absence of such notification, the police shall have no duty of surveillance, investigation or ticketing. The only defense before the District Justice of one who parks a vehicle so that it projects within, or occupies such three (3) foot section shall be that such person had the consent of said owner or tenant.

Violation of this ordinance shall be considered a summary offence as defined under Article H of the General Provisions of the Borough Code.<sup>178</sup>

- C. No person shall allow a motor vehicle to stand on any street or sidewalk for the purpose of greasing or repairing the same except in case of emergency repairs.
- D. No person shall allow a motor vehicle to stand or be parked upon any street unless said vehicle bears a license evidencing current registration under the Vehicle Code and a currently valid certificate of inspection under the Vehicle Code.<sup>179</sup>
- E. No person shall allow a truck trailer or trailer to be parked upon any street without having attached thereto a means of mechanical traction so constructed or designed for the purpose of pulling or drawing such trailer.
- F. It shall be unlawful for any person to park or store more than one commercial vehicle or for the owner of any commercial vehicle to allow more than one commercial vehicle owned by him or her to be parked or stored on any highway, street or public way within the Borough of Penbrook in the Village Zoning District or the Residential Single-Family Town Zoning District or the Residential Multifamily Town Zoning District or on a residential street in any zoning district:

- (1) This prohibition shall apply to all commercial motor vehicles. For purposes of this section of the Codified Ordinances of Penbrook Borough, a commercial vehicle shall be defined as "any vehicle the principal use of which is the transport of commodities, merchandise, produce, freight, and any vehicle used primarily in construction, industry or farming, including but not limited to, bulldozers, backhoes, tractors, trucks, vans, pickup trucks, automobiles or trucks

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<sup>178</sup> Amended Ordinance 2007-8 on Aug 6 2007, Updated section B

<sup>179</sup> Amended Ordinance 2009-1 on Jul 6 2009, Updated section D

fitted with cranes, air compressors, welders, tanks or similar equipment."

- (2) A residential street shall be defined for purposes of this section of the Codified Ordinances of the Borough of Penbrook only as any block in which the majority of the block, by number of the parcels on the block, are used for residential purposes whether single family or multifamily and not for commercial purposes.
- (3) Notice of parking restrictions shall be provided by means of posted traffic control devices, certified letter, personal service or the placing of a notice on the windshield or other readily visible location on the vehicle. In absence of a posted traffic control device, enforcement of this section shall not take place unless a notice of violation has been issued to the owner of the vehicle prior to the date and time enforcement is initiated.
- (4) Notwithstanding any prohibition herein contained, a vehicle prohibited herein may be temporarily parked for a period not in excess of one continuous 8-hour period for the purpose of actively unloading the same or for the purpose of active construction, repair service or remodeling pursuant to a valid building permit, if needed, but only on a temporary non regular basis.
- (5) Upon receipt of an application in writing therefore, and the circumstances upon which such application is based, the Borough Manager may, on a temporary basis and for specific services provided to a property in the block in which a vehicle is to be parked, grant permission for parking of a commercial vehicle otherwise prohibited under this section. The permission may not be granted by the Borough Manager for the purpose of allowing more than one commercial vehicle to be parked at a residence of the owner or driver of the vehicle or for commuting purposes. The grant of authority to park in this subsection will not be provided if such parking is otherwise prohibited by Borough Ordinances or other statutes or regulations. Any person dissatisfied with the decision of the Borough Manager under this subsection may appeal to the Borough Council by filing a written request appealing such decision to the Council within seven calendar days of the decision of the Borough Manager.

Any person who violates any provision of this chapter shall be guilty of a summary offense and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$1,000, plus costs of prosecution for each and every offense, and in the default of payment thereof, shall be sentenced to imprisonment for not more than 30 days. Each violation and each day of violation will constitute a separate offense. <sup>180</sup>

**§ 254-22. Angle parking.**

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<sup>180</sup> Amended Ordinance 2009-2 on Jul 6 2009, Added section 254-21 F

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No person shall park a vehicle upon any of the streets or parts thereof described in Schedule XIII (§ 254-52), attached to and made a part of this chapter, except at the angle designated and only within the painted stall lines. On all streets or portions thereof where angle parking is now or shall hereafter be authorized, all vehicles parked thereon shall be parked with the front thereof nearest the curb.

### **§ 254-23. Parking prohibited at all times.**

No person shall park a vehicle at any time upon any of the streets or parts thereof described in Schedule XIV (§ 254-53), attached to and made a part of this chapter.

### **§ 254-24. Parking prohibited certain hours.**

No person shall park a vehicle upon any of the streets or parts of streets described in Schedule XV (§ 254-54), attached to and made a part of this chapter, during the hours specified in said schedule, on any day except Saturdays, Sundays and holidays.

### **§ 254-25. Time limit parking.**

No person shall park a vehicle or allow the same to remain parked upon any of the streets or parts of streets described in Schedule XVI (§ 254-55), attached to and made a part of this chapter, between the hours specified, for longer than the time indicated in said schedule.

### **§ 254-26. Special purpose parking zones.**

It shall be unlawful for any person to park any vehicle or to allow the same to remain parked in any special purpose parking zone established in Schedule XVII (§ 254-56), attached to and made a part of this chapter, except as specifically provided for such zone.

### **§ 254-27. Penalties for parking violations.**

Any person who violates any provision of this article shall, upon conviction, be sentenced to pay a fine as established from time to time by resolution of the Borough Council; provided, however, that it shall be the duty of the police officers and of parking enforcement personnel of the Borough to report to the Chief of Police all violations of any provision of this article, indicating, in each case, the section violated, the license number of the vehicle involved in the violation, the location where the violation took place and any other facts that might be necessary in order to secure a clear understanding of the circumstances attending the violation. The police officer or other person making the report shall also attach to or place upon every such vehicle a notice stating that the vehicle was parked in violation of this article. The notice shall contain instructions to the owner or driver of the vehicle that if he will report to the Borough office and pay a sum as established from time to time by resolution of the Borough Council, within 48 hours after the time of the notice, or if he will place a sum as established by resolution of the Borough Council, enclosed within the envelope provided, in any of the special parking fine boxes installed at various locations within the Borough, that act will save the violator from prosecution and from payment of the fine and costs prescribed in the first sentence of this section.

## **ARTICLE IV: Removal and Impounding of Certain Vehicles**

### **§ 254-28. Applicability and scope.**

This article is enacted under authority of Section 6109(a)(22) of the Vehicle Code and gives authority to the Borough to remove and impound vehicles that are parked overtime on any street in the Borough, or in metered and unmetered parking lots in the Borough, in violation of any provision of this chapter.

**§ 254-29. Authority to remove and impound.**

The Borough shall have authority to remove and impound or to order the removal and impounding of any vehicle parked overtime or otherwise illegally, provided that the circumstances of its parking were within the conditions stated in § 254-28 of this article and provided that no such vehicle shall be removed or impounded except in strict adherence to the provisions of this article.

**§ 254-30. Designation of approved storage garages; bonding; towing and storage.**

Removal and impounding of vehicles under this article shall be done only by storage garages that have contracted with the Borough to perform such services. Every such garage shall submit evidence to the Borough Council that it is bonded or has acquired liability insurance in an amount satisfactory to the Borough Council as sufficient to indemnify owners of impounded vehicles against loss or damage to those vehicles while in the custody of the garagekeeper for the purpose of towing or storage. The storage garage shall charge reasonable fees that are competitive and in conformance with fees normally and customarily charged for services rendered.

**§ 254-31. Notification of removal and impounding.**

Within 12 hours from the time of removal of any vehicle under authority granted by this article, notice of the fact that the vehicle was removed shall be provided by the Borough to the owner of record of the vehicle. The notice shall designate the place from which the vehicle was removed, the reason for its removal and impounding and the garage in which it was impounded.

**§ 254-32. Effect of payment of towing and storage charges.**

The payment of any towing and storage charges authorized by this article shall, unless payment is made under protest, be final and conclusive and shall constitute a waiver of any right to recover the money so paid. If payment of any towing or storage charges is made under protest, the offender shall be entitled to a hearing before a District Justice. Payment of towing and storage charges shall not relieve the owner or driver of any vehicle from liability for any fine or penalty for the violation of the provision of this chapter for which the vehicle was removed or impounded.

**§ 254-33. Records of vehicles removed and impounded.**

The Borough shall cause a record to be kept of all vehicles impounded under this article and shall be able at all reasonable times to furnish the owners or the agents of the owners of those vehicles with information as to the place of storage of the vehicle.

**§ 254-34. Restrictions upon removal of vehicles.**

No vehicle shall be removed under the authority of this article if, at the time of the intended removal, the owner or the person for the time being in charge of the vehicle is present and

expresses a willingness and intention to remove the vehicle immediately.

**ARTICLE V: Snow and Ice Emergencies**

**§ 254-35. Declaration of snow and ice emergency.**

In order to facilitate the movement of traffic and to combat the hazards of snow and ice on the snow emergency routes, and other streets and roads of this Borough, and in the furtherance of the public health, safety and welfare, the Mayor or President of the Borough Council, in his/her discretion and in consultation with the Chief of Police, may declare a "Snow Emergency".

**SECTION 254-35(A) DEFINITIONS:**

- A. **SNOW EMERGENCY:** Snow Emergency, shall be defined as an emergency brought on by adverse weather, including the accumulation of snow or ice, which in the reasonable discretion of the Mayor or the President of the Borough Council, declaring the emergency, constitutes an emergency requiring the special authority and actions authorized under this Ordinance. In making a determination, the Mayor or President of Borough Council may consider among other items, the amount of snow that has fallen, the amount of ice which has accumulated, the weather forecasts for the immediate future and the progress which has been made in dealing with the adverse snow, ice and other weather conditions.
- B. **SNOW EMERGENCY ROUTE:** All those streets or parts of streets which are described in Schedule XVIII (S 254-57), as indicated below, are hereby designated as Snow Emergency Routes.

**SECTION 254-35(B) DECLARED SNOW & ICE EMERGENCY COMMUNICATIONS PROTOCOL:**

Immediately following the declaration of a Snow Emergency, the Mayor and/or Chief of Police will inform the Police, Citizens Fire Co #1 of Penbrook and the Penbrook Emergency Management Department of the Snow Emergency. The President of the Borough Council or his/her designee will inform and confirm the Borough Council members and the Borough Manager of the Snow Emergency. The Borough Manager will inform the Highway Department of the Snow Emergency. Information on the existence of a Snow Emergency shall be given by the Borough Manager and/or Chief of Police through radio, newspaper or other available media, and information regarding the termination of the Snow Emergency shall be given through the use of the same media.

**§ 254-36. PARKING AND DRIVING RESTRICTIONS ON SNOW EMERGENCY ROUTES WHEN A SNOW EMERGENCY HAS BEEN DECLARED.**

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Once a Snow Emergency is declared, it shall be unlawful, until the Snow Emergency has been terminated, for any person:

- A. To park, a motor vehicle or to allow a vehicle to remain parked anywhere on any Snow Emergency Route,
- B. To drive any motor vehicle on any Snow Emergency Route unless that vehicle is equipped with snow tires, all weather tires or chains.

### **§ 254-37. PARKING DURING A DECLARED SNOW EMERGENCY ON STREETS NOT DECLARED TO BE SNOW EMERGENCY ROUTES.**

- A. After a snow emergency is declared, and during the twenty-four (24) hours following the declared snow emergency, parking shall be temporarily prohibited in the Citizens Fire Co. #1 of Penbrook lot, the Penbrook Police Department lot and Borough Offices parking areas, as well as at designated Central Dauphin School bus stops, so that immediate removal of snow and ice maybe effectuated, and such parking prohibition shall remain in effect until snow and ice removal is completed.
- B. Twenty-four (24) hours after a snow and ice emergency has been declared, parking shall be regulated on all Borough streets for the purpose of clearing snow and ice as follows:
  - (1) Parking shall be prohibited on the odd numbered side of all Borough streets for the purposes of plowing, salting and/or cindering for a duration of twenty-four (24) hours on those odd numbered days.
  - (2) The day after the odd numbered side of the street has been plowed and/or ice removed, parking shall be prohibited on the even numbered side of all Borough streets for the purposes of plowing, salting and/or cindering for a duration of twenty-four (24) hours.
  - (3) This odd/even non-parking regulation shall remain in effect until all Borough streets have been plowed, salted and/or cindered, as necessary.
- C. Once all Borough streets have been cleared of snow and ice, the Highway Department, in consultation with the Borough Manager, will assess the need for the removal of accumulated snow piles and drifts at intersections or other locations of snow emergency routes and Borough streets, and to remove/ relocate the hazardous snow piles to a safer location or to the designated dumping areas in the Borough.
- D. No resident or other person may "save a parking space" by placing any object in the street to block lawful parking on the street. The Highway Department is authorized to remove any objects placed within the right-of way by anyone for the purpose of saving a parking space and discard those objects, regardless of their value.

- E. At all times during and after any snow storm, it shall be prohibited for any person to shovel, push, throw or plow snow from a sidewalk, driveway, lot or any other area into the street.
- F. It shall be unlawful for any person, association, firm, partnership, corporation or any other entity, in removing or relocating snow, ice, hail, or sleet to deposit the same in such a manner as to:
  - (1) Obscure visibility of any fire hydrant
  - (2) Obstruct or impede access to any fire hydrant

Penbrook Borough Police are hereby authorized to have any vehicle parked in violation of this chapter towed away at the expense of the owner of said vehicle and to enforce the provisions of this ordinance in a manner consistent with law and police department policy.

**§ 254-38. Violations and penalties during snow emergency.**

A. Any person, firm, cooperation or entity who shall violate any provision of this Chapter shall, upon conviction, be sentenced to pay a fine not to exceed three hundred dollars (\$300) or in default of payment thereof, shall be subject to imprisonment for a term not to exceed thirty (30) days. Each day shall constitute a separate offense, the violation of this Chapter may be punished as a separate offense. <sup>181</sup>

**ARTICLE VI: Miscellaneous Provisions**

**§ 254-39. Violations and penalties.**

Unless another penalty is expressly provided by the Vehicle Code (75 Pa.C.S.A. § 101 et seq.) or except as herein specified, every person convicted of a violation of a provision of this chapter, or any supplement thereto, shall be liable to a penalty as established from time to time by resolution of the Borough Council.

**ARTICLE VII: Schedules**

**§ 254-40. Schedule I: Speed Limits.**

In accordance with the provisions of § 254-7, speed limits are hereby established upon the following described streets or parts thereof:

	<b>Speed Limit</b>	
<b>Name of Street</b>	<b>(mph)</b>	<b>Location</b>
Hoffer Street	25	From Walnut Street to 28th Street

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<sup>181</sup> Amended Ordinance 2014-3 on Dec 1 2014, Updated 254-35 thru 254-38



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Walnut Street                    25                    From 28th Street to Butler Street

## § 254-41. Schedule II: Traffic Control Signals.

In accordance with the provisions of § 254-8, traffic control signals shall be installed and operated at the following described intersections:

- 28th Street and Walnut Street
- Canby Street and Walnut Street
- 30th Street and Walnut Street
- 28th Street and Walnut Street

## § 254-42. Schedule III: Prohibited Right Turns on Red Signal.

In accordance with the provisions of § 254-9, no person shall make a right turn (or a left turn from a one-way street onto another one-way street) when facing a steady red signal at any of the locations described below:

<b>Name of Street</b>	<b>Direction of Travel</b>	<b>Prohibited Right Turn on Red Signal Onto</b>
South 30th Street	North	Walnut Street
Walnut Street	East	Banks Street

## § 254-43. Schedule IV: Prohibited Turns at Intersections.

In accordance with the provisions of § 254-10, no driver of any vehicle shall make a turn of the kind designated below at any of the following intersections:

<b>Name of Street</b>	<b>Direction Prohibited</b>		<b>Hours</b>	<b>At Intersection of</b>
	<b>of Travel</b>	<b>Turn</b>		
30th Street	South	Left	All	Butler Street
Elm Street	East	Left	All	Canby Street
Elm Street	East	Right	All	28th Street

## § 254-44. Schedule V: U-Turns.

In accordance with the provisions of § 254-11, no driver of any vehicle shall make a U-turn on any of the streets or parts thereof described below:

<b>Name of Street</b>	<b>Location</b>
(Reserved)	

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### § 254-45. Schedule VI: One-Way Streets.

In accordance with the provisions of § 254-12, the following described streets or parts thereof are hereby designated as one-way streets in the direction indicated:

<b>Name of Street</b>	<b>Direction of Travel</b>	<b>Limits</b>
24th Street	South	From Walnut Street to Elm Street
27th Street	South	From Canby Street to Elm Street
29th Street	South	Between Penbrook Avenue and Canby Street
30th Street	North	Between Penbrook Avenue and Walnut Street
31st Street	North	Between Walnut Street and Hillside Street
Banks Street	South	Between Walnut Street and Elm Street
Boas Street	East	S. 29th Street to S. 31 Street
Boas Street	East	Walnut Street (S.R. 3014) to Elm Street
Books Street	North	Between Herr Street and the Borough line
Booser Avenue	East	Between Walnut Street and 30th Street
Butler Street	West	Between Elm Street and Walnut Street
Butler Street	East	S. 29th Street to Market Street Road (S.R. 3023) <sup>182</sup>
Ellsworth Street	East	Between Banks Street and Elm Street
George Street	East	Between 30th Street and 32nd Street
Hillside Street	West	Between 30th Street and 32nd Street
Hoffer Street	West	Market Street Road (S.R. 3023) to Walnut Street (S.R. 3014)
Hoffer Lane	West	Between Elm Street and Walnut Street
Parkway Boulevard	West	From the Harrisburg city boundary line to South 27th Street
Penbrook Avenue	East	Between Walnut Street and 29th Street
Penbrook Avenue	West	Between Walnut Street and 27th Street
S. 30th Street	North	Market Street Road (S.R. 3023) to Canby Street (S.R. 3020)
S. 30th Street	South	Market Street Road (S.R. 3023) to Boas Street
Sherman Street	North	Between Walnut Street and Penbrook Avenue

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<sup>182</sup> Amended Ordinance 2008-3 on April 7 2008, Added Hoffer, S30th, Boas, and Butler

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Short Alley	East	Between 28th Street and 29th Street
Short Street	West	From 28th Street to Parish Street

### § 254-46. Schedule VII: No-Passing Zones.

In accordance with the provisions of § 254-13, no-passing zones are hereby established upon the following described streets or parts thereof:

Name of Street	Direction of Travel	Limits
(Reserved)		

### § 254-47. Schedule VIII: Stop Intersections.

In accordance with the provisions of § 254-14, the following described intersections are hereby established as stop intersections, and stop signs shall be installed as provided therein:

Stop Sign on	Direction of Travel	At Intersection of
24th Street	Both	Canby Street
24th Street	North	Herr Street
24th Street	South	Walnut Street
24th Street, North	North	State Street
24th Street, North	South	Boas Street
24th Street, South	South	Elm Street
25th Street	Both	Penbrook Avenue
25th Street	North	Herr Street
25th Street	North	Walnut Street
25th Street	South	Elm Street
26th Street	Both	Boas Street
26th Street	Both	Hoffer Street
26th Street	North	Herr Street
26th Street	South	Butler Street
26th Street	South	Parkway Boulevard
26th Street	South	Penbrook Avenue
27th Street	Both	Boas Street
27th Street	Both	Canby Street

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27th Street	Both	Hoffer Street
27th Street	Both	Penbrook Avenue
27th Street	Both	Walnut Street
27th Street	North	Elm Street
27th Street	North	Herr Street
27th Street	South	Ellsworth Alley
28th Street	Both	Herr Street
29th Street	Both	Butler Street
29th Street	Both	Canby Street
29th Street	Both	Walnut Street
29th Street	North	Herr Street
29th Street	South	Boas Street
29th Street	South	Booser Avenue
29th Street	South	Elm Street
30th Street	Both	Canby Street
30th Street	North	Butler Street
30th Street	North	George Street
30th Street	South	Butler Street
30th Street	South	Herr Street
30 1/2 Street	Both	Canby Street
30 1/2 Street	North	Elm Street
30th Street, North	North	George Street
32nd Street	Both	George Street
Angle Avenue	West	Canby Street
Banks Street	Both	29th Street
Banks Street	East	30th Street
Banks Street	West	Elm Street
Boas Street	Both	26th Street
Boas Street	Both	30th Street
Boas Street	Both	31st Street
Boas Street	Both	Franklin Street
Boas Street	Both	Market Street
Boas Street	West	24th Street

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Boas Street	West	Elm Street
Books Street	South	Canby Street
Booser Avenue	East	27th Street
Booser Avenue	East	29th Street
Booser Avenue	East	30th Street
Butler Street	Both	27th Street
Butler Street	Both	30th Street
Butler Street	East	31st Street
Butler Street	North	Walnut Street
Butler Street	West	Elm Street
Chestnut Street	West	Canby Street
Douglass Alley	Both	24th Street
Douglass Alley	Both	25th Street
Douglass Alley	Both	Boas Street
Earley Street	West	Angle Avenue
Earley Street	West	Forney Street
Ella Street	East	Market Street Road
Ellsworth Street	East	Baker Street
Elm Street	Both	29th Street
Elm Street	Both	Canby Street
Elm Street	Both	Hoffer Street
Elm Street	West	Banks Street
Elm Street	West	Butler Street
Forney Street	West	Canby Street
Forster Street	Both	State Street
Forster Street	South	Walnut Street
George Street	Both	30th Street
George Street	East	30th Street
George Street	East	32nd Street
Hillside Street	Both	30th Street
Hoffers Lane	East	Market Street Road
Hoffer Street	Both	26th Street
Hoffer Street	Both	Elm Street

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Hoffer Street	North	Walnut Street
Houston Avenue	East	Canby Street
June Street	South	Canby Street
Market Street Road	West	Boas Street
Packer Street	West	Canby Street
Parkway Boulevard	Both	South 27th Street
Parkway Boulevard	West	27th Street
Parkway Boulevard	West	Hoffer Street
Parkway Boulevard	West	South 26th Street
Parrish Street	North	Herr Street
Parrish Street	South	Canby Street
Penbrook Avenue	Both	South 29th Street
Penbrook Avenue	East	30th Street
Penbrook Avenue	West	Canby Street
Pierce Street	Both	24th Street
Pierce Street	Both	Houston Avenue
Pierce Street	South	Walnut Street
Rivington Terrace	East	Elm Street
Rivington Terrace	East	South 26th Street
Sherman Street	Both	Boas Street
Sherman Street	Both	Butler Street
Short Alley	East	Books Alley
State Street	East	Boas Street
State Street	West	Forster Street
Sunrise Street	Both	28th Street
Thomas Street	East	26th Street
Thomas Street	West	Hoffer Street
Union Street	Both	28th Street

### § 254-48. Schedule IX: Yield Intersections.

In accordance with the provisions of § 254-15, the following described intersections are hereby established as yield intersections, and yield signs shall be installed as follows:

**Direction**

**Yield Sign on of Travel At Intersection of**

(Reserved)

**§ 254-49. Schedule X: Vehicle Weight Limits.**

In accordance with the provisions of § 254-16, gross weight limits are hereby established as indicated for commercial vehicles or other tractor, trailer or tractor-trailer combinations, upon the streets, bridges or portions thereof described below, except for the purpose of making local deliveries on said streets, bridges or portions thereof:

**Max. Gross Weight**

**Name of Street or Bridge (pounds) Location**

(Reserved)

**§ 254-50. Schedule XI: Lane Use Reservations.**

In accordance with the provisions of § 254-17, all vehicles shall move as described below:

<b>Intersection (Location)</b>	<b>Lane Reserved</b>	<b>Purpose</b>
Hoffer Street (westbound)	Right	All traffic must turn right onto South 28th Street

**§ 254-51. Schedule XII: Bus Stops.**

Bus stops within the Borough shall be located as determined by CAT.

**§ 254-52. Schedule XIII: Angle Parking.**

In accordance with the provisions of § 254-20, no person shall park a vehicle upon any of the streets or parts thereof described below, except at the angle designated:

**Angle**

**Name of Street Side (degrees) Location**

(Reserved)

**§ 254-53. Schedule XIV: Parking Prohibited at All Times.**

In accordance with the provisions of § 254-23, no person shall park a vehicle at any time upon any of the following described streets or parts thereof:

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<b>Name of Street</b>	<b>Side</b>	<b>Location</b>
24th Street	East	From Canby Street to Boas Street
25th Street	West	From Walnut Street to Douglass Street
27th Street	Both	From Ellsworth Street to Canby Street
28th Street	Both	From Sunrise Alley to Parkway Boulevard
28th Street	East	From the northern Borough line to a point 25 feet south therefrom
28th Street	East	From Walnut Street to Herr Street
28th Street	West	From Herr Street north to the Borough line
28th Street	West	From Walnut Street to Canby Street
30th Street	East	From Herr Street to a point 20 feet north of Swartz Alley
30th Street	West	From Penbrook Avenue to Walnut Street
31st Street	East	From Walnut Street to Hillside Street
Angle Alley	West	Entire length
Baker Street	Both	From Canby Street to Booser Avenue, a distance of 150 feet
Banks Street	West	From Walnut Street to Baker Street
Banks Street	West	From Walnut Street to Elm Street
Boas Street	East	From Douglass Alley to Walnut Street
Books Street	Both	From Herr Street to a point 200 feet north
Booser Ave	North	Parrish St to a point 24 feet east of Parrish St. <sup>183</sup>
Butler Street	East	From Walnut Street to Baker Alley
Canby Street	North	From Borough boundary to Borough boundary
Canby Street	South	From Walnut Street to the east Borough boundary line
Clayton Avenue	Both	From South 30th Street to South 31st Street
Ellsworth Street	Both	From Banks Street to Baker Street
Ellsworth Street	South	From Banks Street to Elm Street
Elm Street	South	From Canby Street to 29th Street
Herr Street	North	From 29th Street to a point 53 feet east
Herr Street	North	From a point 50 feet west of 30th Street to Walnut Street

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<sup>183</sup> Amended, Ordinance 2013-1, Mar 4 2013, added Swartz Alley



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Herr Street	North	From the western Borough line to a point 117 feet east of 28th Street
Herr Street	South	From 28th Street to a point 237 feet west <sup>184</sup>
Herr Street	South	From a point 50 feet east of 27th Street to a point 50 feet west of 27th Street
Herr Street	South	From a point 50 feet west of 28th Street to Walnut Street
Herr Street	South	From the western Borough line to 24th Street
Market Street Road	Both	From Borough boundary line to Borough boundary line
North 28th Street	East	From a point 190 feet north of Herr Street to a point 95 feet north
Parish Street	Both	From Herr Street to Ludwig Street
Parkway Boulevard	South	From South 27th Street to South 28th Street
Pierce Street	East	From Walnut Street to Douglas Street
Sherman Street	Both	From Early Street to Walnut Street
Swartz Alley	Both	3100 block
Swartz Alley	Both	George Street to Hillside Street <sup>185</sup>
Swartz Street	Both	From 29th Street to 30th Street
Walnut Street	South	From Banks Street to Canby Street
Walnut Street	South	From Penbrook Avenue to South 29th Street

### § 254-54. Schedule XV: Parking Prohibited Certain Hours.

In accordance with the provisions of § 254-22, no person shall park a vehicle between the hours specified below of any day, except Saturdays, Sundays and legal holidays, upon any of the streets or parts thereof described below:

Name of Street	Side	Hours	Location
Clayton Street		6:00 a.m. to 4:00 P.M. on School days	Between 27 <sup>th</sup> and 28 <sup>th</sup> Streets <sup>186</sup>

<sup>184</sup> Amended, Ordinance 2024-4, Dec 2-2024, extended no parking zone

<sup>185</sup> Amended, Ordinance 2005-1, Dec 5-2005, added Swartz Alley

<sup>186</sup> Amended Ordinance 2011-1 on March 7 2011, Added Clayton St.

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Elm Street	South	7:30 a.m. to 8:45 a.m. and 4:00 p.m. to 5:45 p.m.	From Union Street to Banks Street
Walnut Street	North	7:00 a.m. to 9:00 a.m.	From the western Borough line to the eastern Borough line
Walnut Street	South	4:00 p.m. to 6:00 p.m.	From the western Borough line to the eastern Borough line

### § 254-55. Schedule XVI: Time Limit Parking.

In accordance with the provisions of § 254-23, no person shall park a vehicle or allow the same to remain parked upon any of the streets or parts thereof described below, between the hours specified, for longer than the time indicated below:

Name of Street	Side	Time Limit; Hours/Days	Location
Booser Ave	South	1 Hour Parking; 7a.m. - 5p.m. / All	from Walnut Street to Hooker Alley, a distance of 195 feet <sup>187</sup>
Canby Street	West	30 Minute Parking; 7a.m. -5 p.m. / Mon-Fri	In front of 2521 Canby <sup>188</sup>
Herr Street	South	30 Minute Parking; 7a.m. -5 p.m. / Mon-Fri	From 30ft west of the intersection of Sherman Ave. Forty feet west. <sup>189</sup>
Pierce Street	West	1 hr.; All/All	From Walnut Street to Douglas Street
South 27th Street	Both	1/2 hour; All/All	From South of Walnut Street to Booser Street
Walnut Street	Both	2 hours; 9:00 a.m. to 4:00 p.m./All	From the western Borough line to the eastern Borough line

### § 254-56. Schedule XVII: Special Purpose Parking Zones.

In accordance with the provisions of § 254-24, the following are hereby established as special purpose parking zones:

Name of Street	Side	Authorized Purpose or Vehicle	Location
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<sup>187</sup> Amended ordinance 2008-2 on Mar 3 2008, Added item

<sup>188</sup> Amended, Ordinance 2005-1, Dec 5-2005, added 2521 Canby Street

<sup>189</sup> Amended ordinance 2007-2 on Apr 2 2007, Added item

Penbrook Borough Community -- Persons conducting Borough business or  
Building Parking Lot leasing Borough facilities only

**§ 254-57. Schedule XVIII: Snow Emergency Routes.**

In accordance with the provisions of § 254-37, the following streets or parts thereof are hereby designated as snow emergency routes:

<b>Name of Street</b>	<b>Limits</b>
28 <sup>th</sup> Street	From the Northern Border to Southern Border of Borough
Canby Street	From Herr St. to Union Deposit Rd
Herr Street	From Western Border of Borough to its terminus at 30 <sup>th</sup> St <sup>190</sup>
Market St Rd	From parkway Boulevard to Union Deposit Rd
Walnut Street	From the Eastern Border to Western Border of Borough

**ARTICLE VIII: Handicapped Parking**

**§ 254-58. Establishment of handicapped parking spaces.**

Borough Council may establish, by resolution, reserved, on-street handicapped parking spaces for handicapped persons or severely disabled veterans pursuant to the terms of Section 3354 (d) of the Vehicle Code, 75 Pa.C.S.A. § 3354 (d).

**§ 254-59. Application.**

An individual requesting the establishment of a reserved, on-street handicapped parking space (handicapped parking space) shall make application to the office of the Borough Manager on an application form provided by the Borough.

**§ 254-60. Review of request; recommendation; Council to grant or deny request.**

The Chief of Police shall review all requests for handicapped parking spaces and shall submit a recommendation to the Borough Manager who shall forward it to the highway committee of the Borough Council along with any recommendations the Borough Manager feels appropriate. The highway committee shall review the application and shall submit a report and recommendation to the Borough Council. Borough Council shall decide on whether to grant or deny the request for a handicapped parking space and the decision of Borough Council shall be final.

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<sup>190</sup> Amended Ordinance 2014-3 on Dec 1 2014. Updated 254-57

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### § 254-61. Criteria for determining request.

The criteria used to determine whether to grant the request for a handicapped parking space shall include but not be limited to the following:

- A. The applicant must own and possess a motor vehicle with a valid handicapped person's license plate under the regulations issued by the Pennsylvania Department of Transportation.
- B. No more than one handicapped parking space shall be provided to any one individual within the corporate limits of the Borough of Penbrook.
- C. No more than one handicapped parking space shall be provided per dwelling unit within the corporate limits of the Borough of Penbrook.
- D. No handicapped parking space shall be provided for a location if there exists a reasonably accessible and practicable off-street parking space to serve such location, or if providing such a handicapped parking space would create an unsafe condition or would create a shortage of parking spaces for residents in the immediate surrounding area.
- E. The applicant must have a physical impairment or other condition which restricts ambulation to a degree which makes it unreasonably hazardous or unreasonably difficult for the applicant to travel between the residence of the applicant and a vehicle parked at any location other than that which is closest to the residence of the applicant. A handicapped parking space will only be granted when a clear need has been demonstrated and when the physical impairment of the applicant severely restricts ambulation.
- F. The applicant must establish that the physical impairment or other condition which restricts ambulation will continue for a period of not fewer than six consecutive months.
- G. The applicant must reside in a residential district, and the on-street handicapped parking space must be entirely within an area that is adjacent to the boundary line of the property of the residence of the applicant.
- H. The handicapped parking space shall comply with all other ordinances of the Borough of Penbrook and all other laws and regulations affecting parking and motor vehicles.
- I. Although a medical report from the applicant's treating physician may be considered, such a report shall not be conclusive.
- J. The criteria set forth in this section shall not be inclusive and any other criteria or factors deemed applicable or appropriate may be considered.

### § 254-62. Handicapped parking spaces designated.

#### Location

2811 Boas Street

**§ 254-63. Exclusive right to space not granted.**

The establishment of a reserved on-street handicapped parking space shall not give the applicant any exclusive right to that space.

**§ 254-64. Time limit.**

The establishment of any handicapped parking space under this article shall terminate three years from the date of the erection of the signs indicating a reserved handicapped space, unless sooner revoked or terminated by Borough Council under the terms of this article. If the applicant wishes to renew the handicapped parking space, he or she shall file another application within 60 days of the expiration of the three-year period. The application shall be processed and considered in the same manner as a new application.

**§ 254-65. Chief of Police to review parking spaces annually.**

The Chief of Police shall review all handicapped parking spaces or areas at least once annually and report to the Borough Manager and the highway committee whether or not the individuals who were granted handicapped parking spaces or areas continue to be eligible under the criteria set forth in this article and under any other criteria or conditions imposed by the Borough Council.

**§ 254-66. Removal of parking space.**

Any handicapped parking space may be removed at any time and for any reason at the direction of the Borough Council. Without intending to limit the discretion of the Borough Council, the Borough Council may direct the removal of the handicapped parking space if there is a change of circumstances which would render the applicant ineligible for a handicapped parking space under the criteria set forth in this article or under any other criteria or conditions imposed by Borough Council.

**§ 254-67. Notification of changes required.**

Any applicant for whose benefit a handicapped parking space was established shall immediately notify the office of the Borough Manager if there has been a change in the applicant's residence, motor vehicle license plate, physical impairment or other change which could render the applicant ineligible for a handicapped parking space under the criteria set forth in this article or any other criteria or conditions that had been imposed by Borough Council.

**§ 254-68. Construal of provisions.**

This article shall not be construed to limit the discretion of the Borough Council to establish handicapped parking spaces at such other locations and for such other reasons as the Borough Council shall deem appropriate.

**ARTICLE IX: Designated Zones**

§ 254-69. School zones.

The following streets or part of streets are designated as school zones:

Name of Street	Location
Baker Street	From Butler Street to Banks Street
Banks Street	From Butler Street to Elm Street
Elm Street	From Butler Street to Banks Street
Pierce Street	From Baker Street to Douglas Street

§ 254-70. Special loading and unloading zones.

The following locations are designated as special loading and unloading zones:

Name of Street	Side	Hours	Location
Elm Street	North	7:30 a.m. to 8:45 a.m. and 3:00 p.m. to 4:45 p.m.	

ARTICLE X: Traffic Calming Devices

§ 254-71. Schedule XIX Traffic Calming Devices

- A. Traffic Calming Devices shall be placed as determined by the engineer on the following roadways in order to reduce vehicle speed and thus reduce the likelihood of accidents. The engineer shall determine which devices, such as speed cushions, speed humps, etc. shall be most effective in the following locations:
  - 1. Boas Street from Elm Street to Market Street Road (S.R. 3023)
  - 2. Butler Street from Elm Street to Market Street Road
  - 3. Elm Street from Hoffer Street to Banks Street
  - 4. Banks Street from Elm Street to S, 28th Street (S.R. 3013)
  - 5. Hoffer Street from S. 28th Street (S.R. 3013) to Walnut Street (S.R. 3014)
  - 6. N. 30th Street from Herr Street (S.R. 3018) to Locust Lane
  
- B. The engineer shall determine the appropriate signage and shall determine the location for such signage wherever traffic calming devices are used.
  
- C. The connection between Parkway Boulevard at South 26th St and S. 27th St shall be closed by the placement of rubberized curbing.<sup>191</sup>

<sup>191</sup> Amended Ordinance 2008-3 on April 7 2008, Added Article X



## Chapter 258: VEHICLES, OFF-ROAD

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 6-1-1981 by Ord. No. 81-5 as Ch. IV, Art. 16, of the 1981 Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Vehicles and traffic — See Ch. 254.

#### § 258-1. Prohibited acts.

It shall be unlawful for any person to operate or drive on property owned or leased by the Borough of Penbrook any motorcycle, motorbike, minibike, go-cart or any other vehicle of similar nature.

#### § 258-2. Violations and penalties. <sup>192</sup>

Any person who shall violate the provisions of this chapter shall, upon conviction thereof, be subject to the penalties provided in Chapter 1, General Provisions, Article II, Enforcement; Penalties.

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<sup>192</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).



## **Chapter 265: SMALL WIRELESS FACILITIES AND USE OF PUBLIC RIGHT-OF-WAY ORDINANCE**

[**HISTORY: Adopted by the Borough Council of the Borough of Penbrook 11-7-2022 by Ord. No. 2022-05.**]

**§ 265-1. Legislative Intent.** The Borough Council enacts this Article to govern use of public street rights-of-way and municipal poles in accordance with and as limited by Act 50 2021, The Small Wireless Facilities Deployment Act. The Borough Council recognizes the limitations of the Act on its powers and desires to regulate the public street rights-of-way and municipal poles to the maximum extent allowed by such Act. The Borough Council further desires to limit, to the extent legally permissible, conflicts with other uses of the public street rights-of-way.

### **§ 265-2. Word Usage and Definitions.**

- A. Word usage. In interpreting this Article, the singular shall include the plural, and the masculine shall include the feminine and the neuter.
- B. Definitions. All words and phrases not otherwise defined herein shall have the meanings set forth in Section 2 of the Act.

ACT – The Small Wireless Facilities Deployment Act, the Act of June 30, 2021, P.L. 232, No. 50, 53 P.S. §11704.1 et seq., and as may be amended in the future.

ADA – The federal Americans with Disabilities Act, as amended, and all regulations adopted to implement such statute.

CODE ENFORCEMENT OFFICER – The person designated by the Borough Council to administer this Article.

BOROUGH – The Borough of Penbrook, Dauphin County, Pennsylvania.

FCC – The Federal Communications Commission or any agency successor thereto.

ONE CALL – The Pennsylvania One Call Act, the Act of December 10, 1974, P.L. 852, as amended, 73 P.S. §176 et seq., and all regulations adopted to implement such statute.

UCC – The Pennsylvania Uniform Construction Code, as adopted and administered by the Borough.

**§ 265-3. Permit Application Requirements.** All persons who desire to install a small wireless facility within a right-of-way, whether by co-location or by the installation of a new utility pole, shall file an application in writing for a permit with the Code Enforcement Officer. In order to be considered a complete application, such application must include all of the following:

- A. A written application form identifying in detail the name of the applicant and contact information for the applicant and the name and contact information of the person who prepared the application and whether applicant proposes erection of a new utility pole or co-location on an existing utility pole.
- B. Precise location of all portions of the proposed small wireless facility, including pole mounted and ground mounted small wireless facility components.
- C. Identity of the owner of the utility pole if the Applicant proposes co-location on an existing utility pole.
- D. A report by a qualified engineering expert which shows that the small wireless facility will comply with all applicable FCC regulations. The report must identify the person who prepared the report and his or her qualifications.
- E. Construction drawings demonstrating compliance with Section 3 of the Act, the UCC and this Article.
- F. Plan showing the proposed small wireless facility installation sealed by a professional engineer which shall contain a certification that after installation of the facility any sidewalk, curb, or curb cuts which may be impacted will comply with the ADA after installation of the small wireless facility. The plan shall meet all of the following requirements and include all of the following information:
  - 1. Existing right-of-way width, sidewalk, curbing, and cartway with sufficient information to demonstrate that the small wireless facility will be located completely within the existing public street right-of-way and will not interfere with the safe operation of traffic control equipment, sight lines, or clear zones for vehicles or pedestrians.
  - 2. Location of all storm water management facilities within the public street right-of-way including swales, inlets, rain gardens, and pipes, with sufficient information to demonstrate that the small wireless facility will be located and

installed in a manner that will not interfere with existing storm water management facilities.

3. Location of all utility facilities within the public street right-of-way including but not limited to public water and sewer facilities, including all hydrants and manholes with sufficient information to demonstrate that the small wireless facility will be located and installed in a manner that will not interfere with existing utility facilities.
- G. Where the application proposes co-location on an existing utility pole which is not a municipal pole, written permission from the owner of the existing utility pole.
  - H. Where the application proposes installation of a new utility pole, a self-certification that the applicant has determined in good faith that it cannot meet its service reliability and functional objectives of the application by co-locating on an existing utility pole or municipal pole. This self-certification shall include documentation of the basis of the determination which shall identify all existing utility poles and municipal poles in the vicinity and why they are not suitable.
  - I. Where a new pole or excavation for any reason is proposed, an application for a street opening permit meeting all requirements of Chapter 230 Article III of the Borough Code of Ordinances with street opening permit fee and evidence of compliance with One Call.
  - J. The fee established by this Article.

**§ 265-4. Time and Manner of Submission of Applications.** All applications shall be submitted to the Borough office on a day that the Borough office is open to the public and during hours that the office is open to the public. Applications received within one hour of close of business shall be considered filed on the next day that the Borough office is open for business.

**§ 265-5. Consideration of Application and Issuance of Permit.**

- A. Within 10 business days of receiving an application, the Borough must determine and notify the applicant in writing whether the application is incomplete. If the application is incomplete, the Borough will provide written notice to the applicant specifically identifying the missing information. All deadlines contained in this section shall restart upon the submission of a complete application.

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- B. An application for co-location shall be approved or denied by the Borough within sixty (60) days of the receipt of a completed application.
- C. An application to replace an existing utility pole or install a new utility pole with small wireless facilities attached shall be approved or denied by the Borough within ninety (90) days of the receipt of a completed application.
- D. If there are deficiencies in an application, the Borough shall document the basis for denial, and send such document to the applicant.
- E. The applicant may cure the deficiencies and resubmit a revised application within 30 days.
- F. The Borough shall review the revised application only to the extent that it addresses the deficiencies outlined in the denial previously issued by the Borough to the applicant. The Borough shall approve or deny the revised application within thirty (30) days of resubmittal by the applicant.
- G. Any application resubmitted by an applicant that addresses or changes other sections shall afford the Borough an additional fifteen (15) days to review the resubmittal and shall trigger an additional application fee to be paid by the applicant upon resubmittal of the revised application.
- H. If the application meets all requirements of the Act and this Article, the Code Enforcement Officer shall issue a permit to authorize installation of the small wireless facility and an invoice for the right-of-way fee for the small wireless facility.
- I. The proposed co-location, the modification or replacement of a utility pole or the installation of a new utility pole with small wireless facilities attached for which a permit is granted under this Article shall be completed within one year of the permit issuance date.
- J. Subject to the permit requirements and the wireless provider's right to terminate at any time, the permit shall grant the wireless provider authorization to operate and maintain small wireless facilities and any associated equipment on the utility pole covered by the permit for a period of five years, which shall be renewed for two additional five-year periods if the permit holder is in compliance with the criteria set forth in this Article and the Act and the permit holder has obtained all necessary consent from the utility pole owner.

**§ 265-6. Design Standards for Small Wireless Communications Facilities.** All small wireless facilities to be installed and maintained within the right-of-way shall meet all of the following requirements:

- A. The small wireless facility and all associated equipment shall meet the size limits and height limits of the Act.
- B. The small wireless facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the right-of-way. This shall include, but not be limited to, any interference with compliance with the ADA.
- C. A new pole shall not be located within 10 feet of an existing driveway or street intersection. A new pole shall not be located within any storm water management facility including, but not limited to, any swale or rain garden. A new pole shall not be located within 18 inches of the face of the curb.
- D. All equipment of the small wireless facility which is mounted on a pole shall have a clearance of not less than 18 feet if located over a cartway and not less than 10 feet if not located over a cartway.
- E. Ground-mounted accessory equipment, walls, or landscaping shall not be located within any storm water management facility including, but not limited to, any swale or rain garden or within 18 inches of the face of the curb.
- F. A new pole or ground mounted accessory equipment, walls or landscaping shall not be located in an easement extending onto the lot adjoining the right-of-way without the written permission of the easement holder.
- G. Ground-mounted accessory equipment that cannot be placed underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features. Any required electrical meter cabinets shall be screened to blend in with the surrounding area.
- H. All underground facilities shall be designed and installed in a manner which will not require the removal or relocation of any storm water management facility or underground utility.

**§ 265-7. Small Wireless Facilities In an Underground District.**

- A. In any officially designated underground utility district of the Borough in which all cable facilities and utility facilities, other than municipal poles and attachments, are required to be placed underground and in which municipal poles may be replaced, any person wishing to place a small wireless facility shall also meet the requirements underground utility district.
- B. Persons wishing to place a small wireless facility in an underground utility district may apply for a waiver from the requirements of the underground utility district. After an application for a waiver is received by the Borough, the Borough shall hold a public hearing on the request for a waiver. In order to be considered, the request for a waiver must include a letter from the owner of the property where the small cell facility is to be placed giving their/its approval for the waiver request.

**§ 265-8. Maintenance of Small Wireless Facilities.** The wireless provider shall maintain the small wireless facility in a manner that meets or exceeds all of the design standards of this Article and all standards of the UCC. If the small wireless facility is the only facility on a pole, the wireless provider shall maintain the pole in accordance with this Article and all applicable requirements. The wireless provider shall remove any graffiti on the small wireless facility, including but not limited to ground-mount accessory equipment, within 30 days after notice from the Borough to do so.

**§ 265-9. Damage to Existing Facilities and Indemnification.**

- A. A wireless provider shall repair all damage to the right-of-way or any other land so disturbed, directly caused by the activities of the wireless provider or the wireless provider's contractors, including installation of the small wireless facility or the failure to properly maintain the small wireless facility, and return the right-of-way in as good of condition as it existed prior to any work being done in the right-of-way by the wireless provider or damage resulting from the failure to maintain the small wireless facility. If the wireless provider fails to make the repairs required by the Borough within 30 days after written notice, the Borough may perform those repairs and charge the wireless provider the reasonable, documented cost of the repairs plus a penalty of \$500. The wireless provider who has failed to make the required repairs shall not be eligible to receive a new permit from the Borough until the wireless provider has paid the amount assessed for the repair costs and the assessed penalty or deposited the amount assessed for the repair costs and the assessed penalty in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.
- B. A wireless provider shall fully indemnify and hold the Borough and its officers, employees and agents harmless against any claims, lawsuits, judgments, costs, liens, expenses or fees or any other damages caused by the act, error or omission of the

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wireless provider or its officers, agents, employees, directors, contractors or subcontractors while installing, repairing or maintaining small wireless facilities or utility poles within the right-of-way.

**§ 265-10. Annual Right-of-Way Fee.** In accordance with Section 3(c) of the Act, the Borough hereby imposes an annual fee to use of right-of-way for each small wireless facility or each new utility pole with a small wireless facility in the amount described in the Borough's Fee Resolution. The annual fee shall become effective beginning on January 1, 2023, and shall be imposed for each calendar year or portion thereof during which a small wireless facility is located in a right-of-way. The owner of each small wireless facility installed within the Borough shall be responsible to pay such right-of-way fee whether or not such provider receives an invoice from the Borough. The fee will be due by January 31 of the calendar year for the calendar year to which the fee relates.

- A. The failure to pay the annual right-of-way fee shall be a violation of this Article and shall be subject to the penalties and remedies in this Article.
- B. If the annual right-of-way fee is not paid in full by January 31 of the calendar year, a penalty of ten (10%) percent of the annual fee shall be added. If the annual fee plus penalty is not paid in full by March 31 of the calendar year, interest at the rate of one (1%) percent per month shall continue until the annual right-of-way fee, penalty, and interest are paid in full.
- C. The annual fee shall be adjusted upward by resolution of the Borough Council if authorized by Section 7(c) of the Act.
- D. The owner of each small wireless facility installed within a right-of-way on the effective date of this Article shall provide the Borough with a report identifying each existing small wireless facility identifying the location of such small wireless facility, the dimensions of such small wireless facility, and the date of installation of the small wireless facility. This report shall include the name and contact information for the owner of the small wireless facilities, including the address to send invoices for the annual right- of-way fee and any notices under this Article.
- E. The owner of each small wireless facility shall provide the Borough with up-to-date contact information. If ownership of a small wireless facility changes, the new owner of the small wireless facility shall provide notice and new contact information to the Borough within 30 days.

**§ 265-11. Application Fees.** An applicant for a permit to install a small wireless facility shall include fees with its application in the amounts described in the Borough's Fee Resolution, based up on the small wireless facilities to be installed.

**§ 265-12. Removal of Small Wireless Facilities from Right-of-Way.**

- A. Within 60 days of suspension or revocation of a permit due to noncompliance with this article or the Act, the permit holder shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the permit holder's wireless facilities and associated equipment are the only facilities on the utility pole, after receiving adequate notice and an opportunity to cure any noncompliance.
- B. Within 90 days of the end of a permit term or an extension of the permit term, the permit holder shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the permit holder's wireless facilities and associated equipment are the only facilities on the utility pole.
- C. A wireless provider which elects to discontinue the use of a small wireless facility shall notify the Borough in writing not less than 45 days prior to the discontinuance of use of the small wireless facility, which notice shall specify when and how the wireless provider will remove the small wireless facility and, if applicable, the pole. The wireless provider shall complete the removal within 45 days of the discontinuance of the use of the small wireless facility. A permit issued under this Article for a small wireless facility which is voluntarily removed shall expire upon the removal of the small wireless facility.

**§ 265-13. Violations and Penalties.**

- A. Violations. It shall be a violation of this Article to do or permit the following:
  - 1. To install a small wireless facility prior to obtaining the permit required by this Article.
  - 2. To install a small wireless facility in a manner other than that authorized by the permit.
  - 3. To place any false or misleading information on an application including, but not limited to, incorrectly identifying the right-of-way width, the identity of



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the owner of a utility pole, the precise location of the utility pole, or the size and location of any proposed or existing equipment.

4. To fail to make any payment required by this Article or to make a payment by a means which is later dishonored.
5. To violate any other provision of this Article.

B. Penalties. Any person who violates or permits the violation of any provision of this Article shall be liable upon summary conviction therefor to fines and penalties of not less than \$100.00 nor more than \$1,000.00 plus all costs of prosecution, including attorneys' fees, which costs, fines, and penalties may be collected as provided by law. Each day that a violation continues and each Section of this Article which is violated constitutes a separate violation.

**§ 265-14. Severability.** The provisions of this Ordinance shall be severable and, if any of the provisions hereof shall be held to be invalid or unenforceable, the remaining provisions of this Ordinance shall remain in effect.

**§ 265-15. Repealer.** All Ordinances or parts of Ordinances conflicting with any of the provisions of this Ordinance are hereby repealed insofar as some affect this Ordinance.

**§ 265-16. Effective Date.** This Ordinance shall become effective immediately.

## Chapter 266: ZONING

[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 2-7-1981 by Ord. No. 81-10; amended in its entirety 7-2-1990 by Ord. No. 90-2. Subsequent amendments noted where applicable.]

### GENERAL REFERENCES

Planning Commission — See Ch. 41.  
Shade Tree Commission — See Ch. 63.  
Animals — See Ch. 92.  
Brush, grass and weeds — See Ch. 200.  
Building construction — See Ch. 104.  
Cemeteries — See Ch. 116.  
Junkyards — See Ch. 160.  
Sewers — See Ch. 210.  
Stormwater management — See Ch. 226.  
Subdivision and land development — See Ch. 233.  
Trees — See Ch. 246.  
Vehicles and traffic — See Ch. 254.

## ARTICLE I: Title, Authority, Purpose, Community Development Objectives

### § 266-1. Title.

This chapter shall be known as and may be cited as the "Penbrook Zoning Ordinance."

### § 266-2. Authority.

This chapter is enacted and ordained under the grant of powers by the General Assembly of the Commonwealth of Pennsylvania, Act 247, the "Pennsylvania Municipalities Planning Code," July 31, 1968, as amended. <sup>193</sup>

### § 266-3. Purpose.

This chapter is enacted for the following purposes:

- A. To promote, protect and facilitate one or more of the following: the public health, safety, morals, general welfare, coordinated and practical community development, proper density of population, civil defense, disaster evacuation, the provision of adequate light and air, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, public grounds and other public requirements; as well as
- B. To prevent one or more of the following: overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers. This Zoning Ordinance is made in accordance with an overall program and with consideration for the character of the suitability of the various parts for particular uses and structures; and
- C. To reduce dependence on depletable energy resources.

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<sup>193</sup>. Editor's Note: See 53 P.S § 10101 et seq.

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### § 266-4. Community development objectives.

The community development objectives are enumerated as follows:

- A. To provide an overall agreed-upon framework of policy against which individual proposals can be evaluated by the legislative body of the community.
- B. To provide a framework within which physical planning for needed facilities can be accomplished.
- C. To establish long-range development responsibilities and policies to which individual property owners, businessmen and industrialists can prepare and coordinate their plans for development.
- D. To establish a consensus about long-term growth potentials, objectives and priorities so that the community can undertake development projects based upon logic, realism, coordination and economy.

### § 266-5. Social objectives.

Social objectives shall be as follows:

- A. Social service planning: to develop a mechanism for social service planning to more adequately meet the unmet or partially served needs of all the community.
- B. Health and environment: to provide and make available to all members of the community the best health care and environmental sanitation possible.
  - (1) Support local, county and state agencies in overall health planning and development of preventive health programs.
  - (2) Enforce all ordinances in such areas as sanitation, air and water pollution.
  - (3) Encourage materials recycling and ecologically sound disposal of unrecycled waste.
- C. Housing: to provide decent housing for every member of the community in order to meet their physical and psychological needs.
  - (1) Adequate enforcement of all codes and ordinances which will ensure the health, safety and welfare of borough residents.
  - (2) Develop residential opportunities which are flexible and open, permitting a mixture of people in all areas.
  - (3) Encourage housing and land development procedures which permit improvement and experimentation in housing types and construction, lot sizes, open space and community facilities.
- D. Recreation: to enhance and enrich the lives of the members of the community by providing the means for a more stimulating and rewarding use of increasing leisure time.
  - (1) Recreational facilities such as playgrounds and parks are to be improved and

expanded.

- (2) Reserve sites for active and passive recreation in areas of potential recreation value.
- E. Energy: to encourage public and private actions which will decrease dependence on external fuel supplies and encourage the use of renewable energy resources.
- (1) Adopt policies to reduce nonrenewal energy in the heating, cooling and operations of buildings.
  - (2) Adopt policies to reduce energy consumption and vehicular emissions in the transportation sector.

**§ 266-6. Economic objectives.**

The community relies on the economy of the surrounding region for most employment opportunities, commercial development and industrial growth. Penbrook, however, does have a successful business community that should be fostered. For a majority of residents, Penbrook will continue to be a bedroom community.

**§ 266-7. Physical objectives.**

Physical objectives shall be as follows:

- A. Land use: to establish a land use pattern which provides the maximum opportunity for meeting human needs while complementing the distinctive features of the natural and man-made environment.
- (1) Adopt and enforce effective land use controls.
  - (2) Minimize the conflicts between land uses in the borough.
  - (3) Coordinate and inter-relate local planning to the plans of the county, region and state.
  - (4) Encourage a relationship between land use and transportation which provides viable alternatives to vehicular use.
- B. Transportation: to develop a community-wide circulation system for serving existing and anticipated future land use, providing and shaping the extent and direction of community growth.
- (1) Design the local street system to discourage through traffic in residential neighborhoods.
  - (2) Encourage the growth and convenience of public transportation in the borough.
  - (3) Encourage bicycling and walking as alternatives to vehicular use.

**ARTICLE II: Terminology**

**§ 266-8. Word usage.**

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- A. The following words are defined in order to facilitate the ordinance for administrative purposes and in the carrying out of duties by appropriate officers and by the Zoning Hearing Board.
- B. Unless otherwise expressly stated, the following words shall, for the purpose of this chapter, have the meanings herein indicated.
- C. Words used in the present tense include the future tense.
- D. The singular includes the plural.
- E. The word "person" includes an individual, a corporation, a partnership, an incorporated association or any other similar entity.
- F. The word "lot" includes the words "plot" or "parcel."
- G. The term "shall" is always mandatory.
- H. The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied."

### § 266-9. Definitions.

- A. As used in this chapter, the following terms shall have the meanings indicated:

**ACCESS DRIVE** — A paved surface, other than a street, which provides vehicular access from a street or private road to a lot.

**ACCESSORY BUILDING** — A building subordinate to and detached from the main building on the same lot and used for purposes customarily incidental to the main building.

**ACCESSORY USE** — A use customarily incidental and subordinate to the principal use of the main building and located on the same lot with such principal use or main building.

**AGRICULTURE** — The tilling of the soil, the raising of crops, horticulture and gardening.

**ALCOHOLIC BEVERAGES** — Any and all beverages, including malt beverages, which contain alcohol, liquor or such other intoxicating substances as are further defined in the Pennsylvania-Liquor Code, 47 P.S. § 1-101 et seq. [Added 2-6-1992 by Ord. No. 92-2]

**ALLEY** — A public thoroughfare other than a minor street which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

**ALTERATIONS** — As applied to a building or structure, a change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

**ALTERATIONS, STRUCTURAL** — Any change in the supporting members of a building such as bearing walls, columns, beams or girders.

**ALTITUDE** — The angular distance from the horizon to the sun.

**AMENDMENT** — A change in use in any district which includes revisions to the zoning text and/or the official zoning map; and the authority for any amendment lies solely with the

governing body.

**AMUSEMENT PLACE** — A commercially operated enterprise with various devices for entertainment and which may have facilities for the sale of food, drink or merchandise.

**ANIMAL HOSPITAL** — A building used for the treatment, housing or boarding of animals.  
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**ANTENNA** — Any system of wires, poles, rods, reflecting discs or similar devices used for the transmission or reception of electromagnetic waves which system is external to or attached to the exterior of any building. Antennas shall include devices having active elements extending in any direction and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom which may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna. The height of an antenna shall be the total maximum to which it is capable of being raised and shall be measured from the highest point of the finished grade adjacent to the structure if ground-mounted or from the highest point of the roof section where mounted, if roof-mounted. If mounted on a chimney, the height will be measured from the point where the roof meets the chimney.

**APARTMENT** — A dwelling unit within a multiple dwelling. This classification includes apartments in apartment houses, bachelor apartments, studio apartments and kitchenette apartments. Conversion apartments are not included in this classification.

**APARTMENT (CONVERSION)** — An existing dwelling unit that is or was converted to a dwelling for more than one family.

**APARTMENT HOUSE** — A building arranged, intended or designed to be occupied by three or more families living independently of each other.

**APPLICANT** — A landowner or developer who has filed an application for development, including his heirs, successors and assigns.

**APPLICATION FOR DEVELOPMENT** — Every application, whether preliminary, tentative or final, required to be filed and approved prior to the start of construction or development, including but not limited to an application for a building permit for the approval of a subdivision plat or plan or for approval of a development plan.

**APPOINTING AUTHORITY** — The Penbrook Borough Council.

**AREA, BUILDING** — The total of areas taken on a horizontal plane at the grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps.

**AUTO BODY SHOP** — Any structure or any building or part thereof that is used for the repair or painting of bodies, chassis, wheels, fenders, bumpers and/or accessories of automobiles and other vehicles of conveyance.

**AUTO COURT** — A building or group of buildings, whether detached or in connected units,

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used as individual sleeping or dwelling units designed primarily for transient automobile travel and providing for accessory off-street parking facilities. The term "auto court" includes buildings designated as tourist cabins, motor lodges, motels and similar appellations.

**AUTOMOBILE AND/OR MOBILE HOME SALES GARAGE** — An open lot used for the outdoor display or sales of new or used automobiles or mobile homes where mechanical repairs and body work may be conducted as an accessory incidental to the primary use.

**AUTOMOBILE AND/OR MOBILE HOME SALES LOT** — An open lot used for the outdoor display or sales of new or used automobiles or mobile homes and where minor and incidental repair work (other than body and fender) may be done.

**AUTOMOBILE SERVICE STATION** — Any area of land, including any structures thereon, or any building or part thereof that is used for the retail sale of gasoline, oil, other fuel or accessories for motor vehicles and which may include facilities used for polishing, greasing, washing, dry cleaning or otherwise cleaning or servicing such motor vehicles; includes filling stations, but not including the storage of motor vehicles.

**AUTOMOBILE WASHING (CAR WASH)** — A building on a lot designed and used primarily for the washing and polishing of automobiles and which may provide accessory services as set forth herein for automobile service stations.

**AUTOMOBILE WRECKING** — The dismantling or wrecking of used automobiles or trailers or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

**AUTOMOTIVE GARAGE** — A building on a lot designed and/or used primarily for mechanical and/or body repairs, storage, rental, servicing or supplying of gasoline or oil to automobiles, trucks or similar motor vehicles.

**AZIMUTH** — The angular distance between true South and the point on the horizon directly below the sun (also referred to as "bearing").

**BAFFLE** — A freestanding randomly located structure, fence-like in nature and materials of construction, except that it is not normally attached to any building, does not particularly follow lot lines nor enclose a particular area, but rather screens one segment of one property from another for the primary purpose of assuring privacy; a baffle or screen of this nature may also be utilized for the support of various types of living plant materials such as vines, climbing roses or espaliered trees and shrubs.

**BASEMENT** — A story partly underground but having at least 1/2 of its height above the average level of the adjoining ground. A basement shall be counted as a story for the purpose of height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five feet or it is used for business or dwelling purposes, other than a game or recreation room.

**BEARING** — See "azimuth."

**BLOCK** — An area bounded by streets.

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**BOAT** — A small open vessel, floating craft or water craft of all sorts and sizes propelled by physical or mechanical means.

**BUFFER YARD** — See "yard, buffer."

**BUILDING** — Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of persons, animals or chattels and including covered porches or bay windows and chimneys.

**BUILDING, ACCESSORY** — A subordinate building or a portion of the main building on a lot, the use of which is customarily incidental to that of the main or principal building.

**BUILDING, DETACHED** — A building surrounded by open space on the same lot.

**BUILDING, FRONT LINE OF** — The line of that face of the building nearest the front line of the lot. This face includes sun parlors and covered porches, whether enclosed or unenclosed, but does not include steps.

**BUILDING, HEIGHT OF** — The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

**BUILDING LINE** — A line parallel to the front, side or rear lot line set so as to provide the required yard.

**BUILDING, MAIN** — A building in which is conducted the principal use of the lot on which it is located.

**BUILDING, NONCONFORMING** — A building so located on a lot that it does not have the minimum front, side or rear yard required minimum distance between any enclosed structure and the adjacent property line.

**BUILDING SETBACK LINE** — A line parallel to the front, side or rear lot line set so as to provide the minimum required yard.

**B.Y.O.B. CLUB** — Any business facility such as a dance hall, club or association not licensed by the Pennsylvania Liquor Control Board, wherein patrons 21 years of age and older may, after payment of an entry fee, cover charge or membership fee, consume alcoholic beverages which said patrons have carried onto the premises; also commonly referred to as "bring your own bottle" clubs; provided that a facility which is rented for a limited period of time, not to exceed 12 hours, by individual(s) or an organization for the purpose of a private party in which alcoholic beverages are carried onto the premises shall not be considered a B.Y.O.B. club. [Amended 2-6-1992 by Ord. No. 92-2]

**CARPORIT** — A covered space, open on three sides, for the storage of one or more vehicles and accessory to a main or accessory building.

**CARTWAY** — That portion of a street or alley which is improved, designed or intended for vehicular use.

**CELLAR** — A story partly underground and having more than 1/2 of its clear height below



the average level of the adjoining ground. A cellar shall not be considered in determining the required number of stories.

CHILD — A person under 16 years of age.

CLEAR SIGHTED TRIANGLE — An area of unobstructed vision at street intersections. It is defined by lines of sight between points at a given distance from the intersection of the streets center lines.

COMMON OPEN SPACE — A parcel or parcels of land or an area of water or a combination of land and water within a development site and designed and intended for the use or enjoyment of residents of a planned residential development, not including streets, off-street parking areas and areas set aside for public facilities. Common open space shall be substantially free of structures but may contain such improvements as are in the development plan as finally approved and as are appropriate for the recreation of residents.

COMMUNICATIONS ANTENNA — Any antenna device for the wireless transmission or reception of radio, television, telephone, pager, mobile radio, or any other wireless communication including but not limited to omnidirectional, whip, directional, or panel antennas owned or operated by any person or entity licensed by the Federal Communications Commission to operate such devices. This definition shall not include private, residence-mounted radio, television, citizen's band or amateur radio antennas or their supporting structures.

COMMUNICATIONS EQUIPMENT BUILDING — A normally unmanned building or cabinet containing communications equipment required for the operation of a communications antenna.

COMMUNICATIONS TOWER — A structure other than a building, such as a monopole, self-supporting or guyed tower, designed and used to support communications antennas. <sup>195</sup>

CONDITIONAL USES — Conditional use shall be allowed or denied by the governing body after recommendations by the Planning Commission, pursuant to express standards and criteria set forth in the Zoning Ordinance.

COUNTY — Dauphin County, Pennsylvania.

COURT — An unoccupied open space, other than a yard, on the same lot with a building, which is bounded on two or more sides by the walls of such building.

COURT, INNER — A court enclosed on all sides by exterior walls of a building or by exterior walls and lot lines on which walls are allowable, and the court does not extend to a street, alley, yard or other outer court.

COURT, OUTER — A court enclosed on not more than three sides by exterior walls and lot lines on which walls are allowable, with one side or end open to a street, driveway, alley or

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<sup>195</sup> Amended Ordinance 2008-5 on Dec 1 2008, Added Communications \* definitions

yard.

**COVERAGE** — That portion or percentage of the plot or lot area covered by the building area.

**CROSSWALK** — A right-of-way, publicly or privately owned, intended to furnish access for pedestrians.

**CUL-DE-SAC** — A street intersecting another street at one end and terminating at the other in a vehicular turnaround.

**CURB LEVEL** — The officially established grade of the curb in front of the midpoint of the lot.

**CUT** — An excavation; the difference between a point on the original ground and a designated point of lower elevation on the final grade; also, the material removed in excavation.

**DAY-CARE CENTER** — A facility in which care is provided for seven or more children at any one time, where the child care areas are not being used as a family residence.

**DEVELOPER** — Any landowner, agent of such landowner or tenant with permission of such landowner who makes or causes to be made a subdivision of land or a land development.

**DEVELOPMENT PLAN** — The provisions for development of a planned residential development, including a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities. The phrase "provisions of the development plan," when used in this chapter, shall mean written and graphic materials referred to in this definition.

**DISTRICT; ZONE** — Includes all buildings, lots and surface areas within certain designated boundaries as indicated on the Zoning Map.

**DOG KENNEL** — A structure where three or more dogs that are more than six months old are kept for commercial purposes.

**DUMP** — A lot or land or part thereof used primarily for disposal by abandonment, dumping, burial or other means, and for whatever purpose, of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or part thereof or waste material of any kind.

**DWELLING** — The word "Dwelling," as used in this Ordinance, shall mean a separate and self-contained living space of at least 500 square feet in area, comprised of one (1) or more rooms used for living and sleeping purposes and having its own kitchen with fixed cooking, refrigeration and plumbing facilities, its own sanitation facilities with bath and toilet fixtures, and separate access to the outside or to a common passageway. This chapter categorizes principal Dwellings into the following use types:

1. Apartment: A single Dwelling within a Multi-Family Building or a mixed-use building.

2. Apartment House — A building arranged, intended or designed to be occupied by three or more families living independently of each other.
  3. Dwelling, Single-Family Detached: One (1) Dwelling in a detached building having open areas on all sides.
  4. Dwelling, Single-Family Semi-Detached (Twin): One (1) Dwelling in a semi-detached building adjacent to another Dwelling, each on their own lot and having open areas on all other sides. This is commonly known as a “Twin.”
  5. Dwelling, Single-Family Attached (Rowhouse): One (1) Dwelling in an attached building adjacent to another Dwelling, with each Dwelling on its own separate lot and having open areas to the front and rear. (In a row, the end units may have open space to one side.) This use is commonly known as a “Rowhouse” or “Townhouse.”
  6. Dwelling, Two-Family Detached (Duplex): Two (2) Dwellings in a single detached building on a single lot, with the Dwellings arranged either side by side or one on top of the other. This is commonly known as a “Duplex.”
  7. Multi-Family Building: A single building on a single lot, containing three (3) or more Dwellings or Apartments, each with access to the outside or to a common passageway, lobby, or corridor, either leased or sold for condominium ownership.
  8. Dwelling Group — A group of two or more single-family, two-family or multifamily dwellings occupying a lot in one ownership.
  9. Dwelling, Multifamily — A building used by three or more families living independently of each other and doing their own cooking, including apartment houses.
  10. Dwelling, Single-Family Quadruplex — A building used by one family, having one side yard and two-party walls in common with another building, one party wall being a side wall and one being a rear party wall.
  11. Dwelling, Two-Family Semidetached — A building used by two families, with one dwelling unit arranged over the other, having one side yard and one party wall in common with another building.
  12. Dwelling Unit — A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- A Dwelling shall not include Transient Occupancy unless otherwise permitted as a Short-Term Rental.<sup>196</sup>

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<sup>196</sup> Updated Definition Ordinance 2023-03 on Dec 18,2023

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**DWELLING GROUP** — A group of two or more single-family, two-family or multifamily dwellings occupying a lot in one ownership.

**DWELLING, MULTIFAMILY** — A building used by three or more families living independently of each other and doing their own cooking, including apartment houses.

**DWELLING, SINGLE-FAMILY ATTACHED (ROW)** — A building used by one family and having two party walls in common with other buildings (such as row house or townhouse).

**DWELLING, SINGLE-FAMILY DETACHED** — A building used by one family, having only one dwelling unit and having two side yards.

**DWELLING, SINGLE-FAMILY QUADRUPLEX** — A building used by one family, having one side yard and two-party walls in common with another building, one party wall being a side wall and one being a rear party wall.

**DWELLING, SINGLE-FAMILY SEMIDETACHED** — A building used by one family, having one side yard and one-party wall in common with another building.

**DWELLING, TWO-FAMILY DETACHED** — A building used by two families, with one dwelling unit arranged over the other and having two side yards.

**DWELLING, TWO-FAMILY SEMIDETACHED** — A building used by two families, with one dwelling unit arranged over the other, having one side yard and one party wall in common with another building.

**DWELLING UNIT** — A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**EASEMENT, UTILITY** — A right-of-way granted for limited use of land for public or quasi-public purpose.

**ELECTRIC SUBSTATION** — An assemblage of equipment for purposes other than generation of utilization, through which electric energy in bulk is passed for the purpose of switching or modifying its characteristics to meet the needs of the general public.

**ELECTRIC TRANSMISSION AND DISTRIBUTION FACILITIES** — Electric public utilities transmission distribution facilities, including substations.

**ENGINEERING SPECIFICATIONS** — The engineering specifications of the municipality regulating the installation of any required improvement or for any facility installed by any owner, subject to public use.

**ENGINEER, MUNICIPAL** — A professional engineer licensed as such in the Commonwealth of Pennsylvania, duly appointed as the engineer for a municipality, planning agency or joint planning commission.

**EROSION** — The removal of surface materials by the action of natural elements.

**EXCAVATION** — Any act by which earth, sand, gravel, rock or any other similar materials

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is dug into, cut, quarried, uncovered, removed, displaced, relocated or bulldozed, and shall include the conditions resulting therefrom.

**FAMILY** — An individual or married couple and the children thereof with not more than two other persons related directly to the individual or married couple by blood or marriage, or a group of not more than five unrelated (excluding servants) persons, living together as a single housekeeping unit in a dwelling unit.

**FAMILY DAY-CARE HOME** — Any premises other than a child's own home, operated for profit or not for profit, in which child day care is provided at any one time to four, five or six children who are not relatives of the caregiver.

**FENCE** — Any freestanding and uninhabitable structure constructed of wood, glass, metal, plastic materials, wire, wire mesh or masonry, singly or in combination, erected for the purpose of screening or dividing one property from another to assure privacy or to protect the property so screened or divided or to define and mark the property line, when such structure is erected on or any front, side or rear lot line; for the purpose of this chapter, a freestanding masonry wall when so located is considered to be a fence; also for the purpose of this chapter, when the term "lot line" is used in relation to fences, it shall be synonymous with "rear yard lot lines," "side yard lot lines" and "front yard lot lines." Fences are not synonymous with "garden structures" which are defined elsewhere wherein.

**FILL** — Any act by which earth, sand, gravel, rock or any other material is placed, pushed, transported or moved to a new location above the natural surface of the ground or on top of the stripped surface, and shall include the conditions resulting therefrom. The difference is elevation between a point on the original ground and a designated point of higher elevation on the final grade. The material used to make a fill.

**FILLING STATION** — Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning or otherwise cleaning or servicing such motor vehicles; includes automobile service.

**FLOOR AREA, HABITABLE** — The sum of the horizontal areas of all rooms used for habitation, measured between interior faces or walls, such as living room, dining room, kitchen or bedroom, but not including hallways, stairways, cellars, attics, service rooms or utility rooms, bathrooms, closets, nor unheated areas such as enclosed porches, nor rooms without at least one skylight or window opening onto an outside yard or court.

**FLOOR AREA OF A BUILDING** — The sum of the gross horizontal areas of the several floors of a building and its accessory buildings on the same lot, excluding cellar and basement floor areas not used as primary living and sleeping quarters, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

**FLOOR AREA RATIO** — The ratio of floor area of a building to its lot area. When a floor area ratio of 1.3 is specified, the floor area of a building constructed on a lot of 10,000 square feet is limited to a maximum of 13,000 square feet. The number of stories being optional,

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the building area may be 6,500 square feet per story for two stories and so forth.

**FLOOR AREA RETAIL, NET** — All that space relegated to use by the customer and the retail employee to consummate retail sales and to include display areas used to indicate the variety of goods available for the customer but not to include office space, storage space and other general administrative areas.

**GARAGE, PRIVATE** — An enclosed or covered space for the storage of one or more vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car is leased to a nonresident of the premises.

**GARAGE, PUBLIC** — Any garage other than a private garage and which is used for storage, repair, rental, servicing or supplying of gasoline or oil to motor vehicles.

**GARDEN APARTMENT** — A two-story multifamily dwelling, containing one-story dwelling units, under one ownership.

**GARDENING** — The cultivation of herbs, fruits, flowers or vegetables, excluding the keeping of livestock.

**GARDEN STRUCTURES** — Any accessory structure which may be occupied for other than sleeping or general housekeeping purposes or which serves as a shelter primarily for human beings, except a permitted garage, porch or carport, which is located in any side or rear yard not closer than three feet to any side or rear lot line; included in this category of structures are arbors, aviaries, pergolas, trellises, barbecue shelters, lathe house, private greenhouse and freestanding screens or baffles and similar structures as however called. No such structure may be located in any required front yard between the building setback line and the street line. Such structure may be solidly roofed and walled or open to the sky and on the sides, but if solidly roofed or solidly walled on more than two sides, it must be located within the building line of the lot and may not invade in any required yard. Unscreened, unroofed, unwalled or unfenced patios, birdbaths, ornamental pools and swimming pools are not considered as garden structures. Permitted structures may be attached to or be detached from a dwelling.

**GRADE, ESTABLISHED** — The elevation of the center line of the streets as officially established by the municipal authorities.

**GRADE, FINISHED** — The completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs relating thereto.

**GROUND FLOOR** — The floor of a building nearest the mean grade of the front of the building.

**GROUP DAY-CARE HOME** — A facility in which care is provided for more than six but fewer than 12 children at any one time, where the child care areas are being used as a family residence.

**GOVERNING BODY** — The Borough Council of Penbrook, Dauphin County, Pennsylvania.

**HABITABLE SPACE** — Space in a structure for living, sleeping, eating or cooking.

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Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas are not considered habitable space.

**HEIGHT OF BUILDING** — The vertical distance measured from the mean level of the ground surrounding the building to a point midway between the highest and lowest point of the roof, but not including chimneys, spires, towers, elevator penthouses, tanks and similar projections.

**HOME OCCUPATION** — Any use customarily conducted entirely within a dwelling or in a building accessory thereto and carried on by the inhabitants residing therein, provided that the use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, the exterior appearance of the structure or premises is constructed and maintained as a residential dwelling and no goods are publicly displayed on the premises other than signs as provided herein.

**HOMESTAY**— The word “Homestay” as used in this Ordinance, shall mean a Dwelling unit wherein a one or more rooms are made available for short-term lodging, and where such short-term lodging is provided for compensation, and where the Dwelling unit is concurrently occupied as permanent residence by the owner Person.<sup>197</sup>

**HOSPITAL** — Unless otherwise specified, includes sanitarium, sanatorium, preventorium, clinic, rest home, treatment or other care of ailments, and shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments.

**HOTEL** — A building used as the more or less temporary abiding place of six or more individuals who are, for compensation, lodged, with or without meals, and in which no provision is made for cooking in any individual room or suite. A hotel may include restaurants, newsstands and other accessory services primarily for serving its occupants and only incidentally the public.

**IMPERMISSIBLE INTERFERENCE WITH A SOLAR ENERGY SYSTEM** — The blockage of solar energy received by a protected solar energy system to a degree greater than that which would have occurred by maximum development under the terms of existing zoning at the time the solar building permit for the protected system was granted.

**IMPERVIOUS SURFACE** — Any material which reduces and prevents absorption of stormwater into previously undeveloped land.

**INCINERATOR** — An approved device in which combustible material, other than garbage, is burned to ashes.

**INDUSTRY** — The manufacturing, compounding, processing, assembly or treatment of materials, articles or merchandise.

**JUNKYARD** — A lot, land or structure or part thereof, used primarily for the collecting, storage and sale of waste paper, rags, scrap metal or discarded material or for the collection, dismantling, storage and salvaging of machinery or vehicles not in running condition and

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<sup>197</sup> Added Definition Ordinance 2023-03 on Dec 18, 2023

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for the sale of parts thereof.

### LAND DEVELOPMENT

- (1) Any of the following activities:
  - (a) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
    - [1] A group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots, regardless of the number of occupants or tenure; or
    - [2] The division or allocation of land or space, whether initially or cumulatively, between or among two 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.
- (2) Except the following, which shall be excluded from the definition of land development:
  - (a) The conversion of an existing single-family detached dwelling or single-family semidetached dwelling into not more than three residential units, unless such units are intended to be a condominium; or
  - (b) The addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building.

**LANDOWNER** — The legal or beneficial owner or owners of land, including the holder of an option or contract to purchase (whether or not such option is subject to any conditions), or a lessee if he is authorized under the lease to exercise the rights of the landowner.

**LAUNDERETTE** — A business premises equipped with individual clothes washing and/or drying machines for the use of retail customers, exclusive of laundry facilities provided as an accessory use in an apartment house or an apartment hotel.

### LIGHTING

- (1) **DIFFUSED** — That form of lighting wherein the light passes from the source through a translucent cover or shade.
- (2) **DIRECT** or **FLOOD** — That form of lighting wherein the source is visible and the light is distributed directly from it to the object to be illuminated.
- (3) **INDIRECT** — That form of lighting wherein the light source is entirely hidden, the light being projected to a suitable reflector from which it is reflected to the object to be illuminated.

**LIVESTOCK** — Farm animals, including but not limited to pigs, horses, cows, goats and



poultry, which are kept or raised for use and/or profit. **198**

**LOADING SPACE** — An off-street space on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials and which abuts on a street or other appropriate means of access.

**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.

**LOT AREA** — The area contained within the property lines of a lot as shown on a subdivision plan excluding space within any street, but including the area of any easement.

**LOT, CORNER** — A lot at the junction of and abutting on two or more intersecting streets or private roads or at the point of abrupt change of a single street or private road, where the interior angle is less than 135° and the radius of the street or private road line is less than 100 feet.

**LOT COVERAGE** — That portion of the lot that is covered by buildings and other impervious surfaces.

**LOT, DEPTH OF** — The average horizontal distance between the front and rear lot lines.

**LOT, DOUBLE FRONTAGE** — An interior lot having frontage on two streets.

**LOT, INTERIOR** — A lot other than a corner lot.

**LOT LINES** — The lines bounding a lot, as defined herein.

**LOT, MINIMUM WIDTH** — The minimum lot width at the building setback line.

**LOT, NONCONFORMING** — A lot, the area or dimension of which was lawful prior to the adoption or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption or amendment. **199**

**LOT OF RECORD** — A lot which has been recorded in the office of the Recorder of Deeds of Dauphin County, Pennsylvania.

**LOT, REVERSE FRONTAGE** — A lot extending between and having frontage on an arterial street and a minor street and with vehicular access solely from the latter.

**LOT, THROUGH OR DOUBLE FRONTAGE** — A lot with front and rear street frontage.

**MAJOR THOROUGHFARES** — A street or highway designated as an existing or planned major thoroughfare.

**MANUFACTURING** — The processing and/or converting of raw unfinished or finished materials or products, or any or either of them, into an article or substance of different

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**198. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

**199. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

character or for use for a different purpose; industries furnishing labor in the case of manufacturing or the refinishing of manufactured articles.

**MASSAGE** — Any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external parts of the human body with the hands or with the aid of any mechanical, electrical apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or any gratuity therefor.

**MASSAGE PARLOR** — Any establishment having a source of income or compensation derived from the practice of massage and which has a fixed place of business where any person, firm, association or corporation engages in or carries on the practice of massage.

**MEDIATION** — A voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences, culminating in a written agreement which the parties themselves create and consider acceptable.

**MIXED OCCUPANCY** — Occupancy of a building or land for more than one use.

**MOBILE HOME** — A transportable, single-family dwelling intended for permanent occupancy, contained in one unit or in two or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation. **200**

**MOBILE HOME LOT** — A parcel of land in a mobile home park, improved with the necessary utility connections and other appurtenances necessary for the erection thereon of a single mobile home, which is leased by the park owner to the occupants of the mobile home erected on the lot.

**MOBILE HOME PARK** — A parcel of land under single ownership which has been planned and improved for the placement of mobile homes for non-transient use, consisting of two or more mobile home lots.

**MOTEL** — A building or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units, designed with separate entrances and designed for year-round occupancy, primarily for transient automobile travelers, and providing for accessory off-street parking facilities. The term "motel" includes buildings designated as tourist courts, tourist cabins, motor lodges and similar terms.

**MUNICIPALITY** — Penbrook Borough, Dauphin County, Pennsylvania.

**NONCONFORMING BUILDING** — A building or structure which does not conform to all

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**200. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

the height, area, yard and court regulations of the district in which it is located.

**NONCONFORMING SIGN** — A sign which does not conform to the regulations of the district in which it is located.

**NONCONFORMING STRUCTURE** — A structure or part of a structure manifestly not designed to comply with the applicable use or extent of use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of such ordinance or amendment or prior to the application of such ordinance or amendment to its location by reason of annexation. Such nonconforming structures include but are not limited to nonconforming signs. **201**

**NONCONFORMING USE** — A use, whether of land or of structure, which does not comply with the applicable use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment or prior to the application of such ordinance or amendment to its location by reason of annexation.

**NURSERY, HORTICULTURE** — Any lot or parcel of land used to cultivate, propagate and grow trees, shrubs, vines and other plants, including the buildings, structures and equipment customarily incidental and accessory to the primary use.

**NURSING OR CONVALESCENT HOME** — A building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire and which is approved for nonprofit agencies licensed for profit-making operations by the Pennsylvania Department of Public Welfare for such use.

**OBSCENE MATERIALS** — Any literature, book, magazine, pamphlet, newspaper, story paper, paper, comic book, writing, drawing, photograph, figure, image, motion picture, sound recording, article, instrument or any other written or printed matter which depicts or describes in a patently offensive manner sexual conduct, sexual excitement or sadomasochistic abuse or (in the case of articles or instruments) is designed or intended for use in achieving artificial sexual stimulation; and, taken as a whole, appeals to the prurient interest; and, taken as a whole, does not have serious literary, artistic, political or scientific value.

**OFFICE BUILDING** — A building designed or used primarily for office purposes, no part of which is used for manufacturing or for a dwelling.

**OFFICE, PROFESSIONAL** — A room or rooms used for the carrying on of a profession.

**OFFICIAL MAP** — A map adopted by ordinance pursuant to Article 4 of the Pennsylvania Municipalities Planning Code (Act 247, as amended). **202**

**OWNER OCCUPIED** — The phrase “Owner Occupied,” as used in this Chapter, shall mean a Dwelling that is the primary, permanent residence and domicile of a Person who is identified as the owner or one of the owners on the deed for the property. In order for a Dwelling to be considered

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**201. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

**202. Editor's Note: See 53 P.S. § 10101 et seq.**

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Owner Occupied, the Dwelling must be considered the domicile of the record owner or at least one (1) of the record owners under Pennsylvania law, and the owner must physically reside in the Dwelling not less than six (6) months each calendar year, and the owner cannot be registered to vote at any other address, and the owner must use the Dwelling as the owner's address for payment of taxes including, but not limited to, earned income taxes.<sup>203</sup>

**OPEN SPACE** — The unoccupied space open to the sky on the same lot with the building, not including parking lots.

**PARKING LOT, PUBLIC** — Any lot, municipally or privately owned, for off-street parking facilities, providing for the transient storage of automobiles or motor-driven vehicles. Such parking services may be provided as a free service or may be provided for a fee.

**PARKING SPACE** — The space within a building or on a lot or parking lot for the parking or storage of one automobile.

**PERSON** — Any individual or group of individuals, partnership or corporation.

**PLANNING AGENCY** — A planning commission, planning department or a planning committee of the governing body.

**PLAN, SKETCH** — An informal plan, not necessarily to exact scale, indicating salient existing features of a tract and its surroundings and the general layout of a proposed subdivision.

**PLAT** — The map or plan of a subdivision or land development, whether preliminary or final.

**PLAT, FINAL** — A complete and exact subdivision plan prepared for official recording as required by statute.

**PLAT, PRELIMINARY** — A tentative subdivision plan, in lesser detail than the final plan, indicating the approximate proposed layout of a subdivision as a basis for consideration prior to preparation of the final plan.

**PORCH** — A covered area in excess of four feet by five feet or 20 square feet in area at a front, side or rear door.

**PREMISES** — Any lot, parcel or tract of land and any building constructed thereon.

**PRIVATE** — Not publicly owned, operated or controlled.

**PRIVATE ROAD** — A legally established right-of-way, built to applicable specifications, other than a street, which provides the primary vehicular and/or pedestrian access to a lot.

**PROFESSIONAL OCCUPATION** — The practice of a profession by any attorney, physician, surgeon, osteopath, chiropractor, dentist, optician, optometrist, chiropodist, engineer, surveyor, architect, landscape architect or city planner entitled to practice under the laws of the Commonwealth of Pennsylvania.

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<sup>203</sup> Added Definition Ordinance 2023-03 on Dec 18,2023

**PRURIENT INTEREST** — Is to be judged with reference to average adults unless it appears from the nature of the material or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, in which case the predominant appeal of the matter shall be judged with reference to its intended recipient group.

**PUBLIC** — Owned, operated or controlled by a government agency (federal, state or local, including a corporation created by law for the performance of certain specialized governmental functions and the Board of Education).

**PUBLIC GROUNDS** — Include the following:

- (1) Parks, playgrounds, trails, paths and other recreational areas and other public areas;
- (2) Sites for schools, sewage treatment, refuse disposal and other publicly owned or operated facilities; and
- (3) Publicly owned or operated scenic and historic sites.

**PUBLIC HEARING** — A formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment, prior to taking action in accordance with this chapter.

**PUBLIC MEETING** — A forum held pursuant to notice under the Act of July 3, 1986 (P.L. 388, No. 84), known as the "Sunshine Act." <sup>204</sup>

**PUBLIC NOTICE** — Notice published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing.

**RENEWABLE ENERGY SOURCE** — Any method, process or substance whose supply is rejuvenated through natural processes and, subject to those natural processes, remains relatively constant, including but not limited to biomass conversion, geothermal energy, solar and wind energy and hydroelectric energy and excluding those sources of energy used in the fission and fusion processes.

**RESIDENCE** — A building or structure wholly or partially used for living, sleeping, eating, cooking and sanitation by human occupants. [Added 2-6-1992 by Ord. No. 92-2]

**RESPIRE CENTER** — A room or small group of rooms to be used as a center for clients within a social services organization who are mentally or physically unable to live without supervision by a trained member of the organization for occupancy for short periods of time in order to provide the regular caregiver a period of time away from the client. <sup>205</sup>

**RIGHT-OF-WAY STREET** — A public thoroughfare for vehicular traffic and/or pedestrian

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<sup>204</sup> Editor's Note: See 65 P.S. § 271 et seq.

<sup>205</sup> Amended Ordinance 2016-4 on Jul 6 2016, Added Respite Center Definition

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traffic, whether designated as a street, highway, thoroughfare, parkway, road, avenue, boulevard, lane, alley or however designated.

ROW HOUSE — See "dwelling, single-family attached."

RUNOFF — The surface water discharge or rate of discharge of a given watershed after a fall of rain or snow that does not enter the soil but runs off the surface of the land.

SADOMASOCHISTIC ABUSE — Flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

SANITARIUM; SANATORIUM — A private hospital, whether or not such facility is operated for profit.

SCHOOL — Any place offering instruction in any branch of knowledge under the supervision of the Commonwealth of Pennsylvania or a lawfully constituted ecclesiastical governing body, person, partnership or corporation meeting the requirements of the Commonwealth of Pennsylvania.

SCHOOL, NURSERY — Any place designed and operated to provide regular instruction and daytime care for two or more children under the age of elementary school.

SCHOOL, VOCATIONAL — Same as elementary and secondary school, except that the primary activity is training in a trade or vocation.

SCREEN PLANTING — A vegetative material of sufficient height and density to conceal from the view of property owners in adjoining residential districts the structures and uses on the premises on which the screen planting is located.

SEDIMENTATION — The process by which mineral or organic matter is accumulated or deposited by moving wind, water or gravity. Once this matter is deposited (or remains suspended in water), it is usually referred to as "sediment."

SEXUAL CONTACT — Actual or simulated acts of human masturbation, sexual intercourse or any touching of the clothed or unclothed genitals, pubic areas or buttocks of the human male or female or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals.

SEXUAL EXCITEMENT — The condition of human male or female genitalia when in a state of sexual stimulation or arousal.

SHOPPING CENTER — A group of stores planned and designed to function as a unit for the lot on which it is located with off-street parking provided as an integral part of the unit.

SHORT-TERM-RENTAL — The phrase "Short-Term Rental," as used in the Code, shall mean any Dwelling owned or managed by a local person, firm, or corporation which is rented or leased for the purpose of overnight lodging for a period of thirty (30) consecutive days or less, and which meets the definition of "Hotel" for the purpose of imposing an excise tax by Dauphin County. Homestay shall not be permissible in any Short-Term Rental Dwelling. Units must adhere to the Penbrook Borough Zoning Ordinance, the Code, and have a valid Short-Term Rental license as issued by the Borough of Penbrook. A Short-Term Rental shall

*not* be considered a “Home Occupation” use under this Chapter. A Short-Term Rental is *not* permitted outside of the Commercial or Village Zones. If the owner is not occupying and is not local, the Short-Term Rental must be managed by a local property firm or corporation.<sup>206</sup>

**SIGHT DISTANCE** — The length of roadway visible to the driver of a passenger vehicle at any given point on the roadway when the view is unobstructed by traffic.

**SIGN** — Any structure or device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia of any government or government agency or of any civic, charitable, religious, patriotic, fraternal or similar organization.

**SIGN, ADVERTISING** — A sign intended for the painting, posting or otherwise displaying of information inviting attention to any product, business, service or cause not necessarily located on or related to the premises on which the sign is situated.

**SIGN, BUSINESS** — A sign which directs attention to a use conducted, product or commodities sold or service performed upon the premises.

**SIGN, GROUND OR POLE** — A sign which is supported by structures or supports in or upon the ground independent of support from any building.

**SIGN, IDENTIFICATION** — A sign or nameplate indicating the name of noncommercial buildings or occupants thereof or describing the use of such buildings or, when displayed at a residence, indicating a home occupation legally existing thereat.

**SIGN, NONCONFORMING** — Any sign lawfully existing on the effective date of this chapter or any amendment thereto which renders such sign nonconforming because it does not conform to all the standards and regulations of the adopted or amended ordinance.

**SIGN, OFF-PREMISES ADVERTISING** — A sign, including billboards, intended for the painting, posting or otherwise displaying of information inviting attention to any product, business, service or cause not located on or related to the premises on which the sign is situated.

**SIGN, PROJECTING** — A sign other than a wall sign affixed to any building or wall whose leading edge extends beyond such building or wall.

**SIGN, REAL ESTATE** — A sign relating to the property upon which it is located, offering such property for sale or lease, announcing improvements or changes in connection therewith, warnings or other similar notices concerning such property.

**SIGN, ROOF** — Any device or structure erected for advertising or identification purposes upon or above the roof of any building or structure or part thereof.

**SIGN, SERVICE** — A sign which is incidental to a use lawfully occupying the property upon which the sign is located, which sign is necessary to provide information to the public such as direction to parking lots, location of rest rooms or other such pertinent facts.

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<sup>206</sup> Added Definition Ordinance 2023-03 on Dec 18 2023

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**SIGN, TEMPORARY** — Any sign, banner, cardboard or other material carrying an advertisement or announcement which is displayed or intended to be displayed for a period not exceeding 60 days.

**SIGN, WALL** — A sign painted on or affixed to and paralleling the outside wall of building and extending not more than 18 inches from such wall.

**SIGN, WINDOW** — A sign placed inside or upon a window facing the outside and which is intended to be seen from the exterior.

**SLOPES** — The face of an embankment or cut section; and ground whose surface makes an angle with the plane of the horizon. Slopes are usually expressed in a percentage based upon vertical difference in feet per 100 feet of horizontal distance.

**SOIL STABILIZATION** — Chemical or structural treatment designed to increase or maintain the stability of a mass of soil or otherwise to improve its engineering properties.

**SOLAR ENERGY** — Radiant energy (direct, diffuse or reflected) received from the sun at wavelengths suitable for conversion into thermal, chemical or electrical energy.

**SOLAR ENERGY COLLECTOR** — Any device, structure or part of a device or structure which is used primarily to transform solar energy into thermal, chemical or electrical energy. It includes any space or structural component specifically designed to retain heat derived from solar energy.

**SOLAR ENERGY SYSTEM** — A complete design or assembly consisting of a solar energy collector, an energy storage facility (where appropriate) and components for the distribution of transformed energy to the extent that they cannot be used jointly with a conventional energy system. Passive solar energy systems are included in this definition but not to the extent that they fulfill structural or other functions.

**SOLAR ENERGY SYSTEM (ACTIVE)** — A solar system that required external mechanical power to move collected heat.

**SOLAR ENERGY SYSTEM (PASSIVE)** — A solar energy system that uses natural properties of materials and architectural components to collect and store solar energy without using any external mechanical power.

**SOLAR SKYSPACE** — The space between a given location and the sun which must remain unobstructed between 9:00 a.m. and 3:00 p.m., mean solar time, in order to permit sufficient solar energy to impinge on that location to allow thermally efficient solar utilization.

**SOLAR SKYSPACE EASEMENT** — A right, expressed as an easement, covenant or condition or other property interest in any deed or other instrument executed by or on behalf of any landlord, which protects the solar sky space of an actual, proposed or designated solar energy collector at a described location by forbidding or limiting activities or land uses that interfere with access to solar energy. The solar sky space may be described as three-dimensional space in which an obstruction is prohibited or limited or as the times of day during which direct sunlight to the solar energy collector may not be obstructed, or as a combination of the two methods.



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**STORAGE FACILITY** — A structure intended for lease for the sole purpose of storing household goods, motor vehicles or recreational equipment.

**STORY** — That portion of any building included between the surface of any floor and the surface of the next floor above it, or, if there is no floor above it, then the space between such floor and the ceiling next above it.

**STORY, HALF** — A story under a gabled, hipped or gambreled roof, the wall plates of which on at least two opposite exterior walls are not over two feet above the finished floor of such story.

**STREET** — A public or private right-of-way, built to applicable specifications, which affords primary vehicular traffic or pedestrian access to abutting properties; includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct and any other ways used or intended to be used as vehicular traffic or pedestrian access.

**STREET GRADE** — The officially established grade of the street upon which a lot fronts or in its absence the established grade of the other streets upon which the lot abuts, at the midpoint of the frontage of the lot thereon. If there is no officially established grade, the existing grade of the street at such midpoint shall be taken as the street grade.

**STREET LINE** — The dividing line between the street and the lot, also known as the "right-of-way line."

### **STREET, MAJOR**

- (1) **ARTERIAL STREET** — A major street or highway with fast or heavy traffic of considerable continuity and used primarily as a traffic artery for intercommunication among large areas.
- (2) **COLLECTOR STREET** — A major street or highway which carries traffic from minor streets to arterial streets, including the principle entrance streets of a residential development and streets for circulation within such a development.

**STREET, MINOR** — A street used primarily for access to abutting properties.

**STREET WIDTH** — The distance between street lines measured at right angles to the center line of the street.

**STRUCTURE** — Any man-made object having an ascertainable stationary location, on land or water, whether or not affixed to the land, including but not limited to flagpoles, stadiums, platforms, towers, sheds, storage bins, fences exceeding four feet in height, signs and signposts, lights and light standards for other than residential use, but excepting patios, driveways, walks and parking areas at yard grades.

**STUDIO, DANCING OR MUSIC** — The use of a premises by a teacher of music or dancing where students are taught these arts for a fee and where more than one student may be taught in a class at one time. This term is synonymous with "dancing school" and "music school" and other similar expressions.

**SUBDIVIDER** — The owner or authorized agent of the owner of a lot, tract or parcel of land to be subdivided under this chapter; same as applicant.

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**SUBDIVISION** — The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts or other divisions of land, including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development; provided, however, that the division of land for agricultural purposes into parcels of more than 10 acres, not involving any new street or easement of access, shall be exempted.

**SUBSTANTIAL IMPROVEMENTS** — Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the actual cash value of the structure either before improvement is started or, if the structure has been damaged and is being restored, before the damage occurred.

**SURFACE DRAINAGE PLAN** — A plan showing all present and proposed grades and facilities for stormwater drainage.

**SWALE** — A low lying stretch of land characterized as a depression used to carry surface water runoff.

**SWIMMING POOL** — Any artificially constructed portable or permanent swimming pool, either above or below the surface of the ground, designed to hold water and to be used for the purposes of a swimming pool either for wading, bathing or swimming purposes. Further, a swimming pool, either aboveground or in-ground, shall mean such pools having sidewalls greater than two feet or having a water surface area greater than 100 square feet. A swimming pool shall not include any structure of solid material either above or below the surface of the ground having a water surface of less than 100 square feet even if permanently equipped with a water circulating system or involve structural material such as a jacuzzi or hot tub. The term "swimming pool" shall include an aboveground swimming pool, as hereinafter defined, and an in-ground swimming pool, as hereinafter defined.

**SWIMMING POOL, ABOVEGROUND** — Any artificially constructed portable or permanent swimming pool capable of being used for swimming or bathing, having a sidewall depth of two feet or more measured from the top of the sidewall to the bottom of the swimming pool at any point, and does not meet the definition of an in-ground swimming pool.

**SWIMMING POOL, IN-GROUND** — Any artificially constructed permanent swimming pool capable of being used for swimming or bathing, having a sidewall depth (from the top of sidewall to bottom of pool) of two feet or more at any point. An in-ground swimming pool shall not extend more than six inches (measured from the coping) above any point of the surrounding finished grade.

**SWIMMING POOL, PRIVATE** — An outdoor swimming pool, to include aboveground swimming pool and in-ground swimming pool, used or intended to be used solely by the owner or owners of the residential property, his, her or their guests or lessee thereof and his, her or their family and their guest invited to use it without payment of any charge for admission or other charge.

**SWIMMING POOL, PUBLIC** — A swimming pool constructed and used by persons other than a private family and their guest where admission or other charge is made.

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**TELEPHONE CENTRAL OFFICE** — A building and its equipment erected and used for the purpose of facilitating transmission and exchange of telephone and radio messages between subscribers and other business of telephone company, provided that in a residential district a telephone central office shall not include public business facilities, storage of materials, trucks or repair facilities or housing or repair crews.

**THEATER** — A building or part of a building devoted to the showing of moving pictures or theatrical productions on a paid admission basis.

**TOPSOIL** — Surface soils and subsurface soils which presumably are fertile soils and soil material ordinarily rich in organic matter or humus debris. Topsoil is usually in the uppermost soil layer called the "A horizon."

**TOWNHOUSE** — See "dwelling, single-family attached."

**TRANSFERABLE DEVELOPMENT RIGHTS** — The attaching of development rights to specified lands which are desired by a municipality to be kept undeveloped, but permitting those rights to be transferred from those lands so that the development potential which they represent may occur on other lands within the municipality where more intensive development is deemed by the municipality to be appropriate.

**TRANSFORMER SUBSTATION** — An electric substation containing an assemblage of equipment for the purpose other than generation or utilization, through which electric energy in bulk is passed for the purpose of switching and modifying its characteristics to meet the needs of the general public, provided that in a residential district an electric substation shall not include rotating power equipment, storage of materials, trucks or repair facilities or housing of repair crews.

**TRANSIENT OCCUPANCY** — The phrase "Transient Occupancy," as used in this Chapter, shall mean use, occupancy, and/or possession of a Dwelling or portion thereof for a period of thirty (30) consecutive calendar days or less.<sup>207</sup>

**TRANSIENT OCCUPANT** — The phrase "Transient Occupant," as used in this Chapter, shall mean a Person who uses, possesses, or occupies a Dwelling or portion thereof for a period of thirty (30) consecutive calendar days or less.<sup>208</sup>

**UNDEVELOPED LAND** — Any lot, tract or parcel of land which has not been graded or in any other manner prepared for the construction of a building.

**USE** — The specific purpose for which land or a building is designated, arranged, intended or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

**VARIANCE** — The permission granted by the Zoning Hearing Board for an adjustment to some regulation which if strictly adhered to would result in an unnecessary physical hardship, where the permission granted would not be contrary to the public interest and

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<sup>207</sup> Added Definition Ordinance 2023-03 on Dec 18 , 2023

<sup>208</sup> Added Definition Ordinance 2023-03 on Dec 18 , 2023

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would maintain the spirit and original intent of the ordinance.

**WATERCOURSE** — A stream of water, river, brook, creek or a channel or ditch for water, whether natural or man-made.

**WIND ENERGY CONVERSION SYSTEM (WECS)** — A device which converts wind energy to mechanical or electrical energy.

**WINDOW** — An opening to the outside, other than a door, which provides all or part of the required natural light, natural ventilation, or both, to an interior space.

**WIND ROTOR** — The blades, plus hub to which the blades are attached, that are used to capture wind for purpose of energy conversion. The wind rotor is used generally on a pole or tower and along with other generating and electrical storage equipment forms a wind conversion system.

**YARD** — An unoccupied space, other than a court, open to the sky, on the same lot with a building or structure.

**YARD, BUFFER** — A strip of required yard space adjacent to the boundary of a property or district, not less than the width designated in this chapter and on which is placed (planted) year-round shrubbery, hedges, evergreens or other suitable plantings of sufficient height and density to constitute an effective screen and give maximum protection and immediate screening to an abutting property or district and may include a permissible wall.

B. The following words and phrases, when used in Article XIV, shall have the meanings given to them in this section unless context clearly indicates otherwise:

**BOARD** — Anybody granted jurisdiction under a land use ordinance or under the Pennsylvania Municipalities Planning Code <sup>209</sup> to render final adjudications.

**DECISIONS** — Final adjudication of any board or other body granted jurisdictions under any land use ordinance or the Pennsylvania Municipalities Planning Code <sup>210</sup> to do so, either by reason of the grant of exclusive jurisdiction or by reason of appeals from determinations. All decisions shall be applicable to the Court of Common Pleas of the county and judicial district wherein the municipality lies.

### DETERMINATION

(1) Final action by an officer, body or agency charged with the administration of any land use ordinance or applications thereunder, except the following:

(a) The governing body;

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**209. Editor's Note: See 53 P.S § 10101 et seq.**

**210. Editor's Note: See 53 P.S § 10101 et seq.**

- (b) The Zoning Hearing Board; or
  - (c) The planning agency, only to the extent the planning agency is charged with the final decision on preliminary or final plans under the Subdivision and Land Development Ordinance <sup>211</sup> or planned residential development provisions.
- (2) Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal.

HEARING — An administrative proceeding conducted by a board pursuant to Article XIV.

LAND USE ORDINANCE — Any ordinance or map adopted pursuant to the authority granted in Article I.

REPORT — Any letter, review, memorandum, compilation or similar writing made by any body, board, officer or consultant, other than a solicitor, to any other body, board, officer or consultant for the purpose of assisting the recipient of such report in the rendering of any decision or determination. All reports shall be deemed recommendatory and advisory only and shall not be binding upon the recipient, board, officer, body or agency, nor shall any appeal lie therefrom. Any report used, received or considered by the body, board, officer or agency rendering a determination or decision shall be made available for inspection to the applicant and all other parties to any proceeding upon request, and copies thereof shall be provided at cost of reproduction.

### **ARTICLE III: General Regulations**

#### **§ 266-10. Applicability.**

The following regulations shall qualify or supplement the district regulations appearing elsewhere in this chapter.

#### **§ 266-11. Use regulations.**

- A. <sup>212</sup> Clubs, lodges and fraternal organizations. In districts where permitted, these and similar uses are restricted to those not conducted primarily for gain, although a dining room may be operated for the benefit of club members, provided that no permanent sign advertising the sale of food or beverages will be permitted. Buildings or structures hereafter converted or erected for such use are subject to all applicable regulations for the district in which the facility is to be located.
- B. Dwelling groups. A dwelling group may be erected, altered, changed and used in any district permitting residential uses, provided that:
  - (1) As a land development, a plat is prepared and submitted to the borough in

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**211. Editor's Note: See Ch. 233, Subdivision and Land Development.**

**212. Editor's Note: Former Subsection A1, Apartment: (Conversion), which immediately preceded this section, was deleted 5-1-1995 by Ord. No. 95-3, which ordinance also renumbered former Subsections A2 through A22 as A1 through A21.**

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accordance with the requirements of the county's Subdivision and Land Development Ordinance.

- (2) Each dwelling in the group shall comply with the use, height, area, width, yard and coverage regulations of the district in which it is located.
  - (3) All buildings will be served by a public sanitary sewage system and public water supply.
  - (4) Parking shall be provided in accordance with the provisions of Article X, entitled "Off-Street Parking."
- C. Gardening shall be permitted in any district.
- D. Garden apartments. In districts where permitted, all garden apartments shall comply with the following:
- (1) There shall be not more than 18 dwelling units per building.
  - (2) No garden apartment building shall be in excess of three stories in height.
  - (3) Lot area per dwelling unit shall not be less than the area required by the district regulations when served by both public water and sanitary sewers.
  - (4) All applicable provisions of this chapter.
- E. Commercial uses. In order that the Zoning Officer may have a reasonable basis upon which to approve a proposed commercial operation for conformity to the requirements of this chapter, the following data shall be submitted with an application for a permit:
- (1) Plot plan.
  - (2) Architectural plan.
  - (3) Description of operation.
  - (4) Engineering and architectural plans for water supply and sewage disposal.
  - (5) Plans for prevention or control of noise, vibration, glare, fire hazards, air pollution, water pollution and traffic.
  - (6) Proposed fuel.
  - (7) Number of shifts and maximum employment per shift.
  - (8) Additional pertinent data as may be required by the Zoning Officer.
  - (9) Where two or more buildings or any nonresidential buildings are proposed as a land development, plats shall be prepared and submitted to the borough in accordance with the requirements of the county's Subdivision and Land Development Ordinance.
- F. Home occupation. Home occupations are permitted subject to the following

conditions:

- (1) The home occupation shall be carried on completely within the dwelling unit or accessory building.
  - (2) Not more than one person other than the occupants of the dwelling unit shall be employed.
  - (3) Not more than 1/2 the floor area of a main building shall be devoted to home occupation.
  - (4) any sale of retail goods shall not constitute a substantial portion of the business and there shall be no display or stockpiling of any inventory of a substantial nature. <sup>213</sup>
  - (5) There shall be no exterior display or sign (except as permitted in the regulation on signs in this chapter), no exterior storage of materials and no other exterior indication of the home occupation or variation of the residential character of the main building.
  - (6) No offensive noise, vibration, smoke or other particulate matter, heat, humidity, glare or other objectionable effects shall be produced.
  - (7) A home occupation may include but is not limited to a professional, medical or osteopathic physician, dentist, podiatrist, chiropractist, lawyer, optometrist, engineer, architect, artist, teacher, dressmaker, barbershop, beauty parlor, real estate or insurance office.
- G. Medical or dental clinical buildings. Where permitted in a residential district, a building for use as a medical or dental clinic may be erected and used subject to the following conditions:
- (1) The building shall be occupied and used only by persons licensed to practice the healing arts in the Commonwealth of Pennsylvania and their staffs.
  - (2) The lot area shall not be less than 15,000 square feet.
  - (3) The front yard depth shall be in accordance with Article VI, § 266-35A; the side yard width shall be a total of 45 feet with a minimum of 15 feet on one side; the rear yard depth shall be 35 feet.
  - (4) The side and locations of these spaces shall be in accordance with the provisions of Article X, entitled "Off-Street Parking."
  - (5) An architectural sketch of the building and a plot plan showing the size and location of the building, parking areas and driveways shall be submitted to the governing body and Planning Commission for review and approval.
  - (6) Where two or more buildings or any nonresidential buildings are proposed as

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<sup>213</sup> Amended Ordinance 2013-4 on Dec 2 2013, Updated F (4)

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a land development, plats shall be prepared and submitted to the borough in accordance with the requirements of the county' s Subdivision and Land Development Ordinance.

- H. Mobile home. A mobile home shall be permitted in the R-MT District subject to the following regulations:
- (1) A mobile home and the site it occupies shall conform to the residential requirements for dwellings in the district in which it is located and shall be located within a mobile home park.
  - (2) Such use shall comply with all other rules, regulations or ordinances of the borough.
- I. Mobile home parks. Where permitted as a land development, plats shall be prepared and submitted to the borough in accordance with the requirements of the county's Subdivision and Land Development Ordinance.
- J. Motels. In the district where permitted, motels shall be subject to the following safeguards and regulations:
- (1) Where two or more buildings or any nonresidential buildings are proposed as a land development, plats shall be prepared and submitted to the borough in accordance with the requirements of the county's Subdivision and Land Development Ordinance.
  - (2) No motel shall have a lot area of less than one acre, and where building is proposed, plans shall be submitted and approved by the Borough Council after recommendation from the Planning Commission.
  - (3) Motels shall be connected to a public sanitary sewer and water supply.
  - (4) Front, side and rear yards of the motel shall be permanently landscaped and maintained in good condition.
  - (5) Off-street parking and loading spaces for other facilities developed as part of the motel premises shall be provided as required by Article X of this chapter.
  - (6) Every unit shall be provided with running hot and cold water and separate toilet facilities.
  - (7) Motel buildings or parts thereof shall be placed no closer to any lot line than 30 feet.
  - (8) The space between motel buildings shall be not less than 20 feet and the space between the fronts and rears of units shall be not less than the dimensions required for courts, where such are formed by the arrangement of units, except where parking is proposed. In such cases, the distance between the fronts and/or rear of units shall be approved the County as required by Subsection J(1) above.
  - (9) When the application for a permit is for a single motel building, a plan shall



be submitted to the Zoning Officer showing the following:

- (a) Extent and area of property.
  - (b) Entrance, exits, driveways, roads, parking areas and walks.
  - (c) Location of the main building and accessory buildings.
  - (d) Plan for storm drainage.
  - (e) Plan for soil erosion and sedimentation control approved by the County Conservation District.
  - (f) Plan for supply of electricity, gas and other utilities.
  - (g) Where entrances and exits of driveways are located on state highways, copies of permits secured from the Pennsylvania Department of Transportation shall be submitted with the plan.
- (10) Before issuing a permit, the Zoning Officer shall submit the plan for such single motel building proposal to the governing body for approval.
- K. Municipal uses. In any district, a building may be erected, altered or extended and land may be developed which is arranged, intended or designed for municipal uses, including municipal recreation use.
- L. Swimming pools, private. Private swimming pools shall be a permitted accessory use in any district and shall comply with the following conditions and requirements:
- (1) Definitions. As used in this § 266-11L, the definitions of "swimming pool," "aboveground swimming pool," "in-ground swimming pool," "private swimming pool" and "public swimming pool," as defined in Article II, § 266-9, of this chapter, shall apply. <sup>214</sup>
  - (2) Applicability. This subsection shall apply to all new swimming pools hereafter constructed or those pools or yards to which renovation or reconstruction takes place. This part shall not apply to public swimming pools.
  - (3) Construction.
    - (a) Application for building permit. Before any work is commenced on the construction of a swimming pool or any addition, alteration, remodeling or other improvement to any swimming pool, an application for a building permit, together with plans and specifications pertinent to the construction, as well as explanatory data, shall be submitted to the Code Official. No part of the work (including earth removal) shall be commenced until proof that a building permit has been issued by the Code Official. The fee for such building permit shall be established, from time to time, by resolution

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**214. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

of the Borough Council.

- (b) Plans and specifications. The plot plan shall show the location of all buildings, including but not limited to the principal residence or structure and accessory building, if any, the location of the proposed swimming pool on the property, distances to all property lines in the immediate vicinity of the swimming pool, location of utility lines and location of proposed closure or fence around the swimming pool or property.
  - (c) Standard swimming pools. Standard swimming pools designed by established swimming pool companies, having been previously approved by a registered engineer or registered architect, shall be acceptable. Further, a standard swimming pool kit (the components of the swimming pool to be constructed or installed by the applicant) designed by established swimming pool companies, having been previously approved by a registered engineer or registered architect, shall be acceptable.
- (4) Enclosure.
- (a) Every swimming pool, whether in-ground or aboveground, shall be completely surrounded by a fence, wall or similar enclosure not less than 3 1/2 feet in height, which, if constructed of wire, shall be constructed as to have no openings, gaps or holes larger than two inches in any dimension and in conformance with § 266-17 of the Penbrook Zoning Ordinance pertaining to fences. If the fence or wall is a picket fence, the horizontal dimensions maintained shall not exceed four inches. A dwelling or accessory building may be used as part of such enclosure.
  - (b) All gates through such enclosures shall be self-closing and equipped with self-latching devices on the swimming pool side for keeping the gate securely closed at all times when not in use, except that the door of any dwelling or accessory building which forms a part of such enclosure need not be so equipped. The self-latching device shall be at least three feet above ground level. The fence, wall or similar enclosure shall completely surround the pool and deck area; provided, however, that the fence may be constructed at or near the rear or side property lines of the property. <sup>215</sup>
  - (c) Aboveground swimming pools having walls of four feet or greater in height may be excluded from the enclosure requirement as set forth in the preceding paragraph, provided that such aboveground swimming pool is equipped with fencing around the top of the pool of at least 36 inches and an access ladder or access ladders which may

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**215. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

be raised and located in a near vertical position when the pool is unattended. If the aboveground swimming pool is not equipped with fencing and an access ladder or ladders which may be raised and locked in a near vertical position, then the aboveground swimming pool shall be enclosed as provided in this section.

- (5) Location on the property. A swimming pool shall be located to the rear of the principal structure or dwelling or within the side yard, provided that any pool within the side yard shall be at least 15 feet behind the front building line of the principal structure or dwelling or the front yard setback, whichever is greater. A swimming pool, measured from the pool wall, shall not be located less than five feet from:
  - (a) The principal residence or dwelling.
  - (b) Any detached garage.
  - (c) Any property line.
  - (d) Any basement wall or cellar wall.
- (6) Design and construction requirements. No building permit to construct a new swimming pool (existing swimming pools are excluded from this section) shall be issued unless and until the following design and construction requirements are observed:
  - (a) Material. The material used for lining a swimming pool shall be impervious and shall provide a tight tank with easily cleaned surfaces. Sand or dirt bottoms are prohibited if uncovered.
  - (b) Walls and bottom. All pool walls and bottoms shall be designed to withstand water pressure from within and to resist the pressure of earth or groundwater when the swimming pool is empty.
  - (c) Deck. There shall be a minimum of three feet of concrete, stone, brick or block sidewalk or other all-weather surface, including wood, completely around and abutting all in-ground swimming pools. The all-weather surface shall be designed in such a manner as to direct drainage away from the swimming pool and in such a manner as not to drain upon adjoining properties. The all-weather surface shall be designed and constructed in such a manner as to be safe from slipping.
  - (d) Steps, ladders, handholds. One or more means of egress shall be provided from the swimming pool. Treads of steps or ladders shall have slip-resistant surfaces and handrails on both sides, except that the handrails may be omitted when there are not more than four steps or when the steps extend the full width of the side or end of the swimming pool.
  - (e) Makeup water. Swimming pools shall be equipped with suitable facilities for adding makeup water as required. There shall be no

physical connection between the water supply line and the swimming pool system. When the makeup water is added to the swimming pool, the inlet shall be at least six inches above the pool water surfaces.

- (f) Recirculation. Provision shall be made for complete circulation of water throughout the swimming pool. The system shall be designed and constructed so that a turnaround at least once every twelve-hour period shall be provided. Recirculation systems shall consist of pumping equipment, hair and lint catcher, filters, together with all necessary pipe connections to the pool inlets and outlets, facilities and pipe connections necessary for backwashing or cleaning filters.
  - (g) Safety equipment. Life preservers, ropes or pole, appropriate to pool size, shall be readily available at the swimming pool site.
  - (h) Drainage system. The swimming pool and equipment shall be equipped to completely empty the water, and the discharge of water shall be disposed of in such a manner that it will not create a nuisance to an adjoining property.
- (7) Property rights. No swimming pool shall be used or maintained as to intentionally interfere with the enjoyment of the rights of others, specifically including adjoining property owners or occupants.
  - (8) Shielding lights. All lights which illuminate any swimming pool or swimming pool area shall be placed or shaded in such a manner as to eliminate glare on adjoining properties.
  - (9) Unnecessary noise. It shall be unlawful for any person to make, continue or cause to be made or continue at any swimming pool any loud, unnecessary or unusual noise which disturbs, injures or endangers the comfort, health, peace or safety of others. The use or operation of any radio, musical instrument, phonograph, recording equipment or other machine or device for producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of neighboring inhabitants of at any time with volume louder than is necessary for convenient hearing of persons at the swimming pool site shall be unlawful.
  - (10) Electrical connections. All electrical installations shall conform to the specifications of the National Electric Code. No electric wire or conductors shall cross, either overhead or underground, on any part of a swimming pool, nor shall any electric wiring be installed parallel to any pool wall closer than five feet, if underground, unless enclosed in rigid conduit or within five feet, if overhead or at such other minimum distance required by the National Electrical Code, as the same may be amended from time to time.
    - (a) All underwater lights must be watertight self-contained units with ground connections running from a waterproof junction box to a proper grounding facility or medium. All underground electric wires

supplying current to said lights within a distance of five feet of the pool wall or walls shall be enclosed in rigid conduits.

- (b) All metal fences, enclosures or railings near or adjacent to a swimming pool which might be electrically charged as a result of contact with broken overhead conductors or from any other cause shall be effectively grounded or bonded.
- (c) All electrical work done on any swimming pool, including all auxiliary equipment such as pumps, filters and other mechanical and electrical equipment, shall conform to the requirements of the National Electrical Code and all amendments and supplements thereto. A written certificate for a final inspection on electrical work by an approved inspection agency shall be delivered to the Code Official prior to any use of the swimming pool. <sup>216</sup>

M. Townhouses. In districts where permitted, all townhouses shall comply with the following:

- (1) There shall be not more than 5 units in a row.
- (2) Lot area per dwelling unit shall not be less than the area required by the district regulations when served by both public water and sanitary sewer.
- (3) All applicable provisions of this chapter.
- (4) Each dwelling unit, whether sold as fee simple, condominium or some other form of ownership, shall be required to conform to Section 266-11.M (2), above. <sup>217</sup>

N. Automobile or gasoline service stations. In districts where permitted, service stations shall be subject to the following safeguards and regulations:

- (1) Hereafter, no service station shall be located nearer than 1,000 feet to the lot line of any school, hospital or nursing or convalescent home.
- (2) Driveways shall be located as provided in Article X for parking, loading areas and access drives.
- (3) All driveways and service areas shall be paved with a surfacing material as approved by the municipality.
- (4) Motor vehicles shall not be permitted to be parked or to stand on sidewalk areas.

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**216. Editor's Note: Former Article 3, Section A, Subsection 13, Paragraph k, which contained penalties specific to swimming pool violations and immediately followed this subsection, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I). For current penalty provisions, see § 266-98.**

<sup>217</sup> Amended Ordinance 2007-7 on Jul 2 2007, Update section M

- (5) Minimum frontage, as measured at the building setback line, on an interior lot shall be not less than 125 feet and on a corner lot on a side street not less than 100 feet and the front street not less than 125 feet.
- (6) Gasoline pumps shall be set not less than 25 feet from any street line and not less than 30 feet from any residential zone boundary line.

O. Prohibited uses.

- (1) The primary living and sleeping quarters of dwelling units shall not be permitted in cellars.
- (2) The following uses are prohibited in all districts throughout the municipality:
  - (a) The incineration, reduction or storage of garbage, offal, animals, fish or refuse, unless by the authority of or under the supervision of the municipality.
  - (b) Dumps and dumping of any kind unless by the authority of or under the supervision of the municipality.
  - (c) Junkyards.
  - (d) Dog kennels
  - (e) Race tracks for stock cars, midget cars and other motorized vehicle racing.
  - (f) Raising and maintaining of livestock. **218**
  - (g) The operation of any business which has as a substantial or a significant portion of its stock-in-trade obscene materials or which offers live entertainment appealing to the prurient interest.
  - (h) Massage parlor. The operation of any massage parlor in which any of the following activities are carried on:
    - [1] The treatment of any person of the opposite sex, except upon the signed order of a licensed physician, osteopath, chiropractor, licensed massage therapist, or registered physical therapist, which order shall be dated and shall specifically state the number of treatments, not to exceed 10. The date and hour of each treatment given and the name of the operator shall be entered on such order by the establishment where such treatments are given and shall be subject to inspection by the police. The requirements of this provision shall not apply to treatments given in the residence of a patient, the office of a licensed physician, osteopath or registered physical therapist, chiropractor or licensed massage therapist or in a regularly established and licensed

hospital or sanitarium. <sup>219</sup>

- [2] The massage of or physical contact with the sexual or genital parts of one person by any other person. Sexual or genital parts shall include the genitals, pubic area, buttocks, anus or perineum of any person or the vulva or breasts of a female.
- [3] The failure to conceal with a fully opaque covering the sexual or genital parts of the body of any person.
  - (i) Conversion apartments. [Added 5-1-1995 by Ord. No. 95-3]
  - (j) Illegal uses. Any uses or activities illegal under federal, state or local laws. [Added 5-1-1995 by Ord. No. 95-3]

P. Public utility facilities. Public utility facilities shall be permitted in any district without regard to the use and area regulations; provided, however, that buildings or structures erected for these utilities shall be subject to the following regulations:

- (1) Front, side and rear yards shall be provided in accordance with the regulations of the district in which the facility is located.
- (2) Height shall be as required by the district regulations.
- (3) Unhoused equipment shall be enclosed with a chain link fence six feet in height.
- (4) Housed equipment. When the equipment is totally enclosed within a building, no fence or screen planting shall be required; however, the yard areas shall be in conformity with the district in which the facility is located.
- (5) Screen planting in residential and commercial districts. The required fence for unhoused equipment shall be surrounded by an evergreen planting as approved by the Zoning Officer.
- (6) The external design of the building shall be in conformity with the buildings in the districts.
- (7) Access for unhoused equipment. Where vehicular access is across the front yard, the gate shall be constructed of solid materials having not less than 50% solid in ratio to open space.

Q. Churches, hospitals, municipal buildings, school and other public and semipublic buildings. Existing schools, hospitals, churches or other public buildings cannot be remodeled or converted to other uses until such plans are presented to the Borough Council together with approvals as may be necessitated by state and local law and rules and regulations of the Department of Labor and Industry, the State Department of Environmental Protection and others.

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<sup>219</sup> Amended Ordinance 2012-1 on May 7 2012, Updated section H (1)

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- R. Solar collectors and solar related equipment shall be permitted in any district.
- S. Theaters and amusement places:
- (1) The proposed use will be reviewed as to its relationship to and effect upon the surrounding uses regarding noise, potential traffic hazards and congestion, illumination and glare.
  - (2) The proposed use will be reviewed in relation to the development objectives established in the Penbrook Borough Comprehensive Plan.
  - (3) Ingress and egress to the site of the proposed use, circulation and movement of vehicular and pedestrian traffic, parking requirements (Article X, Off-Street Parking) and accessibility will be reviewed.
  - (4) Adequacy and availability of utility service will be reviewed.
- T. Day-care facilities. Day-care homes and facilities are permitted, subject to the following conditions:
- (1) Where permitted, day-care homes and facilities must hold an approved Pennsylvania Department of Public Welfare registration certification or license, as appropriate, and meet all current DPW regulations, including those standards governing adequate indoor space, accessible outdoor play space and any applicable state or local building and fire safety codes. A copy of this certification must be given to the borough to be maintained in its files.
  - (2) All day-care homes and facilities shall be fully protected by smoke detectors and fire extinguishers.
  - (3) Family day-care homes and group day-care homes may locate in any district subject to the standards in that particular district for a single-family residence and the following additional safeguards, whichever is more restrictive:
    - (a) Parking. In addition to the district's parking requirements, there shall be one additional off-street parking space provided for each nonresident employee and one safe off-street passenger unloading space measuring at least 10 feet by 20 feet.
    - (b) Fencing. The requisite outdoor play area shall be surrounded by a safety fence or a natural barrier.
    - (c) Hours. Outside play shall be limited to the hours between 8:00 a.m. and 8:00 p.m.
    - (d) Signs. Any sign shall comply with the standards governing signs for home occupations.
    - (e) When day care is provided in a home, the amount of floor area devoted to such purposes shall not exceed 30% of the total floor area of the dwelling and there shall be no change to the exterior of the building for the purpose of accommodating day care.



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- (4) Day-care centers may be located only in the C Commercial District subject to the regulations of that zoning district and the following additional standards, whichever is more restrictive:
  - (a) Parking. There shall be one off-street parking space for each employee and one safe off-street passenger unloading space measuring at least 10 feet by 20 feet for each 10 children that the facility is licensed to accommodate.
  - (b) Off-premises play area. When an off-premises outdoor play area is utilized, it must be located within 1,000 feet and safely accessible without crossing at grade any arterial street or other hazardous area.
  - (c) Play area setback. No portion of the outside play area shall be less than 50 feet from an existing occupied residence without the owner's written consent.
  - (d) Hours. Outside play shall be limited to the hours between 8:00 a.m. and 8:00 p.m.
  - (e) Signs. Any sign shall comply with district regulations for churches, schools or other similar uses.
  - (f) Concentration. No day-care center shall be established within 500 feet from another day-care center or private nursery or kindergarten.
- U. Respite Center – This type of social service may be provided to eligible clients of a social service organization which serves mentally or physically disabled persons who cannot live without trained supervision and provided that:
  - (1) No more than 6 individual clients may stay at the Respite Center at any one time.
  - (2) No single individual may use the Respite Center for more than 8 days during any 30-day period.
  - (3) The center must include ADA compliant sleeping, bathing, and sanitary facilities which are specific to the type of services which the organization provides.
  - (4) The Respite Center shall be staffed by trained personnel of the agency during all times where clients are in residence.
  - (5) The Respite Center shall keep and maintain a list of all persons staying at the center overnight, including staff. Such list shall be kept away from the location and shall be provided to the Borough Police upon request. The list shall include the names, permanent addresses and telephone numbers of all clients staying or scheduled to stay overnight at the center and the names, phone numbers and addresses of their permanent caregivers. Such

information shall be maintained in accordance with all HIPAA, Medicare, Federal, State, County and Borough privacy laws and regulations

- (6) The Respite Center shall not be converted to any other residential use.
- (7) Any social service agency operating a Respite Center shall have and maintain all required permits and licenses required by the Pennsylvania Department of Human Services, Dauphin County and the Borough of Penbrook.
- (8) The Respite Center shall meet the requirements of Borough Ordinance 200, the Property Maintenance Ordinance, and shall comply with all health and requirements of the Commonwealth, Dauphin County and the Borough of Penbrook.
- (9) The Respite Center shall comply with the requirements of Borough Code Chapter 113, the Buyer Notification and Rental Inspection Ordinance and shall be inspected every three years for compliance to the code and must keep current a Certificate of Occupancy.
- (10) Installation of a Respite Center shall not add to the number of parking spaces required for the existing agency business in a shared use facility. <sup>220</sup>

**V. Short-Term Rental.**

Short Title. This Section V shall be known as, and may be cited to as, the “Penbrook Borough Short-Term Rental Ordinance.”

Purpose and Intent. The purpose of this Section is to require the owner or owners of a residential Dwelling that is used or is proposed to be used as a Short-Term Rental, to apply for and secure a license authorizing such use in the manner provided by this Section in order to protect and promote the public health, safety, and welfare.

**1. Application.**

a. Pursuant to Section 266-95 of the Code, the commencement of Short-Term Rental activity of a Dwelling shall be considered a “change of use” of the property and shall not occur without the property owner first applying for, and receiving a zoning permit from the Borough for such change in use, followed by or in conjunction with an application for and approval of a Short-Term Rental license.

b. A separate Short-Term Rental license is required for each Dwelling being rented as a Short-Term Rental and each Dwelling in a Two-Family or Multi-Family Dwelling being rented as a Short-Term Rental.

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<sup>220</sup> Amended Ordinance 2016-4 on Jul 6 2016, Added section (U)

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- c. Short-Term Rental licenses shall be renewed on an annual basis and with any change in ownership of the Dwelling. An inspection will be conducted by the Borough on an annual basis as part of license renewal.
- d. Short-Term Rental licenses shall not be granted for a property located outside of the Commercial or Village Zones.
- e. The applicant shall submit, as part of a Short-Term Rental license application, the following:
  - i. A complete written application as provided by the Borough.
  - ii. A copy of the current recorded Deed for the Property establishing ownership.
  - iii. Copies of: (A) current Dauphin County Hotel Room Excise Tax Certificate and current Pennsylvania Sales and Use Tax License; or (B) proof of third-party booking agent collecting and remitting state and local taxes on behalf of owner.
  - iv. Signatures of both the owner and the local managing agent or local contact Person, if applicable.
  - v. If the building is a Multi-Family Dwelling, the total number of Dwellings in entirety, the number of Dwellings being used as Short-Term Rental, and the designation of which units are Short-Term Rentals.
  - vi. If an owner does not occupy the Short-Term Rental, and the owner is not within thirty (30) miles of the property, the applicant shall designate a local contact Person who shall have access and authority to assume management of the Short-Term Rental and take remedial measures. The local contact Person shall reside within thirty (30) miles of the property if a LLC is involved. An applicant who resides within the Borough or within thirty (30) miles of the Short-Term Rental may designate himself/herself as the local contact person.
- f. An initial inspection will be conducted by the Borough at the time of Short-Term Rental application. Annual inspections shall be performed with costs covered by the property owner. Smoke detectors and fire extinguishers shall be inspected to ensure they are operating correctly (and proof of certification that fire extinguishers are current shall be provided).
- g. Short-Term Rental license applications shall be accompanied by administrative and inspection fees to defray the costs of processing and managing the application. The fees shall be as set by Resolution of the Council as part of the Borough's overall schedule of fees.

### 2. Standards of Operation.

Operators of Short-Term Rentals shall conform to the following standards:

- a. The maximum number of Short-Term Rental units that can be separately rented in a Multi-Family Dwelling with more than three (3) units, shall be forty percent (40%).
- b. The Short-Term Rental shall not provide meals or retail sales/rental of merchandise, equipment, or services for compensation (either directly or indirectly).

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c. The length of stay per Transient Occupant shall be limited to a maximum of thirty (30) consecutive calendar days.

d. The local contact Person shall respond to the Borough or to a police officer after being notified by such official of the existence of a violation of this chapter or any disturbance requiring immediate remedy or abatement. If the local contact Person is not the owner, the local contact Person shall immediately advise the owner of any notification of a violation. There shall be a local contact Person available at all times the Short-Term Rental is operated. The owner may change the local contact Person only after written notice to the Zoning Officer.

e. Short-Term Rentals shall not exceed the number of Transient Occupants of two (2) persons per dedicated bedroom excluding children under the age of three (3).

f. For each Short-Term Rental that is all or part of a Single-Family Dwelling, up to three (3) bedrooms, shall provide at least one (1) parking space per bedroom, plus one additional parking space (to account for additional Transient Occupants who may drive separately). Short-Term Rental properties with four (4) or more bedrooms shall provide two (2) parking spaces in addition to the base parking of one (1) per bedroom.

Each Short-Term Rental that is all or part of a Multi-Family Building shall comply with these requirements. The parking required by this Section shall be available for use by the Transient Occupants while the Short-Term Rental is occupied by them. Unless otherwise provided herein, all parking must comply with Article X, Off-Street Parking.

In no event shall parking for the Transient Occupants include spaces in any public street right-of-way.

g. Transient Occupants must adhere to the Borough's Code, specifically Chapter 174 Noise, and shall not engage in disorderly conduct or disturb the peace and quiet of any nearby neighborhood or Person by loud, unusual, or excessive noise, by tumultuous or offensive conduct, public indecency, threatening, traducing, quarreling, challenging to fight, or fighting or, creating a dangerous or physically offensive condition. The Transient Occupants shall sign a binding document that requires they acknowledge and agree to adhere to those minimum standards. A copy of the signed agreement shall be made available to the Borough's Zoning Officer when requested.

h. The owner or local contact Person shall use best efforts to assure that the Transient Occupants of the Short-Term Rental do not create unreasonable noise or disturbances, engage in disorderly conduct, or otherwise violate provisions of any Borough ordinance or any state law pertaining to noise or disorderly conduct including, but not limited to, notifying the occupants of the rules regarding Short-Term Rentals and responding when notified that the Transient Occupants are violating laws, ordinances, or regulations regarding their occupancy.

An inspection will be conducted by the Borough upon receipt of a verified complaint relating Short-Term Rental compliance.

i. Fireworks and floating lanterns are prohibited.

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- j. The owner or local contact Person shall, upon notification that Transient Occupants of the Short-Term Rental have created unreasonable noise or disturbances, engaged in disorderly conduct, or otherwise violated provisions of any Borough ordinance or state law pertaining to noise or disorderly conduct, promptly use best efforts to prevent a recurrence of such conduct by those Transient Occupants.
- k. A Short-Term Rental shall comply at all times with the applicable Borough sewer ordinances and regulations. If a sewer malfunction occurs, Term Rental of the Dwelling shall be discontinued until the malfunction is corrected.
- l. A Short-Term Rental shall not have any outside appearance indicating a change of use from the surrounding residential uses.
- m. Subleasing all or a portion of the Dwelling is prohibited.
- n. There shall be no occupancy of recreational vehicles, camper trailers, and in tents at the Short-Term Rental. There is to be no overnight sleeping of Transient Occupants of the Short-Term Rental outside of the Dwelling.
- o. The applicant shall prominently and continuously display the Short-Term Rental license approval (within the Dwelling or adjacent to the front door) which shall contain all of the following information:
  - i. The owner's name or managing agency, agent, property manager, or local contact authorized in writing to accept service for the owner of the Dwelling and a telephone number at which that party can be reached on a 24-hour basis.
  - ii. The 911 address of the property.
  - iii. The maximum number of Transient Occupants permitted to stay in the Short-Term Rental Dwelling and maximum number of days at any one time.
  - iv. The maximum number of all vehicles allowed to be parked on the property or in front of the Dwelling within the property boundaries.
  - v. The requirement that all Transient Occupant and/or guest parking must be parked in the available parking areas on the property and not in or along any private, community, or public street right-of-way.
  - vi. The trash pick-up day, location to place trash for pickup, and notification that trash and refuse shall not be left or stored on the exterior of the property unless it is in a water-tight metal or plastic can.
  - vii. Floor plans for the Short-Term Rental, showing emergency exits and path or exit from sleeping quarters.
  - viii. Notification that a Transient Occupant or guest may be cited and fined for creating a disturbance or for violating other provisions of any Borough ordinance, including parking and occupancy limits.

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- ix. Notification that Short-Term Rental Transient Occupants are required to make the Dwelling available for inspection by the Borough upon request.
- x. The Borough's Noise regulations, Chapter 174.

### SECTION 7: Enforcement.

If it appears that a violation of this Ordinance has occurred, the Borough shall initiate enforcement proceedings by having the Zoning Officer send an enforcement notice as provided in Article XIV, Administration and Enforcement.

The enforcement notice shall be sent to the owner of record of the Short-Term Rental for which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that Short-Term Rental, and to any other person requested in writing by the owner of record. The enforcement notice shall contain the following information:

- A. The name of the owner of record and any other person against whom the Borough intends to take action.
- B. The location of the Short-Term Rental in violation.
- C. The specific violation with a description of the requirement which have not been met, citing in each instance the applicable provisions of the Ordinance.
- D. The date before which steps for compliance must be commenced and the date before which the steps must be completed. For a violation, the notice shall direct compliance with this Ordinance within ten (10) calendar days following service of the notice.
- E. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a prescribed period of time in accordance with the procedures set forth in the Zoning Ordinance.
- F. That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation with possible sanctions clearly described.

No Person shall be entitled to written notice for any subsequent violation of the same provision of this Ordinance that occurs within 365 days of the first notice. The first notice shall be deemed to be ongoing for any violations within that time period, and the Borough may proceed immediately with enforcement. As such, the timeline on Ordinance violations does not reset after each notice. {02356160/2}10

Any Person directly affected by a determination of the Zoning Officer shall have the right to appeal to the Zoning Hearing Board, provided that a written application for appeal is filed within thirty (30) calendar days after the day the notice was served pursuant to Article XIV, Administration and Enforcement.

Appeals of notices issued by the Zoning Officer shall stay the action or enforcement of the notice until the appeal is heard by the Zoning Hearing Board.

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Any Person who or which has violated the provisions of this Ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by Penbrook Borough before a District Justice, pay a judgment of Five Hundred Dollars (\$500.00) plus all court costs, including reasonable attorney fees incurred by Penbrook Borough as a result thereof. No judgment shall commence or be imposed, levied, or be payable until the date of determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, Penbrook Borough may enforce the judgment pursuant to the applicable rules of civil procedure.

Each day that a violation continues shall constitute a separate violation unless the district justice determines that there was a good faith basis for the Person violating this Ordinance to have believed that there was no such violation, in which case there shall be deemed to have been only one such violation unless the fifth day following the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation.

All judgements, costs, and reasonable attorney fees collected for the violation of this Ordinance shall be paid over to Penbrook Borough. The Court of Common Pleas of Dauphin County, upon petition, may grant and order or stay, upon cause shown tolling the per diem judgment pending a final adjudication of the violation and judgment. Nothing contained in this section shall be construed or interpreted to grant to any Person or entity other than Penbrook Borough the right to commence any action for enforcement pursuant to this section.<sup>221</sup>

- W. Uses not provided for. Whenever in any district established under this chapter a use is neither specifically permitted or denied and an application is made by a property owner to the Zoning Officer for such use, the Zoning Officer shall refer the application to the Zoning Hearing Board which shall have the authority to permit the use or deny the use. The use may be permitted if it is similar to and compatible with permitted uses in the district and in no way is in conflict with the general purpose and intent of this chapter.

### **§ 266-12. Height regulations.**

- A. The height of any building may exceed the maximum permitted height by one foot for each additional foot by which the width of each yard exceeds the minimum yard regulation for the district in which the building is located.
- B. Height regulations shall not apply to spires, belfries, cupolas, domes not used for human occupancy, nor to chimneys, ventilators, skylights, water tanks, utility poles or towers, solar collectors and ornamental or necessary mechanical appurtenances.
- C. For all residential uses, accessory buildings shall not exceed 14 feet in height.
- D. No dwelling shall be hereafter erected less than one story in height.

### **§ 266-13. Accessory buildings.**

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<sup>221</sup> Added Section V Ordinance 2023-03 on Dec 18.2023

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- A. An accessory building may only be erected within one of the side yards or within the rear yard, provided that:
- (1) Such accessory building shall be not less than 10 feet from the rearmost portion of the main building.
  - (2) When constructed on the side or rear lot line, the accessory building shall be located a minimum of three feet from such lot line.
  - (3) Where such side or rear yard is along an alley, the accessory building shall be located not less than five feet from the alley.
  - (4) Where such side or rear yard is adjacent to another lot, the accessory building shall be not less than three feet from any lot line.
  - (5) When an accessory building is erected within the side or rear yard adjacent to a side street on a corner lot, the accessory building shall be not less than the required front yard depth from the exterior side lot line.
  - (6) On a corner lot in any residential district, an accessory building shall not be erected within 30 feet of the exterior side lot line (street line); provided, however, that when the main building exists on both the corner lot and the lot abutting the rear of the corner lot, an accessory building may be erected at the existing main building.
- B. A carport, open on three sides, may be erected within one of the side yards or rear yard when attached to a main building existing at the effective date of this chapter, provided that the carport shall be not less than five feet from the side or rear lot line.

### § 266-14. Buffer yards.

- A. Where a commercial use adjoins a residential district, a buffer yard of not less than 15 feet in width shall be provided along the lot lines, in addition to the yards required for the district in which it is located.
- B. All buffer yard areas shall be planted and maintained with a screen planting at least four feet in height and a minimum of five feet from any property line or right-of-way line or the buffer yard may be reduced to 10 feet in width when a solid masonry wall of at least five feet in height is used to screen a commercial use from an adjoining residential district and a minimum of 10 feet from any property line or right-of-way line.
- C. Buffer yards other than interior side buffer yards may be crossed by access roads, service drives and utility easements not more than 35 feet in width, provided that the angle of the center line of the road, drive or easement crosses the lot line and buffer yard at not less than 60°.

### § 266-15. Projections in yards.

- A. Cornices, eaves, gutters, bay windows or chimneys may project into the front, side or rear yard of a lot not more than 24 inches.



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- B. Covered enclosed porches shall be considered as part of the main building and shall not project into any required yard.
- C. Components of a solar energy system may project into any side yard to the limit of the existing side building line which is closest to the property line.

**§ 266-16. Obstruction to vision. 222**

- A. Walls, fences, signs or other structures shall be erected or altered and hedges, trees or other plant material shall not be planted or maintained which may cause danger to traffic on a street or road by obstructing the view.
- B. On corner lots no walls, fences, signs or other structures in excess of 3 feet in height shall be erected or altered and no hedge, or other plant material in excess of 3 feet in height shall be permitted within a clear sight triangle formed by any combination of alleys, minor streets, and/or collector streets. A clear sight triangle shall include the area on each corner that is bounded by the line which connects the sight or "connecting" points located on the right-of-way lines of the intersecting street. The clear sight triangle shall be determined by applying the dimensions as set forth in the following table:

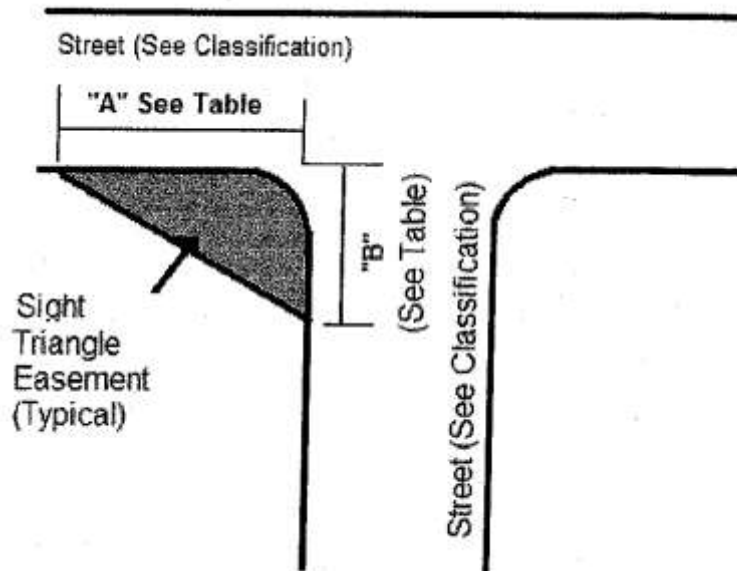
Street "A" Distance in Feet		Street "B" Distance in Feet		
		Alley	Minor Street	Collector Street
10Ft	Alley	10Ft	10Ft	25 Ft
10Ft	Minor Street	10Ft	10Ft	25 Ft
25 Ft	Collector Street	10Ft	10Ft	25 Ft

The Zoning Officer shall determine the type of streets involved by measuring the Right-of-Way (R-O-W) of each and apply the table below when establishing the clear sight triangle easement.

Street Type	Width of R-O-W
Alley	20 Feet or less
Minor Street	20 - 40 Feet
Collector Street	40 - 100 Feet

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222. Editor's Note: See also § 100-3, Obstruction of vision.



**§ 266-17. Fences and walls.**

- A. Fences and walls may be erected, altered and maintained within the side or rear yard with no set back provided that any fence or wall not exceed six (6) feet in height and may be erected, altered and maintained shall not violate any other provisions of the Borough Ordinances and fences within the front yard may be erected, altered and maintained with no set back but shall not exceed three (3) feet and shall not violate any other provisions of the Borough Ordinances. <sup>224</sup>
- B. All yards used for the storage of any material needed for the operation or conduct of a manufacturing or commercial enterprise shall be enclosed by a solid wall, uniformly painted board fence or screen planting, at least six feet in height on all sides which face upon a lot in a more restricted zone.

**§ 266-18. Habitable space. <sup>225</sup>**

The minimum habitable space of a dwelling unit hereafter erected shall be in accordance with the requirements of the Property Maintenance Code. <sup>226</sup>

**§ 266-19. Illumination.**

- A. The illumination of any sign shall be arranged in such a manner that the light shall

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<sup>223</sup> Amended Ordinance 2013-4 on Dec 2 201, Update section B

<sup>224</sup> Amended ordinance 2010-2 on May 3 2010, Updated section A

<sup>225</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>226</sup>. Editor's Note: See Ch. 200, Property Maintenance.

be shielded from any residential building or fall within the right-of-way of any street or highway.

- B. The illumination of the exterior grounds of commercial establishments shall be arranged in such a manner that the light source shall not enter any residential building or fall within the right-of-way of any street or highway.

**§ 266-20. Performance standards.**

Hereafter, all uses of land, buildings and structures or industrial processes shall be prohibited that are noxious or injurious by reason of the production or emission of dust, smoke, refuse matter, odor, gas fumes, noise, vibration or similar substances or condition; provided, however, that any uses may be permitted except those specifically prohibited in the district regulations or general provisions if adequate provisions and safeguards to protect the health, safety, morals and the general welfare of the community are established by a written agreement between the Borough Council and the property owner, subject to the securing of a permit therefor and subject to the carrying out of such provisions, restrictions and safeguards.

**§ 266-21. Drainage regulations.**

A building may be erected or used and a lot may be used or occupied only when in conformity with the following regulations:

- A. Obstructions. The following shall not be placed or caused to be placed in an open drainageway: fences except two-wire fences, other structure or matter which may impede, retard or change the direction of the flow of water in open drainageway or that is placed where the flow of the water would carry the same downstream to the damage or detriment of either public or private property adjacent to said open drainageway.
- B. Installation of fill materials. Fill may be placed at and within the outer line of a drainageway when approved by the Zoning Officer and subject to the following conditions:
  - (1) Satisfactory evidence shall be submitted to the Zoning Officer indicating that the cross-sectional area of the drainageway will not be reduced.
  - (2) Satisfactory evidence shall be submitted to the Zoning Officer indicating that there will be no adverse flooding conditions created by the proposed fill.
- C. Reduction of lot area. Where the configuration of a drainageway is such that minimum lot area or width regulations cannot be reasonably met, adjacent land within other districts may be applied to meet requirements. In such cases, the largest lot area and width of the district involved shall apply. All other district regulations shall remain in force.
- D. Storm drainage plan. Stormwater shall be managed in a manner approved by the borough's engineer.

**§ 266-22. Control of traffic and protection to public safety.**

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The application for a permit for any and all uses shall be accompanied by a site plan showing building location, service and parking areas and access to highways. Where a driveway or access road gives access to a state road or highway, approval by the Pennsylvania Department of Transportation shall be required.

### § 266-23. Windmills, wind wheels and wind energy conversion systems.

Windmills, wind wheels or wind energy conversion systems (WECS) shall be permitted in all districts subject to the following conditions:

- A. The structure supporting the wind rotor unit, including any necessary guideposts and supporting cables, shall be independent of any occupied structure and located a minimum distance of the tower height plus ten feet from any occupied dwelling and shall not be more than 75 feet in height.
- B. The minimum distance between the tower and any property line shall be not less than twice the height of the tower.
- C. The minimum distance between grade and the lowest point of the rotor blade shall be 20 feet.
- D. All electric lines/utility wires shall be buried underground.
- E. Any mechanical equipment associated and necessary for operation, including a building for batteries and storage cells, shall be enclosed with a six-foot fence. The supporting structure shall also be enclosed with a six-foot fence, unless the base of the tower is not climbable for a distance of 12 feet.
- F. When a building is necessary for storage cells or related mechanical equipment, the building shall not exceed 140 square feet in area nor eight feet in height and must be located at the base of the supporting structure.
- G. One windmill/wind wheel/WECS shall be permitted per property.
- H. The resultant energy harnessed from the wind shall be used on the property it is located on and not used as a commercial enterprise.
- I. The supporting structure and generating unit shall be kept in good repair and sound condition. Upon abandonment of use, the supporting structure and related structures shall be dismantled and removed from the property within 60 days.
- J. The applicant shall demonstrate that any noise from the wind generating unit shall not exceed 45 dB(A), measured at the property line.
  - (1) A "decibel" shall mean a unit for measuring the relative intensity of sounds; more specifically, a unit for expressing the ratio of two amounts of acoustic signal power equal to 10 times the common logarithm of this ratio.
  - (2) "A weighted sound level" shall mean the total sound level in decibels of all sound as measured with a sound level meter with a reference pressure of 20 micro-pascals using the "A" weighted network (scale) at slow response. The unit of measurement shall be defined as "dB(A)."

**§ 266-24. Wireless communications facilities and Antennas for Radio or Television**

A. Purposes:

- (1) The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless communications facilities in the Borough of Penbrook (referred to herein as the "Borough"). While the Borough recognizes the importance of wireless communications facilities (referred to herein as the "WCF") in providing high quality communications service to its residents, the Borough also recognizes that it has an obligation to protect public safety and to minimize the adverse effects of such facilities through the standards set forth in the following provisions.
- (2) By enacting this ordinance and the provisions herein, the Borough intends to:
  - (a) Accommodate the need for WCF while regulating their location and number so as to ensure the provision of necessary services;
  - (b) Provide for the managed development of WCF in a manner that enhances the benefits of wireless communication and accommodates the needs of both Borough residents and wireless carriers in accordance with federal and state laws and regulations;
  - (c) Establish procedures for the design, siting, construction, installation, maintenance and removal of both tower-based and non-tower-based wireless communications facilities in the Borough, including facilities both inside and outside the public rights-of-way;
  - (d) Address new wireless technologies, including but not limited to, distributed antenna systems, data collection units, cable wi-fi and other wireless communications facilities;
  - (e) Minimize the adverse visual effects and the number of such facilities through proper design, siting, screening, material, color and finish and by requiring that competing providers of wireless communications services collocate their commercial communications antennas and related facilities on existing towers;
  - (f) Promote the health, safety and welfare of the Borough's residents.

B. Conditional Use Authorization Under This Chapter 266-24 – Enforcement and Administration

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- (1) Filing of conditional use. For any use permitted by conditional use, a conditional use must be obtained from the Penbrook Borough Council. In addition to the information required on the zoning permit application, the conditional use application must show:
  - (a) Ground floor plans and elevations of proposed structures.
  - (b) Names and address of abutting property owners, including properties directly across a public right-of-way.
  - (c) A scaled drawing (plot/site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this chapter.
  - (d) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this chapter.
  - (e) General criteria. Each applicant must demonstrate compliance with the following:
    - [1] The proposed use shall be consistent with the purpose and intent of this chapter.
    - [2] The proposed use shall not detract from the use and enjoyment of adjacent or nearby properties.
    - [3] The proposed use will not substantially change the character of the subject property's neighborhood.
    - [4] Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.).
    - [5] The proposed use complies with local, state, and federal laws, including any relating to floodplain management.
    - [6] The proposed use shall comply with those criteria specifically listed in this chapter.
    - [7] The proposed use will not substantially impair the integrity of the most recent version of the Penbrook Borough Comprehensive Plan, and/or other applicable plans adopted by Penbrook Borough.
      - (f) Conditions. The Penbrook Borough Council in approving conditional use applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer, and failure to comply with such conditions shall constitute a violation of the Penbrook Zoning Code.

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- (g) Plot/site plan approval. Any plot/site plan presented in support of the conditional use pursuant to this Chapter shall become an official part of the record for said conditional use. Approval of any conditional use will also bind the use in accordance with the submitted plot/site plan; therefore, should a change in the plot/site plan be required as part of the approval of the use, the applicant shall revise the plot/site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved plot/site plan shall require the obtainment of another conditional use approval.
- (2) Hearing procedures.
- (a) Before voting on the approval of a conditional use, the Penbrook Borough Council shall hold a public hearing thereon, pursuant to public notice. The Penbrook Borough Council shall submit each such application to the Penbrook Borough Planning Commission at least 30 days prior to the hearing held upon an application to provide the Borough Planning Commission an opportunity to submit recommendations. If, after any public hearing held upon an application, the proposed application is revised, the Penbrook Borough Council shall hold another public hearing, pursuant to public notice, before proceeding to vote on the application.
  - (b) Public notice, as defined herein, shall be provided. In addition, the Applicant shall notify in writing by mail, the applicant, Zoning Officer, and other such persons whether owners or tenants of property located within 500 feet of the subject property for which the application was submitted, and every other person or organization who shall have registered with the Borough for the purposes of receiving such notices, and other persons as the Penbrook Borough Council shall designate by ordinance, and to any person who has made timely request for the same. Written notices shall be given by certified first class mail, with proof of mailing supplied to the Penbrook Borough Council before any hearing shall take place. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.
  - (c) The Penbrook Borough Council may prescribe reasonable fees with respect to hearings. Fees for said hearings may include compensation for the secretary, notice and advertising costs, and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses, expenses for engineering, architectural, or other technical consultants, or expert witness costs.

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- (d) The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Penbrook Borough Council, and any other person, including civic or community organizations permitted to appear by the Penbrook Borough Council. The Penbrook Borough Council shall have power to require that all persons who wish to be considered parties enter appearance in writing on forms provided by the Penbrook Borough Council for that purpose.
- (e) The President, Vice President, or Acting President of the Penbrook Borough Council shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and paper, including witnesses and documents requested by the parties.
- (f) The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.
- (g) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- (h) The Penbrook Borough Council may keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Penbrook Borough Council. The cost of the original transcript shall be paid by the Penbrook Borough Council if the transcript is ordered by the Penbrook Borough Council; or shall be paid by the person appealing the decision of the Penbrook Borough Council if such appeal is made, and in either event, the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases, the party requesting the original transcript shall bear the cost thereof.
- (i) The Penbrook Borough Council shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.



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- (j) The hearing shall be conducted by the Penbrook Borough Council, or the Borough Council may appoint any member or an independent attorney as a hearing officer. The decision, or, where there is no decision, the findings shall be made by the Penbrook Borough Council. However, the appellant or the applicant, as the case may be, in addition to the Borough, may, prior to the decision of the hearing, waive decision or findings by the Penbrook Borough Council and accept the decision or findings of the hearing officer as final.
  - (k) The Penbrook Borough Council shall render a written decision or, when no decision is called for, make written findings on the conditional use application within 45 days after the last hearing before the Penbrook Borough Council. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefor. Conclusions based on any provisions of this chapter or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.
  - (l) Where the Penbrook Borough Council fails to render the decision within the period required by this chapter or fails to commence, conduct or complete the required hearing as provided herein, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record of an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Penbrook Borough Council to meet or render a decision as hereinabove provided, the Penbrook Borough Council shall give public notice of the decision within 10 days from the last day it could have met to render a decision. If the Penbrook Borough Council shall fail to provide such notice, the applicant may do so.
- (3) Time limitation.
- (a) If a conditional use is granted, the necessary permit shall be secured and the authorized action begun within two years after the date when the conditional use is finally granted, and the building or alteration, as the case may be, shall be completed within three years of said date. For good cause, the Penbrook Borough Council may, at any time, upon application in writing, extend either of these deadlines.

- (b) Should the appellant or applicant fail to obtain the necessary permits within said two-year period, or having obtained the permit, should he fail to commence work thereunder within such two-year period, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn, or abandoned his application, and all approvals and permits granted to him shall be deemed automatically rescinded by the Penbrook Borough Council.
- (c) Should the appellant commence construction or alteration within said two-year period, but should he fail to complete such construction or alteration within said three-year period, the Penbrook Borough Council may, upon 10 days' notice in writing, rescind or revoke the granted conditional use, if the Penbrook Borough Council finds that no good cause appears for the failure to complete within such three-year period, and if the Penbrook Borough Council further finds that conditions have altered or changed in the interval since the granting of the conditional use that revocation or rescission of the action is justified.

C. General and specific requirements for non-tower wireless communications facilities.  
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D. General and specific requirements for tower-based wireless communications facilities.

- (1) The following regulations shall apply to all tower-based wireless communications facilities.
  - (a) Standard of care. Any tower-based WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to, the most recent editions of the American National Standards institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. Any tower-based WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same

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<sup>227</sup> Subsection C Removed Ordinance 2023-03 on Dec 18, 2023

shall not endanger the life of any person or any property in the Borough.

- (b) Conditional use authorization required. Tower-based WCF are permitted in certain zoning districts by conditional use and at a height necessary to satisfy their function in the WCF applicant's wireless communications system.

- [1] Upon submission of an application for a tower-based WCF and the scheduling of the public hearing upon the application, the WCF applicant shall mail notice to all owners of every property within 500 feet of the proposed facility. The WCF applicant shall provide proof of the notification to the Borough.
- [2] Prior to the Council's approval of a conditional use authorizing the construction and installation of tower-based WCF, it shall be incumbent upon the WCF applicant for such conditional use approval to prove to the reasonable satisfaction of the Council that the WCF applicant cannot adequately extend or infill its communications system by the use of equipment, such as relays, repeaters, antenna(s) and other similar equipment installed on existing structures, such as utility poles or their appurtenances and other available structures. The WCF applicant shall further demonstrate that the proposed tower-based WCF must be located where it is proposed in order to serve the WCF applicant's service area and that no other viable, less-intrusive alternative location exists.
- [3] The conditional use application shall also be accompanied by documentation demonstrating that the proposed tower-based WCF complies with all state and federal laws and regulations concerning aviation safety.
- [4] Where the tower-based WCF is located on a property that is not owned by the WCF applicant, the WCF applicant shall present documentation to the Council that the owner of the property has granted an easement, if necessary, for the proposed WCF and that vehicular access will be provided to the facility.
- [5] The conditional use application shall also be accompanied by documentation demonstrating that the proposed tower-based WCF complies with all applicable provisions of this chapter.

- (c) Engineer inspection. Prior to the Borough's issuance of a permit authorizing construction and erection of a tower-based WCF, a structural engineer licensed in the Commonwealth of Pennsylvania shall issue to the Borough a written certification of the proposed WCF's ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association and certify the proper construction of the foundation and the erection of the structure. This certification shall be provided prior to issuance of any building permits.

- (d) Visual appearance and land use compatibility. Tower-based WCF shall employ stealth technology, which may include the tower portion to be painted gray, blue, and/or green as appropriate; however, each case should be evaluated individually. All tower-based WCF and accessory equipment shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible.
- (e) Collocation and siting. An application for a new tower-based WCF shall demonstrate that the proposed tower-based WCF cannot be accommodated on an existing or approved structure or building, or sited on land owned and maintained by the Borough. The Council may deny an application to construct a new tower-based WCF if the WCF applicant has not made a good faith effort to mount the commercial communications antenna(s) on an existing structure. The WCF applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers within a 1/4 of a mile radius of the site proposed, sought permission to install an antenna on those structures, buildings, and towers and was denied for one of the following reasons:
  - [1] The proposed antenna and accessory equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
  - [2] The proposed antenna and accessory equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
  - [3] Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
  - [4] A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.
- (f) Permit required for modifications. To the extent permissible under applicable state and federal law any WCF applicant proposing the modification of an existing tower-based WCF, which increases the overall height of such WCF, shall first obtain a permit from the Borough. To the extent permissible under law, nonroutine modifications shall be prohibited without a permit.
- (g) Additional antennas. As a condition of approval for all tower-based WCF, the WCF applicant shall provide the Borough with a written

commitment that it will allow other service providers to collocate antennas on tower-based WCF where technically and economically feasible. To the extent permissible under state and federal law, the owner of a tower-based WCF shall not install any additional antennas without obtaining the prior written approval of the Borough.

- (h) Wind and ice. Any tower-based WCF structures shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/ TIA-222, as amended).
- (i) Height. Tower-based WCFs shall be designed and kept at the minimum functional height. The maximum height of any tower-based WCF shall be 50 feet. No WCF applicant shall have the right under these regulations to erect a tower to the maximum height specified in this section unless it proves the necessity for such height. The WCF applicant shall demonstrate that the antenna/tower/pole for the tower-based WCF is the minimum height necessary for the service area.
- (j) Accessory equipment. Either one single-story wireless communications equipment building not exceeding 500 square feet in area or its equivalent may be located on the site for each unrelated company sharing space on the tower-based WCF.
- (k) Public safety communications. No tower-based WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- (l) Maintenance. The following maintenance requirements shall apply:

[1] Any tower-based WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.

[2] Such maintenance shall be performed to ensure the upkeep of the WCF in order to promote the safety and security of the Borough's residents and utilize the best available technology for preventing failures and accidents.

- (m) Radio frequency emissions. A tower-based WCF shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC

Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.

- (n) Historic buildings. No tower-based WCF may be located within 500 feet of any property, or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, located within an historic district, or is included in the official historic structures list maintained by the Borough.
- (o) Signs. All tower-based WCFs shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. The only other signage permitted on the WCF shall be those required by the FCC, or any other federal or state agency.
- (p) Lighting. No tower-based WCF shall be artificially lighted, except as required by law. If lighting is required, the WCF applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.
- (q) Noise. Tower-based WCF shall be operated and maintained so as to produce the least amount of noise possible, except in emergency situations requiring the use of a backup generator, where any such noise standards of local or state laws and ordinance may be exceeded on a temporary basis only.
- (r) Timing of approval.

[1] Within 30 calendar days of the date that an application for a tower-based WCF is filed with the Borough, the Borough shall notify the WCF applicant in writing of any information that may be required to complete such application. All applications for tower-based WCFs shall be acted upon within 150 days of the receipt of a fully completed application for the approval of such tower-based WCF and the Borough shall advise the WCF applicant in writing of its decision. If additional information was requested by the Borough to complete an application, the time required by the WCF applicant to provide the information shall not be counted toward the 150-day review period.

[2] Within 90 days of receipt of a complete application for a tower-based WCF consisting of a small wireless communications facility and new wireless support structure, the Borough shall make a final decision on whether to approve the application and shall notify the WCF applicant in writing of such decision.

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- (s) Nonconforming uses. Nonconforming tower-based WCF which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored at their former location but must otherwise comply with the terms and conditions of this section. If over 50% of a tower-based WCF is damaged, the owner of the WCF must demolish and rebuild such WCF. The collocations of antennas is permitted on nonconforming structures.
- (t) Removal. In the event that use of a tower-based WCF is planned to be discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF or portions of WCF shall be removed as follows:
  - [1] All unused or abandoned tower-based WCFs and accessory facilities shall be removed within 90 days of the cessation of operations at the site unless a time extension is approved by the Borough.
  - [2] If the WCF and/or accessory facility is not removed within 90 days of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and accessory facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner of the WCF or its principals.
  - [3] Any unused portions of tower-based WCF, including antennas, shall be removed within 90 days of the time of cessation of operations. The Borough must approve all replacements of portions of a tower-based WCF previously removed.
    - (u) Permit fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a tower-based WCF, as well as related inspection, monitoring, and related costs. Such permit fees shall be established by the Borough fee schedule.
    - (v) FCC license. Each person that owns or operates a tower-based WCF over 40 feet in height shall submit a copy of its current FCC license, including the name, address, and emergency telephone number for the operator of the facility.
    - (w) Insurance. Each person that owns or operates a tower-based WCF greater than 40 feet in height shall provide the Borough with a certificate of insurance evidencing general liability coverage in the minimum amount of \$5,000,000 per occurrence and property damage coverage in the minimum amount of \$5,000,000 per occurrence covering the tower-based WCF. Each person that owns or operates a tower-based WCF 40 feet or less in height shall provide the Borough with a certificate of insurance evidencing general liability coverage

in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering each tower-based WCF.

- (x) Indemnification. Each person that owns or operates a tower-based WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the tower-based WCF. Each person that owns or operates a tower-based WCF shall defend any actions or proceedings against the Borough in which it is claimed that Personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of tower-based WCF. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.
  - (y) Engineer signature. All plans and drawings for a tower-based WCF shall contain a seal and signature of a professional structural engineer, licensed in the Commonwealth of Pennsylvania.
- (2) In addition to the applicable regulations set forth in this Section, the following regulations shall apply to tower-based wireless communications facilities located outside the public rights-of-way:
- (a) Development regulations.
    - [1] Tower-based WCF shall not be located in, or within 50 feet of an area in which utilities are primarily located underground.
    - [2] Tower-based WCF are permitted outside the public rights-of-way in the following zoning districts by conditional use, subject to the requirements of this chapter:
      - [a] C Commercial District.
    - [3] Sole use on a lot. A tower-based WCF shall be permitted as a sole use on a lot, provided that the underlying lot meets the minimum requirements of the underlying zoning district. The minimum distance between the base of a tower-based WCF and any adjoining property line or street right-of-way line shall equal 150% of the proposed WCF structure's height, unless the applicant shows to the satisfaction of



the Borough Council that the proposed tower-based WCF has been designed in such a manner that a lesser setback will have no negative effects on public safety.

- [4] Combined with another use. A tower-based WCF may be permitted on a property with an existing use, or on a vacant parcel in combination with another use, except residential, subject to the following conditions:
  - [a] The existing use on the property may be any permitted use in the applicable district and need not be affiliated with the WCF.
  - [b] Minimum lot area. The minimum lot shall comply with the requirements for the applicable zoning district and shall be the area needed to accommodate the tower-based WCF and guy wires, the equipment building, security fence, and buffer planting if the proposed WCF is greater than 40 feet in height.
  - [c] Minimum setbacks. The minimum distance between the base of a tower-based WCF and any adjoining property line or street right-of-way line shall equal 150% of the proposed height of the tower-based WCF, unless the applicant shows to the satisfaction of the Borough Council that the proposed tower-based WCF has been designed in such a manner that a lesser setback will have no negative effects on public safety.
    - (b) Design regulations.
      - [1] The WCF shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. Application of the stealth technology utilized by the WCF applicant shall be subject to the approval of the Borough.
      - [2] Any proposed tower-based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF applicant's antennas and comparable antennas for future users.
      - [3] Any tower-based WCF over 10 feet in height shall be equipped with an anticleimbing device, as approved by the manufacturer.
        - (c) Surrounding environs.
          - [1] The WCF applicant shall ensure that the existing vegetation, trees and shrubs located within proximity to the WCF structure shall be preserved to the maximum extent possible.
          - [2] The WCF applicant shall submit a soil report to the Borough complying with the standards of Appendix I: Geotechnical Investigations, ANSI/EIA/TIA-222, as amended, to document and verify the design specifications of the foundation of the tower-based WCF, and anchors for guy wires, if used.

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- (d) Fence/screen. Any tower-based WCF shall be surrounded by a security fence. The base of the tower-based WCF shall be landscaped so as to screen the foundation and base and related communications equipment building from abutting properties. Such fencing and screening shall comply with the requirements of the Penbrook Borough Zoning Code.
- (e) Accessory equipment.
  - [1] Ground-mounted accessory equipment associated or connected with a tower-based WCF greater than three cubic feet shall not be located within 50 feet of a lot in residential use.
  - [2] Ground-mounted accessory equipment associated, or connected, with a tower-based WCF shall be placed underground or screened from public view using stealth technologies, as described above.
  - [3] All accessory equipment, utility buildings and accessory structures shall be architecturally designed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district.
- (f) Access road. An access road, turnaround space and parking shall be provided to ensure adequate Emergency and service access to tower-based WCF. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion. The road shall be of a durable and dustless surface (e.g., concrete or bituminous concrete unless of an alternative material and/or design as part of readily accepted stormwater BMP subdivision and land development, or any other construction materials specifications adopted by the Borough), and approved by the Borough Engineer. Where applicable, the WCF owner shall present documentation to the Borough that the property owner has granted an easement for the proposed facility.
- (g) Inspection. The Borough and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to inspect the WCF and any accessory structures to ensure such compliance. The Borough may require the WCF Owner to obtain a professional third-party inspection to verify compliance, condition, repairs needed, or other information necessary for protection of the public.
- (h) Financial security. Prior to receipt of a zoning permit for the construction or placement of a tower-based WCF, the WCF applicant shall provide to the Borough financial security in amount sufficient to

cover the installation, construction, and maintenance of the tower-based WCF during the projected lifetime thereof. The amount required shall be determined at the sole discretion of the Borough based upon the unique characteristics of the tower-based WCF. Said financial security shall remain in place until the tower-based WCF is removed.

- (i) Full site plan. A full site plan must be filed with the Borough, which shall include written authorization from the owner and occupant (if other than owner) of the proposed tower-based WCF site if applicable, shall be drawn to scale of not smaller than 100 feet to one inch and show the following:

- [1] Property boundaries and lease lines.
- [2] Any tower guy wire anchors and other apparatus.
- [3] Existing and proposed structures.
- [4] Scaled elevation view of proposed structures.
- [5] Access road(s), location and design standard.
- [6] Parking areas.
- [7] Fences in accordance with Penbrook Code.
- [8] Location and content of any signs.
- [9] Exterior lighting specifications.
- [10] Landscaping plan.
- [11] Land elevation contours not greater than intervals of five feet.
- [12] Existing land uses surrounding the site.
- [13] Proposed transmission building and/or other accessory uses with detail including:
  - [a] Elevations.
  - [b] Proposed use.
- [14] Height and design of proposed tower-based WCF.
- [15] A cross-section of the structure(s).
- [16] Engineering specifications detailing construction of tower, base, and guy wire anchorage.
- [17] Proposed painting and lighting details.

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- [18] Tower's capacity, including the number and type of antennas that it can accommodate.
- [19] Radio frequency coverage.
- [20] Tower structure information certified by a professional engineer licensed and registered to practice in the Commonwealth of Pennsylvania.
- [21] Tower-based WCF data certified by a professional engineer licensed and registered to practice in the Commonwealth of Pennsylvania experienced in communications towers.
- [22] Inventory of existing wireless support structures within a two-mile radius of the proposed site and information establishing unavailability of such sites for one or more of the following reasons:
  - [a] Refusal by current tower owner.
  - [b] Topographic limitations.
  - [c] Adjacent impediments blocking transmission.
  - [d] Site limitations to tower construction.
  - [e] Technical limitations of the system.
  - [f] Equipment exceeds structural capacity of facility or tower.
  - [g] No space on existing facility or tower.
  - [h] Other limiting factors rendering existing facilities or towers unusable.
  - [i] An update of capacity on an existing tower.
  - [j] One or more of the reasons set forth in this Section above.
- [23] Written confirmation that the electromagnetic fields and radio frequency interferences comply with Federal Communications Commission regulations concerning such emissions, as well as an estimated nonionizing electromagnetic radiation (NIER) level from the proposed antennas, when added to existing levels, that does not exceed applicable federal standards.
- [24] A "zone of visibility map" provided to determine locations where the tower-based WCF may be seen as well as before and after pictorial representations setting forth views from key viewpoints within the Borough.
  - (j) Subdivision/land development. All applicable requirements of Penbrook's subdivision and land development ordinances must be met.

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- (3) In addition to the applicable regulations set forth in this Section, the following regulations shall apply to tower-based wireless communications facilities located in the public rights-of-way.
- (a) Location and development standards.
- [1] Tower-based WCF in the public ROW shall not be located in the front facade area of any structure.
- [2] Tower-based WCF in the public ROW shall be permitted in the following zoning districts by conditional use, subject to the requirements of this chapter:
- [a] C Commercial District.
- (b) Time, place and manner. The Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all tower-based WCF in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the Borough and the requirements of the Public Utility Code.<sup>228</sup>
- (c) Equipment location. Tower-based WCF and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the ROW as determined by the Borough. In addition:
- [1] In no case shall ground-mounted accessory equipment, walls, or landscaping obstruct passage on any street, sidewalk or other passageway.
- [2] Ground-mounted accessory equipment that cannot be placed underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Borough.
- [3] Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Borough.
- [4] Any graffiti on the tower or on any accessory equipment shall be removed at the sole expense of the owner within 30 days of notification.
- [5] Any underground vaults related to tower-based WCFs shall be reviewed and approved by the Borough.
- (d) Design regulations.

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<sup>228</sup> Editor's Note: See 66 Pa. C.S.A. § 101 et seq.

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- [1] The WCF shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the stealth technology chosen by the WCF applicant shall be subject to the approval of the Borough.
- [2] Tower-based WCF in the public ROW shall not exceed 40 feet in height.
- [3] To the extent permissible under state and federal law, any height extensions to an existing tower-based WCF shall require prior approval of the Borough, and shall not increase the overall height of the tower-based WCF to more than 40 feet.
- [4] Any proposed tower-based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF applicant's antennas and comparable antennas for future users.
  - (e) Relocation or removal of facilities. Within 90 days following written notice from the Borough, or such longer period as the Borough determines is reasonably necessary or such shorter period in the case of an emergency, an owner of tower-based WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Borough, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
    - [1] The construction, repair, maintenance or installation of any Borough or other public improvement in the right-of-way;
    - [2] The operations of the Borough or other governmental entity in the right-of-way;
    - [3] Vacation of a street or road or the release of a utility easement; or
    - [4] An emergency as determined by the Borough.
  - (f) Reimbursement for ROW use. In addition to permit fees as described in this section, every tower-based WCF in the ROW is subject to the Borough's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Borough's actual ROW management costs, including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Borough. The owner of each tower-based WCF shall pay an annual fee to the Borough to compensate the Borough for the Borough's costs incurred in connection with the activities described above.

E. Radio and Television Antennas

(1) Radio and television antennas may be installed, erected and maintained within all land use zones of the borough, but only in accordance with the provisions of this section. All antennas shall be subject to the following:

(a) Approval of antennas.

[1] All antennas shall be subject to the review and approval of the Code Official.

[2] The following antennas shall be reviewed and approved by the Code Official, if in conformity with the development standards:

[a] All roof-mounted antennas where the boom or any active element of the antenna array is longer than 12 feet.

[b] All ground-mounted antennas 40 feet or less in height.

[3] Ground-mounted antennas, as defined in Subsection b (5) below of this section, exceeding 40 feet in height are permitted if in conformity with Subsection d of this section, provided that no antenna shall exceed 70 feet.

(b) Development standards. All antennas shall be located, designed, constructed, treated and maintained in accordance with the following standards:

[1] Antennas shall be installed and maintained in compliance with the requirements of the Building Code. <sup>229</sup>

[2] Antennas which are roof-mounted shall not extend higher than 12 feet above the highest point of the roof section where mounted, except a single vertical pole antenna may extend to 20 feet above the peak of the roof. Disc antennas exceeding 36 inches in diameter shall not be permitted on the roof.

[3] Not more than one ground-mounted antenna exceeding 40 feet in height shall be permitted on each lot.

[4] Antennas shall be erected or maintained to the rear of the main building, except in those instances when the subject property is a cul-de-sac or corner lot where the side yard is larger than the rear yard, in which case the antenna may be located in the side yard. Antenna towers shall not be located in any required setback area. No portion of an antenna array shall extend beyond the property lines or into any front yard or easement areas. Guy wires shall not be anchored within any front yard or easement areas, but may be attached to the building.

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<sup>229</sup> Editor's Note: See Ch. 104, Building Construction.

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- [5] Antennas may be roof-mounted or ground-mounted, freestanding or supported by guy wires, buildings or other structures in compliance with the manufacturer's structural specifications. Ground-mounted antennas shall be any antenna with its base mounted directly in the ground, even if each antenna is supported or attached to the wall of a building. Fixed-guyed antenna towers shall be fascia-mounted or guyed according to approved standards. Wire antennas that are not self-supporting shall be supported by objects within the property lines, but not within any front yard areas.
- [6] The antenna, including guy wires, supporting structures and accessory equipment, shall be located and designed so as to minimize the visual impact on surrounding properties and from public streets. Antennas should be screened through the addition of architectural features and/or landscaping that harmonize with the elements and characteristics of the property. The materials used in constructing the antenna shall not be unnecessarily bright, shiny, garish or reflective.
- [7] Antennas shall meet all manufacturer's specifications. The mast or tower shall be of noncombustible and corrosive-resistant material. The miscellaneous hardware, such as brackets, turnbuckles, clips and similar-type equipment subject to rust or corrosion, shall be protected with a zinc or cadmium coating by either galvanizing or sherardizing process after forming. These finishes are selected to guard against electrolytic action due to the use of adjoining dissimilar metals.
- [8] Whenever it is necessary to install an antenna where damage would be caused by its falling, a separate safety wire must be attached to the antenna mast or tower and secured in a direction away from the hazard. No antenna shall be in excess of a height equal to the distance from the nearest overhead electrical power lines, less five feet.
- [9] Every antenna must be adequately grounded for protection against a direct strike of lightning with an adequate ground wire. Ground wires shall be of the type approved by the latest edition of the National Electrical Code for grounding masts and lightning arresters and shall be installed in a mechanical manner with as few bends as possible, maintaining a clearance of at least two inches from combustible materials. Lightning arresters shall be used which are approved as safe by the Underwriters' Laboratories, Inc., and both sides of the line must be adequately protected with proper arresters to remove static charges accumulated on the line. When lead-in conductors of polyethylene ribbon-type are used, lightning arresters must be installed in each conductor. When coaxial cable or shielded twin lead is used for lead-in, suitable protection may be provided without lightning arresters by grounding the exterior metal sheath
- (c) Application for approval. Prior to installing any antenna, an application shall be submitted to and approved by the borough. The application shall be accompanied by construction drawings showing the proposed method of installation, the manufacturer specifications, if any, and a sketch showing the location of the antenna, property and



setback lines and all structures. In addition, applications shall be accompanied by engineering data establishing the fact that the antenna conforms to the structural requirements of the Building Code. Such engineering data may include custom engineering calculations for each installation, the calculations and data to be submitted by a structural or civil engineer registered by the State of Pennsylvania. Such registered engineer may be employed by the manufacturer of the antenna.

(d) Development standards for ground-mounted antennas.

- [1] Where permitted, ground-mounted antennas, as defined in this Section, in the required application shall meet, in addition to all other required contents, the following:
- [a] A site plan showing adjacent properties, possible views and all screening features.
  - [b] Affected exterior elevations and architectural features and the texture and color of all materials to be used.
  - [c] A map and list showing property owners' names and addresses, as shown on the last equalized assessment roll, within a distance of 500 feet from the boundaries of the subject property.
  - [d] A statement of proposed measures to mitigate radio frequency and television interference shall be included in case such interference should result from the operation of the amateur radio station.
- [2] The application will be processed in accordance with the above requirements and may be approved only if the criteria established therein are met. The antenna may be approved for any height not exceeding 70 feet. In determining the height to be permitted, the borough shall consider the horizontal and vertical dimensions and mass of the antenna, the nature of the materials and design of the antenna, the location of the antenna in relation to setback lines and adjacent properties, the presence of screening structures or landscaping and the visual impact of the antenna on adjacent properties and public rights-of-way.
- [3] The antenna shall be removed upon the termination or revocation of the permit. The permit shall terminate on the sale or transfer of ownership of the property by the applicant and shall be so conditioned; provided, however, that if the sale or transfer of ownership occurs, then upon application to the borough, the permit may be extended by the Code Official.

(e) Enforcement.

- [1] All antennas shall be maintained in good condition and in accordance with all requirements of this section.
  - [2] All antennas shall be subject to periodic reinspection. No addition, changes or modifications shall be made to an antenna, unless the addition, change or modification is in conformity with the Building Code Chapter 104.
  - [3] Failure to abide by and faithfully comply with this section shall constitute grounds for the revocation of the approval or permit by the Borough Council. The remedies provided for herein shall be cumulative with all other remedies provided in this chapter and not exclusive.
- D. Noncommercial and amateur usage exemption. Borough residents utilizing satellite dishes, citizen and/or band radios amateur radio antennas, and other non-commercial antennas for the purpose of maintaining television, phone, internet connections, data, connections, and/or amateur radio connections at their residences shall be exempt from the regulations enumerated in this Section.<sup>230</sup>

#### **ARTICLE IV: Nonconforming Buildings and Uses**

##### **§ 266-25. Regulations.**

All lawful uses of land or of a building, sign or other structure existing on the effective date of this chapter may be continued, altered, restored, reconstructed, changed, sold or maintained even though such use may not conform to the use, height, area, yard and other regulations of the district in which it is located, provided that such nonconforming conditions shall comply with the following:

- A. Continuation. The Zoning Officer shall identify and register all of the premises occupied by a lawful nonconforming use existing at the effective date of this chapter and issue a certificate of nonconformance which shall be for the purpose of insuring to the owner the right to continue a nonconforming use.
- B. Building permit.
  - (1) Where a building permit has been issued 90 or more days prior to the effective date of this chapter and the proposed building or use does not conform to the requirement of this chapter, the proposed building or use shall be considered the same as a lawful building or use and shall be regulated by the requirements of this chapter.
  - (2) Where a building permit has been issued less than 90 days prior to the effective date of this chapter and the proposed building or use does not

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<sup>230</sup> Amended Ordinance 2020-1 on Aug 2, 2020, Replace Section 266-24

conform to the requirements of this chapter, the proposed building or use shall be considered the same as a lawful building or use and shall be regulated by the requirements of this chapter only if at least one of the following conditions has been met prior to the effective date of this chapter:

- (a) Construction other than excavation has been started.
- (b) A contract for construction other than excavation has been let.

C. Alterations.

(1) The types of alterations listed below are permitted for nonconforming uses and buildings existing on the effective date of this chapter:

- (a) The extension of a nonconforming use of land upon a lot occupied by such use.
- (b) The alteration of a conforming building occupied by a nonconforming use.
- (c) The alteration of a nonconforming building occupied by a nonconforming use.
- (d) The alteration of a nonconforming building occupied by a conforming use.

(2) The foregoing alterations of such nonconforming buildings or use shall be subject to the following conditions:

- (a) The alteration shall conform to the height, area, yard and coverage regulations in the district in which it is located. Where a building or structure is nonconforming as to a required side or rear yard setback, the established nonconforming setback may be continued, so long as the proposed extension or enlargement does not project further into any yard, whether side or rear yard, than the original building. [Amended 5-1-1995 by Ord. No. 95-3]
- (b) The alteration of the building or use shall be provided with off-street parking and loading spaces as required by Article X, entitled "Off-street Parking." Compliance with this provision shall not be required where the alterations to a single-family dwelling in the case of structural alterations do not involve more than 90% of the square footage of the existing dwelling or in the case of enlargements do not exceed 50% of the square footage of the existing dwelling, as measured cumulatively, from the effective date of the enactment of this chapter. [Amended 5-1-1995 by Ord. No. 95-3]
- (c) The alteration does not replace a conforming use.
- (d) The alteration of the nonconforming building or use shall not be permitted to extend into vacant parcels of land adjacent to the initial parcel of land existing and occupied on the effective date of this

chapter where such vacant parcels have been recorded separately or acquired following the effective date of this chapter.

- (e) A nonconforming use may be changed to another nonconforming use of the same or more restricted classification. Whenever a nonconforming use has been changed to a more restricted classification or to a conforming use, such use shall not hereafter be changed to a use of less restricted classification.
- D. Discontinuance. If a nonconforming use of land or building ceases operations for a continuous period of more than two years, then such use of land or building shall conform to the regulations of this chapter.
- E. Nonconforming signs. Signs in existence at the effective date of this chapter or amendments thereto may be continued subject to the regulations contained in the regulations in Subsection D above and in Article XI, § 266-71.

## **ARTICLE V: Zoning of Districts**

### **§ 266-26. Enumeration of districts.**

For the purpose of this chapter, the borough is hereby divided into districts which shall be designated as follows:

V	Village District
R-ST	Residential Single-Family Town District
R-MT	Residential Multifamily Town District
C	Commercial District

### **§ 266-27. Zoning Map. 231**

The boundaries of the districts shall be as shown upon the map attached to and made a part of this chapter which shall be designated "Zoning Map." Said map and all the notations, reference and other data shown thereon are hereby incorporated by reference into this chapter as if all were fully described herein.

### **§ 266-28. District boundaries.**

- A. The boundaries between districts are, unless otherwise indicated, either the center lines of streets, alleys, rights-of-way, lot lines or such lines extended or lines parallel thereto.
- B. Where district boundaries approximate the location of the above lines, they shall be construed to be on those lines.
- C. Where figures are shown on the Zoning Map between a street, alley, right-of-way or lot line and a district boundary line, they indicate that the district boundary line runs parallel to that line at a distance therefrom equivalent to the number of feet so

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231. Editor's Note: The Zoning Map is included at the end of this chapter.

indicated. <sup>232</sup>

- D. Where district boundaries are not clearly fixed by the above methods, they shall be determined by the use of the scale of the Zoning Map.

**§ 266-29. Interpretation of boundaries.**

When a district boundary line divides a lot held in single and separate ownership at the effective date of this chapter, the regulations of either abutting district may be construed by the owner to be applicable to the portion of such lot in the other abutting district for a distance of not more than 50 feet beyond the district boundary line.

**ARTICLE VI: Village District**

[Added 3-2-1992 by Ord. No. 92-1]

**§ 266-30. Intended purpose.**

The purpose of this district is to provide a mixture of uses to maintain a village atmosphere in the Borough Square and surrounding area of Penbrook Borough; to preserve the residential uses; and to limit commercial and office uses to those which are compatible with the village atmosphere of the district.

**§ 266-31. Permitted uses.**

Permitted uses shall be as follows:

- A. Residential uses.
- (1) Single-family detached dwelling units.
  - (2) Single-family semidetached dwelling units.
  - (3) Single-family attached dwelling units.
  - (4) Home occupations.
- B. Public/semipublic uses.
- (1) Churches and similar places of worship.
  - (2) Public or private preschool, primary and secondary educational facilities and related school uses.
  - (3) Public parks and recreation areas.
- C. Commercial uses.
- (1) The following uses shall be permitted subject to meeting the following standards and criteria:
    - (a) Off-street parking shall be required in accordance with Article X of

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**232. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

this chapter.

- (b) A five-foot-wide screen planting of not less than four feet in height shall be placed in side and rear yards of commercial uses abutting a residential use.
  - (c) The number of commercial uses shall not equal more than 50% of the uses within the boundaries of the V Village District.
  - (d) Commercial uses may occupy no more than 5,000 square feet of floor area.
- (2) Commercial uses shall be limited to the following:
- (a) Garden supplies.
  - (b) General merchandise stores.
  - (c) Food stores.
  - (d) Apparel and accessory stores.
  - (e) Furniture and home furnishing stores.
  - (f) Restaurants.
  - (g) Bed-and-breakfast inns.
  - (h) Drugstores and proprietary stores.
  - (i) Miscellaneous shopping goods stores.
- (3) Professional/business offices and services.
- (a) Banking.
  - (b) Credit agencies other than banking.
  - (c) Security, commodity brokers and services.
  - (d) Insurance carriers.
  - (e) Insurance agents, brokers and service.
  - (f) Real estate.
  - (g) Holding and other investment offices.
  - (h) Personal services.
  - (i) Business services.
  - (j) Miscellaneous repair services (other than motor vehicle)
  - (k) Health services.
  - (l) Legal services.

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- (m) Educational services.
- (n) Social services.
- (o) Museum and art galleries.
- (p) Veterinary services.
- (q) Nursing homes.

D. Customary accessory uses and buildings incidental to any permitted use in accordance with Article III.

### **§ 266-32. Height regulations.**

No building shall exceed two stories or 30 feet in height.

### **§ 266-33. Lot width regulations.**

The lot width within the V Village District shall not be less than 25 feet, as measured at the minimum building setback line.

### **§ 266-34. Area regulations.**

The lot area shall be determined on the basis of yard requirements, coverage, parking and buffer yard requirements as contained in this chapter.

### **§ 266-35. Yard regulations.**

Each lot shall have front, side and rear yards of not less than the depth and width indicated below:

- A. Front yard. There shall be a front building setback line determined as follows: Where buildings exist in the same block on either side of the street, the setback line of the building to be constructed shall be at least the average of all buildings constructed within the same block on both sides of the street. In measuring to determine said building line, open porches shall not be construed as part of the building. In blocks where no buildings exist on either side of the street, the building line shall be 25 feet. In case of a corner lot, there shall be two front yards.
- B. Side yards (two); width: five feet each side of a principal residential building. In the case of a corner lot, there shall be one side yard and one rear yard. For a commercial use, the side yard setback will be 15 feet, which shall include the required five-foot screen planting when the property adjoins an existing residential use. On a lot in a V Village District held in single and separate ownership at the effective date of this chapter, with a lot width less than required for the zone district, the required side yards shall be determined by the Zoning Hearing Board upon application for a variance.
- C. Rear yard depth: 10 feet.
- D. Buffer yards shall be provided in accordance with the provision of Article III, § 266-14, entitled "Buffer yards." Parking within the buffer yard shall not be permitted.

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### § 266-36. Coverage regulations.

The coverage shall be no more than 75%. At least 10% of the remaining lot area shall be covered with an approved living plant material.

### § 266-37. Off-street parking regulations.

Off-street parking shall be provided in accordance with the provisions of Article X of this chapter.

### § 266-38. Signs regulations.

Signs shall be provided in accordance with the provisions of Article XI of this chapter.

## ARTICLE VII: R-ST Residential Single-Family Town District

### § 266-39. Applicability of regulations.

In the R-ST Residential District, the following regulations shall apply.

### § 266-40. Permitted uses.

Permitted uses shall be as follows:

- A. Single-family detached dwellings.
- B. Churches or similar places of worship, parish houses, convents.
- C. Municipal buildings, public libraries, museums and firehouses.
- D. Public and private schools, including colleges and institutions of higher education.
- E. Public parks, playgrounds and municipal recreation areas.
- F. Public utility and communications buildings and structures where operation requirements necessitate locating within the district.
- G. Signs when erected and maintained in accordance with the provisions of Article XI appearing herein, entitled "Signs."
- H. Home occupations (§ 266-11F).
- I. Windmills, wind wheels and wind energy conversion systems (§ 266-23).
- J. Radio and television antennas (§ 266-24).
- K. Family and group day-care home (§ 266-11T).
- L. Uses and buildings customarily accessory and incidental to any of the above permitted uses.
- M. Uses which are of the same general character as those listed as permitted uses and which will not be detrimental to the intended purpose of the district.

### §266-41 Height Regulations.



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The height of a building shall be not greater than 40 feet. The Height of a dwelling shall be not less than one story.

**§ 266-42. Area regulations.** [Amended 3-2-1992 by Ord. No. 92-1]

The lot area per dwelling unit shall be not less than 7,500 square feet.

**§ 266-43. Width regulations.**

For a dwelling, the lot width at the required front building line shall be not less than 50 feet.

**§ 266-44. Yard regulations.** [Amended 1-11-1995 by Ord. No. 95-1]

Each lot shall have front, side and rear yards of not less than the depth or width indicated below:

- A. Front yard depth. There shall be a front setback line determined as follows: Where buildings exist in the same block on either side of the street, the setback line of the building to be constructed shall be at least the average of all buildings constructed within the same block on both sides of the street. In measuring to determine said building line, open porches shall not be construed as part of the building. In blocks where no buildings exist on either side of the street, the building line shall be 25 feet. In case of a corner lot, there shall be two front yards.
- B. Side yards. There shall be two sides with a total width of not less than 15 feet, except that for each foot a lot existing at the time of enactment of this chapter is less than 50 feet in width, the total width of two side yards may be reduced by nine inches to a total width of not less than 12 feet. The width of the narrowest side yard shall not be less than 1/3 the total width of both side yards. In case of a corner lot, there shall be two side yards.
- C. Rear yards. There shall be a rear yard, the depth of which shall be at least 20 feet from the rear lot line to the rear line of the main building, provided that if, at the time this chapter becomes effective, any lot has been laid out with a depth of less than 125 feet, the depth of the rear yard shall be at least 10 feet.

**§ 266-45. Coverage regulations.**

The coverage shall be no more than 70%.

**§ 266-46. Off-street parking regulations.**

Parking shall be provided in accordance with the provisions of Article X, entitled "Off-Street Parking."

### **ARTICLE VIII: R-MT Residential Multifamily Town District**

**§ 266-47. Applicability of regulations.**

In the R-MT Residential District, the following regulations shall apply.

**§ 266-48. Permitted uses.**

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Permitted uses shall be as follows:

- A. Single-family detached dwellings.
- B. Single-family semidetached dwellings.
- C. Single-family attached dwelling (row houses, townhouses, quadruplex houses).
- D. Two-family detached dwellings (duplex dwellings).
- E. Two-family semidetached dwellings (double duplex dwellings).
- F. Garden apartments (see Article III, § 266-11D).
- G. Apartment dwellings when the building is constructed on the basis of a floor ratio of not more than 1.3.
- H. <sup>233</sup> Churches or similar places of worship, parish houses, convents (See Article III, § 266-11Q).
- I. Private garage.
- J. Municipal buildings, public libraries, museums and firehouses (see Article III, § 266-11K).
- K. Public and private schools, including colleges and institutions of higher education (see Article III, § 266-11Q).
- L. Public parks, playgrounds and municipal recreation areas.
- M. Public utility and communications buildings and structures where operation requirements necessitate locating within the district (see Article III, § 266-11P).
- N. Signs when erected and maintained in accordance with the provisions of Article XI appearing herein, entitled "Signs."
- O. Uses and buildings customarily accessory and clearly incidental to any of the above permitted uses.
- P. Uses which are of the same general character as those listed as permitted uses and will not be detrimental to the intended purpose of the district.
- Q. Clubs, lodges and fraternal organizations, except B.Y.O.B. clubs (§ 266-11A).  
[Amended 2-6-1992 by Ord. No. 92-2]
- R. Home occupations (§ 266-11F).
- S. Medical and dental clinical buildings (§ 266-11G).
- T. Mobile home park (§ 266-11I).

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**233. Editor's Note: Former Subsection A8, Conversion apartments, which immediately preceded this subsection, was deleted 5-1-1995 by Ord. No. 95-3, which ordinance also renumbered former Subsections A9 through A23 as A8 through A22.**

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- U. Windmills, wind wheels and wind energy conversion systems (§ 266-23).
- V. Family and group day-care home.

**§ 266-49. Height regulations.**

The height of a building shall be not greater than 40 feet. The height of a dwelling shall be not less than one story.

**§ 266-50. Area, width and coverage regulations.** [Amended 3-2-1992 by Ord. No. 92-1]

- A. The lot area per dwelling unit and lot width at the required front building line shall be not less and the coverage shall be no greater than indicated below:

<b>Dwelling Type</b>	<b>Lot Area per Dwelling Unit (square feet)</b>	<b>Lot Width Interior (feet)</b>	<b>Corner (feet)</b>
Single-family detached	5,000	35	50
Single-family semidetached	2,250	15	30
Single-family attached	2,700	15	38
Two-family detached	2,250	35	50
Two-family semidetached	2,250	15	30
Garden apartments	2,250	--	--
Apartments	1,000	--	--
Conversion apartments	2,250	--	--

**NOTES:**

- 1. The lot area for corner lots abutting a street shall be 3,000 square feet to permit the fifteen-foot side yard required under § 266-52B below.

- B. Area requirements for nonresidential lots shall be determined through compliance with yard, coverage and off-street parking requirements. [Added 1-11-1995 by Ord. No. 95-1]

**§ 266-51. Residential yard regulations.**

Each residential unit shall have front, side and rear yards of not less than the depth or width indicated below.

- A. There shall be a front setback line determined as follows: Where buildings exist in the same block on either side of the street, the setback line of the buildings to be constructed shall be at least the average of all buildings constructed within the same block on both sides of the street. In measuring to determine said building line, open porches shall not be construed as part of the building. In blocks where no buildings exist on either side of the street, the building line shall be 25 feet unless a greater distance is required as a matter of deed restrictions or recorded plans. In the case of a corner lot, there shall be two front yards.

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- B. Side yards, five feet each, shall be as required for all categories except for apartment dwellings or attached dwellings on interior lots. Exterior lots of attached dwellings will be required to have a fifteen-foot setback. On corner lots, there shall be two side yards.
- C. Rear yard depth shall be 20 feet for all categories except apartment dwellings.
- D. For apartment dwellings of one or two stories, there shall be a front yard, two side yards and a rear yard each of not less than 20 feet. For each story over two, five feet of width or depth shall be added to each yard for each additional story height.

### **§ 266-52. Nonresidential yard regulations.** [Added 1-11-1995 by Ord. No. 95-1]

Each nonresidential lot shall have front, side and rear yards of not less than the depth or width indicated below:

- A. Front yard. There shall be a front setback line determined as follows: Where buildings exist in the same block on either side of the street, the setback line of the buildings to be constructed shall be at least the average of all buildings constructed within the same block on both sides of the street. In measuring to determine said building line, open porches shall not be construed as part of the building. In blocks where no buildings exist on either side of the street, the building line shall be 25 feet unless a greater distance is required as a matter of deed restrictions or recorded plans. In the case of a corner lot, there shall be two front yards.
- B. Side yards. There shall be two sides with a total width of not less than 15 feet, except that for each foot a lot existing at the time of enactment of this chapter is less than 50 feet in width, the total width of two side yards may be reduced by nine inches to a total width of not less than 12 feet. The width of the narrowest side yard shall not be less than 1/3 the total width of both side yards. In case of a corner lot, there shall be two side yards.
- C. Rear yard depth: 20 feet shall be required.

### **§ 266-53. Coverage regulations.**

The coverage shall be no more than 75%. At least 10% of the remaining lot area shall be covered with approved living plant material.

### **§ 266-54. Off-street parking regulations.**

Parking shall be provided in accordance with the provision of Article X, entitled "Off-Street Parking."

## **ARTICLE IX: Commercial District**

### **§ 266-55. Applicability of regulations.**

In the C Commercial District, the following regulations shall apply.

### **§ 266-56. Permitted uses.**

- A. Permitted uses shall be as follows:

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- (1) All uses permitted in any residential district.
- (2) Automobile service stations.
- (3) Auto body shops, painting, upholstery, reconditioning, vehicle repair or overhauling.
- (4) Banks, business and professional offices.
- (5) Bottling works and bookbinding.
- (6) Carpenter, cabinet making, furniture repair and upholstery, electrician, metal working, tinsmith, plumbing, gas, steam, hot water fitting shops.
- (7) Electric and telephone public utility transmission and distribution facilities, including substations, water pumping stations and reservoirs.
- (8) Laboratories and lithographing.
- (9) Laundries, cleaning, dyeing, carpet and rug cleaning.
- (10) The manufacture, compounding, assembling or treatment of articles or merchandise from the following previously prepared materials: bone, cellophane, canvas, cloth, cork, feathers, felt, film, fur, glass, hair, leather, paper, plastics, precious or semiprecious metals or stones, shell, textiles, wood, yarns and paint not employing a boiling process.
- (11) The manufacturing of pottery and figurines or other similar ceramic products, using only clay and kilns fired only by electricity.
- (12) Mortuary and undertaking establishments.
- (13) Motels, hotels, boardinghouses and lodges.
- (14) Motor vehicle sales agency used for sale of vehicles, farm or construction equipment from an open lot, public garage and motor vehicle repair shop and gas service station not used for sale of vehicles, farm or construction equipment from an open lot.
- (15) Motor vehicle parking lot not used for sale of vehicles, farm or construction equipment.
- (16) Municipal buildings or uses.
- (17) Newspaper or job printing.
- (18) Nurseries and greenhouses.
- (19) Personal service shops including barbers, beauty parlors, tailors, shoe repair and dry cleaning.
- (20) Private schools conducted for gain or profit, including a dancing or music school or studio.

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- (21) Railway or bus passenger stations, telegraph offices and express offices.
  - (22) Restaurants, tearooms, cafes and other places serving food or beverages.
  - (23) Stores for the retailing of food, drugs, confectionery, hardware, bakery products, clothing, household appliances, flowers and house plants, furniture.
  - (24) Wholesale business and warehouses.
  - (25) Business identification signs when erected and maintained in accordance with the provisions of Article XI appearing herein, entitled "Signs".
  - (26) Storage facilities.
  - (27) Theaters (§ 266-11S).
  - (28) Amusement place (§ 266-11S).
  - (29) Windmills, wind wheels and wind energy conversion systems (§ 266-23).
  - (30) Radio and television antennas (§ 266-24).
  - (31) Family and group day-care home.
  - (32) Day-care center.
  - (33) Other uses similar to those enumerated above.
  - (34) Accessory buildings and uses clearly incidental to the above uses.
  - (35) B.Y.O.B. clubs as defined in this chapter. [Added 2-6-1992 by Ord. No. 92-2]
- B.** The above-specified stores, shops and business shall be commercial establishments exclusively and shall be permitted only under the following conditions:
- (1) Such stores, shops or business, except those permitted in Subsection A(2), (7), (14), (15), (18), (24), (28), (29), (30), (31) and (32) above, shall be conducted within an enclosed building.
  - (2) Greenhouse heating plant, coal fired, shall not be operated within 100 feet of any residential district boundary. When natural gas or fuel oil are used, the distance may be reduced to 50 feet.
  - (3) The selling of products raised or grown on the premises shall be permitted, provided that all temporary stands or shelters not conforming to Building Code standards used for such sales shall be removed during that period when not in use for the display of or sale of products.
  - (4) The above uses are permitted only on the condition that they are not obnoxious or offensive by reason of the emission of odor, dust, smoke, noise, gas, vibration, illumination, refuse matter or water-carried waste.
  - (5) B.Y.O.B. clubs shall not be operated within 300 feet of any residence, school, hospital, nursing or convalescent homes, church or similar entity, public park

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or recreation areas or public swimming pools. [Added 2-6-1992 by Ord. No. 92-2]

### § 266-57. Height regulations.

The height of a building shall be not greater than 50 feet, except for apartments, in which case the floor area ratio shall control. The height of a dwelling shall be not less than one story.

### § 266-58. Area regulations.

The lot shall be determined on the basis of yard requirements, coverage, parking and buffer yard requirements contained in this article and chapter.

### § 266-59. Yard regulations. [Amended 1-11-1995 by Ord. No. 95-1]

A. Each lot shall have front, side and rear yards of not less than the depth or width indicated below:

- (1) Front yard depth. There shall be a front setback line determined as follows: Where buildings exist in the same block on either side of the street, the setback line of the building to be constructed shall be at least the average of all buildings constructed within the same block on both sides of the street. In measuring to determine said building line, open porches shall not be construed as part of the building. In blocks where no buildings exist on either side of the street, the building line shall be 25 feet. In case of a corner lot, there shall be two front yards.
- (2) Side yards (two); width: 10 feet each side of a principal building. In the case of a corner lot, there shall be two side yards. On a lot in a commercial district held in single and separate ownership at the effective date of this chapter, with a lot width less than required for the zone district, the required side yards shall be determined by the Zoning Hearing Board upon application for a variance.
- (3) Rear yard depth: 10 feet. Buffer yards shall be provided in accordance with the provision of Article III, § 266-14 appearing herein, entitled "Buffer yards."

B. No portion of a motor vehicle service station or any of its equipment shall be placed closer to the street than 15 feet. However, no fuel pumps will be nearer than 25 feet from any street right-of-way line and not less than 30 feet from any residential zone boundary line.

### § 266-60. Coverage regulations. [Added 3-2-1992 by Ord. No. 92-1]

The coverage shall be no more than 70%. At least 15% of the remaining lot area shall be covered with an approved living plant material.

### § 266-61. Off-street parking regulations.

Parking shall be provided in accordance with the provisions of Article X, entitled "Off-Street Parking."

**ARTICLE X: Off-Street Parking**

**§ 266-62. General parking regulations.**

- A. Off-street parking facilities shall be provided to lessen congestion in the streets. The facilities required herein shall be available to patrons throughout the hours of operation of the particular business or use for which such facilities are provided. As used herein, the term "parking space" includes either covered garage space or uncovered parking space located off the public right-of-way.
- B. Outdoor parking space shall be deemed to be part of the open space of the lot on which it is located.
- C. A garage or carport may be located wholly or partly inside the walls of the principal buildings or attached to the outer walls. If separated from the principal building, the garage shall conform to all accessory or building requirements. The garage may be constructed under a yard, provided that the level of such yard shall conform to the general level of the other yards on the lot. The space above an underground garage shall be deemed to be part of the open space of the lot on which it is located.
- D. All commercial, public and semipublic uses shall provide a minimum of one handicapped parking space or 5% of the parking spaces required, whichever is greater, the design to be approved by the Borough Engineer.

**§ 266-63. Facilities required.**

Any of the following buildings hereafter erected or enlarged and any building hereafter converted into one of the following buildings and any open area hereafter used for commercial purposes shall be provided with not less than minimum parking spaces as set forth below.

**Off-Street Parking Space Requirements**

<b>Uses</b>	<b>Required Parking Spaces</b>
Automobile wash	5 for each washing stall
Automobile sales	1 for each 400 square feet of floor area
Banks or professional offices, service garages	1 for each 200 square feet of floor area
Bowling alleys	5 for each alley
Churches and schools	1 for each 3.5 seats in an auditorium or 1 for each 17 classroom seats, whichever is greater
Community buildings and social halls	1 for each 200 square feet of floor area
Editor's Note: Former entry 6a, Conversion Apartments, which immediately followed this entry, was deleted 5-1-1995 by Ord. No. 95-3.	



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Dance halls, swimming pools, roller rinks, clubs, lodges and other similar places and other commercial buildings	1 for each 200 square feet of floor area or of water area in swimming pool
Food markets and convenience stores	1 for each 200 square feet of floor area
Funeral homes, mortuaries	5 for each parlor
Furniture or appliance stores	1 for each 200 square feet of floor area
Hospitals, nursing and convalescing homes	1 for each 3 beds, plus 1 for each 2 employees in the maximum working shift
Hotels, motels, tourist houses, boarding and lodging houses	1 for each guest room, plus 1 for each 2 employees in the maximum work shift
Research or testing laboratories, bottling plants	1 for each 1,000 square feet of floor area, plus 1 for each 2 employees in the maximum working shift. The total parking area shall not be less than 25% of the building floor area.
Medical and dental offices	5 for each practitioner
Multiple dwellings [Amended 5-1-1995 by Ord. No. 95-3]	2.5 per dwelling unit
Restaurants	1 for each 2.5 seats
Retail stores and shops	1 for each 200 square feet of floor area
Rooming houses	1 for each 1 bedroom
Service stations	2 for each service bay
Single-family and two-family dwellings [Amended 5-1-1995 by Ord. No. 95-3]	2.5 per dwelling unit <sup>234</sup>
Theaters and amusement places	1 for each 3 seats or 1 for each 60 square feet where seats are not used
Auditoriums, assembly halls	1 for each 3.5 seats
Trailer or monument sales, auctions	1 for each 2,500 square feet of total lot area
Wholesale establishments or warehouse	1 for each 2 employees on maximum shift. The total parking area shall not be less than 25% of the building floor area.

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<sup>234</sup> Amended Ordinance 2007-7 on Jul 2 2007, Updated entry

**§ 266-64. Location of parking space.**

Parking spaces for multiple dwelling buildings and commercial uses shall be readily accessible to and within a reasonable distance from the buildings served thereby. Such spaces shall conform to the following regulations:

- A. The required parking spaces shall be located within 600 feet of the principle building or open space in question.
- B. Such spaces shall be in the same ownership as the principle use to which they are accessory and shall be subject to deed restrictions acceptable to the Zoning Hearing Board, binding the owner and his heirs or assigns to maintain the required number of parking spaces throughout the life of the principle use.
- C. Joint Parking Facilities. Where the owner of a business in the Village District is unable to fully comply with the requirements of Sections 266-63 (A) and (B), above, an application for Joint Parking Facilities may be made to the Zoning Hearing Board, subject to the following conditions:
  - (1) The proposed Joint Parking Facilities shall be no further than 600 feet from the primary entrance of the business and shall not alter the general character of the neighborhood nor impose any hardship on an abutting residential district.
  - (2) The applicant for Joint Parking Facilities shall demonstrate to the Board that the proposed users of the parking facility will be using it at different periods of the day or different days of the week. Any application shall include a drawing, to scale, showing the location of each use, the location of the parking area to be considered, and the primary entrance to each use. Each drawing shall show the actual location of all parking spaces to be included in the agreement and their width and depth within the parking area. A reduction may be granted for the total number of parking spaces needed, requiring only the number of spaces needed based on the one use of the facility requiring the most spaces. The Zoning Hearing Board may impose other conditions under which any agreement is approved.
  - (3) An agreement or amendment to an agreement for the joint use of a parking facility shall be recorded as a deed restriction, irrevocable license, easement or other recordable document in a form satisfactory to the Solicitor of the Council of the Borough of Penbrook, and shall be filed in the Dauphin County Courthouse in the chain of title of the land to be burdened in perpetuity or for a period of years to extend throughout the life of the use requiring the maintenance of the required number of spaces. Any agreement, amendment or change to an agreement shall be provided to the Borough Secretary within 30 days after approval by the Board.
  - (4) Wherever there is a change of use or ownership of the property which is encumbered by a Joint Parking Facility Agreement, the change shall be presented

to the Board within 30 days of the date of the change, for their approval.

- (5) Any proposed change in the total number parking spaces available, the design of the parking area, or the conditions under which the Joint Parking Facility was originally granted shall be presented to the Board for their approval at least 60 prior to days of the date of the change.
- (6) Where the Penbrook Borough Zoning Hearing Board does not approve the application for a Joint Parking Facility Agreement or any changes thereto, the applicant shall be required to comply with any current agreement, or if no agreement exists, with the requirements of this chapter
- (7) Where an applicant can demonstrate that an existing Joint Parking Facility Agreement is no longer required, or where the change of use of the property no longer requires such agreement, the applicant shall apply to the Board, within 30 days of the change, to have such agreement withdrawn. Any withdrawal, if permitted by the Board, shall be in writing and shall be recorded by the Dauphin County Recorder of Deeds.
- (8) The required number of handicap parking spaces, specified elsewhere in this Chapter, shall not be reduced as a result of the approval of a Joint Parking Facility Agreement.
- (9) The Joint Parking Facility Agreement shall conform to Appendix A to this ordinance. <sup>235</sup>

**§ 266-65. Design standards.**

The minimum dimensions of parking facilities to be provided shall be as follows:

- A. In all districts parking spaces per vehicle shall not be less than nine and one-half feet in width nor less than nineteen feet in length. <sup>236</sup>
- B. In all districts except for single-family dwellings, there shall be no parking between the building line and the edge of the paved cartway.
- C. Parking lot dimensions shall be no less than those listed in the following table:

**Aisle Width**

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<sup>235</sup> Amended Ordinance 2012-1 on May 7 2012, Add section C

<sup>236</sup> Amended Ordinance 2012-1 on May 7 2012, Update section A

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<b>Angle of Parking</b>	<b>Parking Bay Width (feet)</b>	<b>Depth From Curb<sup>1</sup> (feet)</b>	<b>One-Way (feet)</b>	<b>Two-Way (feet)</b>
90°	9.5	19	24	24
60°	10	22	18	20
45°	10	21	15	20

**NOTES:**

Depth from curb is the perpendicular measurement from curb or edge of the parking lot toward the interior portion of the lot to be occupied by the parked vehicles and not including any part of the drive.

- D. All dead-end parking lots shall be designed to provide sufficient backup area for the end stalls of the parking area.
- E. Parking areas shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of other motor vehicles.
- F. The width of entrance and exit drives shall be a minimum of 12 feet for one-way use only and a minimum of 20 feet for two-way use except where ninety-degree parking is used, in which case the minimum shall be not less than 24 feet and a maximum of 24 feet at the edge of the paved cartway.
- G. Setback for parking areas shall be provided as follows:
  - (1) All parking spaces and access drives shall be at least six feet from any multiple dwelling building or commercial building on the lot.
  - (2) All parking spaces and access drives shall be at least five feet from any exterior lot line, except where buffer yards are required, in which case such parking spaces and access drives may not encroach on the buffer yard area.
  - (3) Except at entrance and exit drives, parking areas shall be physically separated from any public and/or private streets by a minimum five-foot planting strip. In no case shall parking areas be designed to require or encourage cars to back into a public or private street in order to leave the parking areas.

**§ 266-66. Drainage, surfacing and maintenance standards.**

- A. The area of the parking lot, including driveways, shall be graded, surfaced with asphalt or other suitable material and drained to the satisfaction of the Municipal Engineer to the extent necessary to prevent dust, erosion or excessive water flow across streets of adjoining property.
- B. Parking areas shall be kept clean and free from rubbish and debris.

**§ 266-67. Lighting.**

Any lighting used to illuminate off-street parking or loading areas shall be shielded from any residential district beyond the property line.

**§ 266-68. Loading and unloading space.**

In addition to the off-street parking space required above, all commercial establishments, hospitals or sanitariums and other similar uses shall provide adequate off-street area for loading and unloading of supplies to and from vehicles.

**ARTICLE XI: Signs**

**§ 266-69. Erection and maintenance.**

Signs may be erected and maintained only when in compliance with the provisions of this chapter and all other ordinances and regulations relating to the erection, alteration or maintenance of signs and similar devices.

**§ 266-70. V Village, R-ST and R-MT Districts.**

- A. The following types of signs and no other shall be permitted in residential districts:
- (1) Signs advertising the sale or rental of the premises upon which they are erected by the owner or broker or any other person interested in the sale or rental of such premises may be erected and maintained, provided that:
    - (a) The area of one side of the sign is not in excess of six square feet.
    - (b) Not more than one sign is placed upon any property in single and separate ownership, unless such property fronts upon more than one street, in which event one such sign may be erected on each frontage.
    - (c) Signs shall be removed within seven days of final sale or rental.
  - (2) Signs advertising the sale or development of the premises upon which they are erected, when erected in connection with the development of the premises by a builder, contractor, developer or other person interested in such sale or development, may be erected and maintained, provided that:
    - (a) The area of one side of any sign is not in excess of 20 square feet.
    - (b) Not more than one sign is placed upon any property in single and separate ownership, unless such property fronts upon more than one street, in which event one such sign may be erected on each frontage.
    - (c) After completion of the development, sign(s) shall be removed at the Zoning Officer's discretion.
  - (3) Signs indicating the location and direction of premises available for or in process of development, but not erected upon such premises and having inscribed thereon the name of the owner, developer, builder or agent, may be erected and maintained, provided that:
    - (a) The area of one side of any such sign is not in excess of six square

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feet and not in excess of four feet in length.

- (b) Not more than one such sign is erected on each 500 feet of street frontage, with a maximum of five such signs.
- (4) Signs bearing the word "sold" or the word "rented," with the name of the person effecting the sale or rental, provided that the conditions in Subsection A(1)(a) hereof are complied with.
- (5) Signs of mechanics, painters and other artisans during the period such persons are performing work on the premises on which such signs are erected, provided that:
  - (a) The area of one side of any such sign is not in excess of 12 square feet.
  - (b) Such signs are removed promptly upon completion of the work.
- (6) Signs indicating the private nature of a driveway or trespassing signs, provided that the area of one side of any such sign shall not exceed two square feet.
- (7) Signs identifying schools, churches, libraries or other institutions of a similar nature, provided that:
  - (a) The area of one side of any such sign is not in excess of 30 square feet.
  - (b) Not more than one sign is placed on property in single and separate ownership, unless such property fronts upon more than one street, in which event one such sign may be erected on each frontage.
  - (c) In addition, one directory sign per property, not to exceed 20 square feet, may be placed on the property.
- (8) Identification signs are permitted for home occupations located in residential districts, provided that:
  - (a) Such signs shall be placed only on the property for which the home occupation has been authorized.
  - (b) The area of one side on any such sign shall not exceed two square foot.
  - (c) Not more than one such sign shall be placed on any property.
  - (d) Such signs may be illuminated if such lighting is shielded or indirect; however, neon signs shall not be permitted.
  - (e) Advertising statements appearing on the sign may contain a brief description of the services offered and shall not contain specific product brand names or trademarks.

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- (9) Business identification signs shall be permitted as provided below:
  - (a) One wall sign to a property, provided that it is attached to the wall of a building and projects horizontally not more than 12 inches therefrom and occupies not more than 20% of the total area of the front of the principal building. It shall not project above the roof ridge line.
  - (b) In no case shall a sign project out over a sidewalk.
  - (c) One projecting sign, provided that it shall not project beyond a vertical plane five feet inside the lot from the street line, with a minimum height of 10 feet
  - (d) One ground or pole sign not to exceed 100 square feet in area. It shall not extend beyond a vertical plane five feet inside the lot from the street line and shall not exceed a height of 35 feet.
- (10) Wall business signs are permitted, provided that:
  - (a) The total area of all wall signs, including business identification signs, for each establishment shall not exceed two square feet for each foot of length of the front building wall or length of that portion of such wall devoted to such establishment.
  - (b) Signs painted on or affixed to the inside or outside of windows shall be included in this computation, if their combined area exceeds 25% of the area of the window which they occupy.
  - (c) In no case, however, may the total area of wall signs, excluding business identification signs, exceed 15% of the area of the wall (including windows and door area) to which they are attached.
- (11) Ground or pole business signs are permitted, provided that:
  - (a) Only one such sign shall be permitted on each property, with the exception of those establishments having walls fronting on two or more streets in which case the sign area for each street may be computed separately.
  - (b) The area of any such sign shall not exceed one square foot for each three feet of lot frontage or 24 square feet, whichever is smaller.
  - (c) The maximum height of a freestanding ground business sign shall not exceed 12 feet, but in no case shall it exceed the height of the roof ridge line.
- (12) Nonilluminated, indirectly illuminated or directly illuminated business signs are permitted, provided that they create no objectionable glare or illumination on adjacent uses.
- (13) On-premises and/or off-premises signs necessary for the direction, regulation

and control of traffic; street name signs; legal notices; and other official signs which are similarly authorized or erected by a duly constituted governmental body. Such signs may be illuminated only as necessary or customary for traffic control or safety.

- (14) Public utility signs required in connection with the identification, operation or protection of public utility, provided that the area of one side of any such sign shall not exceed eight square feet.
- (15) Signs indicating direction may be erected along streets to direct vehicles or pedestrians to premises or businesses not located on such streets, but the access to which is from such streets. The following regulations shall apply:
  - (a) Directional signs shall be ground signs with a maximum area of six square feet per side.
  - (b) The content of the directional sign shall be limited to the name of the establishment and direction and distance information.
  - (c) Directional signs shall not be located more than 500 feet from an entrance or other street leading to the advertiser and shall be located in advance of such street or entrance and on the same side of the road as the advertiser's premises.
  - (d) Written permission from the landowner must be obtained before a directional sign can be erected on private property.
- (16) Restrictions on height of signs.
  - (a) Freestanding ground signs shall not exceed eight feet in height.
  - (b) Wall signs or portions of such signs shall not be located above the ceiling of the ground floor of any building or more than 12 feet above the average upper surface of the official street grade, whichever is less.
- (17) One non-commercial sign consistent with other regulation herein as to size, height, illumination and placement, up to 16 square feet which expresses opinion or political view or belief is permitted. <sup>237</sup>

**§ 266-71. Commercial Districts.**

The following types of signs and no other, shall be permitted in the C Commercial District:

- A. All signs permitted in the residential districts at the standards prescribed therein, except as otherwise provided in this section.

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<sup>237</sup> Amended Ordinance 2010-2 on May 3 2010, Added Section (17)



B. Business identification signs shall be permitted as provided below:

- (1) One wall sign to a business provided that it is attached to the wall of a building and projects horizontally not more than 2 Ft therefrom and occupies not more than 20% of the total area of the front of the building to which it is attached and shall not project above the roof ridge line.

Signs must be attached to the wall of the business they advertise, are at least 10 Ft above the ground or floor below and do not project more than 2 Ft over the sidewalk. Such signs shall meet the requirements of Appendix H of the currently adopted International Building Code and all other requirements of this Chapter. Where an incompatibility exists between the Code and this Chapter, the requirements of the Code shall govern. <sup>238</sup>

- (2) One projecting sign, provided that it shall not project beyond a vertical plane five feet inside the lot from the street line, with a minimum height of 10 feet.
- (3) One ground or pole sign not to exceed 100 square feet in area. It shall not extend beyond a vertical plane five feet inside the lot from the street line and shall not exceed a height of 35 feet.

C. Wall business signs are permitted, provided that:

- (1) The total area of all wall signs, including business identification signs for each establishment, shall not exceed two square feet for each foot of length of the front building wall or length of that portion of such wall devoted to such establishment.
- (2) Signs painted on or affixed to the inside or outside of windows shall be included in this computation, if their combined area exceeds 25% of the area of the window which they occupy.
- (3) In no case, however, may the total area of wall signs, excluding business identification signs, exceed 15% of the area of the wall (including windows and door area) to which they are attached.

D. Ground or pole business signs are permitted, provided that:

- (1) Only one such sign shall be permitted on each property, with the exception of those establishments having walls fronting on two or more streets in which case the sign area for each street may be computed separately.
- (2) The area of any such sign shall not exceed one square foot for each three feet of lot frontage or 24 square feet, whichever is smaller.
- (3) The maximum height of freestanding ground business signs shall not exceed 12 feet, but in no case shall it exceed the height of the roof ridge line.

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<sup>238</sup> Amended Ordinance 2015-2 on June 1 2015, Updated section 1, removed section 2

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- E. Nonilluminated, indirectly illuminated or directly illuminated business signs are permitted, provided that they create no objectionable glare or illumination on adjacent uses.
- F. Only those off-premises signs permitted in the residential districts at the standards prescribed therein shall be permitted.

### **§ 266-72. Billboards (off-premises advertising signs).**

Billboards or off-premises advertising sign structures, including poster panels, bulletins and the like, may be erected and maintained in the C Commercial District subject to the following regulations:

- A. Advertising sign structures shall be spaced at intervals of not less than 1,000 feet along the same side of any street or highway. No such structure shall contain more than two advertising sign facings.
- B. Advertising sign structures shall not exceed a total of 100 square feet in surface area.
- C. No advertising sign shall be permitted to be erected within 100 feet of an adjoining residential district if visible from and designed to face into such district.

### **§ 266-73. Special signs.**

Special signs shall be allowed in any district subject to the following:

- A. Temporary signs advertising home garage sales, yard sales and the like, as differentiated from signs advertising established commercial enterprises, may be erected in any zoning district subject to the following provisions:
  - (1) The area of one side of any such sign shall not exceed four square feet.
  - (2) Only one such sign may be erected on any one piece of property, unless such property fronts on two streets, in which case one sign is authorized on each street frontage.
  - (3) The sign shall be installed no earlier than one week prior to the sale and shall be removed within one day after the activity.
- B. Temporary signs advertising public auctions of sale, as differentiated from signs advertising established commercial enterprises, may be erected in any zoning district subject to the following provisions:
  - (1) Such signs shall be subject to the same provisions as in Subsection A above.
  - (2) Such signs may be erected no earlier than one month prior to the date of the sale and shall be removed within one day after the sale or auction.
- C. Temporary signs advertising nonprofit, charitable and similar events may be erected in any zoning district subject to the following provisions:
  - (1) The area of one side of any such sign shall not exceed 16 square feet.
  - (2) Such signs may be erected no earlier than one month prior to the date

of the event and shall be removed within one day after the event.

- D. Signs advertising nonprofit, charitable and similar organizations may be erected in any zoning district, provided that they do not exceed six square feet.

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- E. Holiday decorations displayed for recognized holidays shall be exempted from the provisions of this chapter, except as they may cause glare, interfere with traffic safety or in any other way become a public safety hazard.

- F. Signs, including advertising signs, of no larger than 32 square feet shall be allowed when attached to the inside of an outfield fence at a borough baseball field. Such signs shall be maintained by the organization responsible for the maintenance of the baseball field under a written contract with the advertiser. The Borough Council reserves the right to review the contract and approve the design of the sign. [Added 3-2-1992 by Ord. No. 92-1]

**§ 266-74. General regulations.**

- A. Computation of sign area.
  - (1) The area of a sign shall be construed to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed, but not including any supporting framework and bracing incidental to the display itself.
  - (2) Where the sign consists of individual letters or symbols attached to a building, wall or window, the area shall be considered to be that of the smallest rectangle or other regular geometric shape which encompasses all of the letters and symbols.
  - (3) In computing square foot area of a double-faced sign, only one side shall be considered, provided that both faces are identical. If the interior angle formed by the two faces of the double-faced sign is greater than 45°, then both sides of such sign shall be considered in calculating the sign area.
- B. Signs must be constructed of durable materials, maintained in good condition and not allowed to become dilapidated.
- C. No signs will be permitted to project over a public cartway.
- D. Signs projecting beyond the property lines shall be not less than 10 feet above public right-of-way areas. Ground signs shall not be permitted between any portion of a public sidewalk and the curb line.
- E. Signs shall not project above the height limit permitted in any district in which they are located.

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- F. All signs erected within the right-of-way of a state highway shall be in accordance with the regulations of the Pennsylvania Department of Transportation.
- G. A permit shall be required for the erection, alteration or reconstruction of billboards or advertising sign boards, including poster panels, bulletins and the like.
- H. All signs shall be removed when the circumstances leading to their erection no longer applies.
- I. Any sign lawfully existing at the time of the passage of this chapter that does not conform with the regulations of the district in which such sign is located shall be considered nonconforming and may continue subject to the following provisions:
  - (1) Signs which are nonconforming by reason of their absolute prohibition shall be removed within five years following enactment of this chapter or from any other date of the establishment of their nonconformity.
  - (2) Signs which are nonconforming by reason of dimensions may continue in their present location until replacement or rebuilding becomes necessary, at which time a zoning permit will be required and the sign brought into conformity with this chapter.

### **§ 266-75. Signs prohibited in all districts.**

The following signs shall not be permitted, erected, constructed or maintained in any zoning district, notwithstanding anything contained in this part or elsewhere. Such signs which are prohibited shall be removed or brought into conformity with the provisions of this article within three years after this chapter is enacted.

- A. Signs which incorporate in any manner any flashing or moving illumination or with illumination which varies in intensity or color and signs which have any visible revolving parts or visible mechanical movement of any description or other apparent visible movement achieved by electrical pulsation or by action of normal wind currents. Hanging signs which simply swing in the wind and clock, time or temperature signs and barber poles shall not be considered as a prohibited sign as long as they comply with the other provisions of this chapter.
- B. Light sources which cast light on signs shall be shielded by opaque material so that the bulbs, floodlights or tubes are not visible off the property on which the signs are located.
- C. Signs advertising activities that are illegal under federal, state or local laws, regulations or ordinances as applied to the location of a particular sign or the location of such activities.
- D. Signs which by reason of size, location, movement, content, coloring or manner of illumination obstruct the vision of drivers either when leaving or entering a public street from another street or driveway and/or obstruct or detract from the visibility or effectiveness of any traffic control device or traffic sign on a public street.
- E. Signs which make use of words such as "stop," "look," "one-way," "danger," "yield,"

"go slow," "caution" or any similar words, phrases, symbols, lights or characters in such a manner as to interfere with, mislead or confuse traffic or which imitate an official traffic sign or signal.

- F. Signs which advertise an activity, business, product or service no longer produced or conducted. In such case, such sign shall be removed within 30 days after the same is no longer produced or conducted.
- G. Signs which are placed or located within the public right-of-way, except with written permission of the Borough. <sup>240</sup>
- H. Signs painted on, pasted or attached to or supported by utility poles, fences, trees or other natural objects.
- I. Signs which consist of pennants, spinners, banners, streamers or searchlights, except for occasions such as grand openings and then only with permission of the borough for such an activity limited to a period of 15 days.
- J. Signs which obstruct free ingress to or egress from a fire escape, door, window or other exit way.
- K. Signs which are structurally unsafe or in a state of disrepair.

**§ 266-76. Permit application and fees.**

No person shall erect, cause to be erected, change or alter any sign on any property within the borough until a permit for the same has been issued by the Zoning Officer. Property owners who authorize or allow any sign on their property shall ensure that all provisions of this chapter are adhered to and shall comply with the following provisions:

- A. Application for a permit shall be made on an authorized borough form and shall be accompanied by the following:
  - (1) A detailed scale drawing showing the sign and its intended location.
  - (2) A description of its type, construction, manner and method of installation and materials to be used.
  - (3) Written authorization of the owner or lessee of the property, if other than the applicant.
  - (4) A permit fee, as established by resolution of the Borough Council.
- B. For the purpose of this chapter, the terms "alter" or "change" shall not be interpreted to include routine maintenance.

**§ 266-77. Exemptions from permits and/or fees.**

- A. A permit and fee shall not be required for the following signs:

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<sup>240</sup> Amended Ordinance 2010-2 on May 3 2010, Update section G

- (1) Official state and municipal signs.
  - (2) Temporary signs.
  - (3) Signs permitted under the provisions of § 266-70 A, B, C, D, E, F, I and J herein.
- B. Exemption from obtaining a permit and paying a fee does not release the person responsible for posting the sign from compliance with other standards or provisions of this chapter and/or other applicable ordinances, codes or laws.

## **ARTICLE XII: Solar Energy Access Provisions**

### **§ 266-78. General provisions.**

No building permit or zoning variance involving the use of a solar energy system shall be granted unless the following requirements have been met:

- A. The planned solar energy unit must be sited and designed so as to be at a height, location and angle to the sun in order to minimize the possibility that future development of nearby property will not result in interference with the solar energy system's access to solar energy.
- B. The planned solar energy system must be of a size related to the present and anticipated energy needs of the structures to which it will supply energy.
- C. At the time that application for the building permit is made, sufficient solar energy must be available to meet the design capacity of the solar energy system at the specified location where the solar energy system will be installed.
- D. If development consistent with existing zoning or the natural growth of vegetation on nearby land would interfere with the planned solar system, the applicant for a building permit involving solar energy must either acquire a privately negotiated easement to limit future development and/or provide for the trimming or elimination of such vegetation or provide a written statement expressly waiving his right to the solar energy such future development or growth would obstruct, and a copy of either the easement or the statement must be filed with the Zoning Officer.

### **§ 266-79. Solar access protection.**

In cases for which building permits involving the construction or installation of solar energy systems are granted, each property whose owner was notified of the solar energy building permit application pursuant to § 266-80 of this article shall be burdened by the creation of a solar skyspace easement declaring that development of height, bulk and configuration which would present an interference with the solar energy system to a degree greater than that allowed by existing zoning at the time the solar building permit was granted would constitute an impermissible interference and shall not be permitted. This provision, however, shall not be interpreted as precluding the creation and recording of private easements which afford a greater degree of solar access protection than afforded by this provision.

### **§ 266-80. Procedure for obtaining solar access protection.**

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The following procedure is established for building permit applicants who wish to secure solar access protection as provided by this chapter:

- A. The permit applicant shall send written notice by registered or certified mail to the neighboring property owners from whom protection is sought. Evidence that such notice has been mailed to the appropriate neighboring land owners not less than 30 days before filing the permit application shall be submitted at the time of filing.
- B. Neighboring property owners shall have the right to object to the planned solar energy system insofar as it fails to meet the requirements of § 266-78 of this article or unduly infringes upon potential development rights.
- C. Objections by neighboring property owners shall be considered before a building permit is issued, provided that objections are received by the Zoning Officer within 30 days after such notification has been given by the permit applicant.
- D. Applications for solar building permits for which no objections are filed shall be approved, provided that all other provisions of this Zoning Ordinance have been satisfied. Solar access protection shall be granted as provided by § 266-79 of this article.
- E. In all cases involving the filing of objection to building permits involving solar energy use, a final determination regarding the issuance of a permit for the construction or installation of a solar energy system shall rest with the Zoning Hearing Board.

### **§ 266-81. Solar sky space easements.**

- A. Solar sky space easements, whether pursuant to the provisions of this chapter or privately negotiated, shall be subject to the same conveyancing and instrument recording requirements as other easements and shall be created in writing on forms supplied by the Zoning Officer. Any such easements shall be appurtenant, shall run with the land benefited and burdened and shall be defined and limited by conditions stated in the instrument of conveyance.
- B. Instruments creating a solar sky space easement shall include but need not be limited to:
  - (1) A permanently identifiable description of the sky space above the burdened land into which trees, buildings and/or other obstructions as specified by the easement shall not be permitted to encroach.
  - (2) Any terms or conditions under which the solar sky space easement is granted or will be terminated.
  - (3) Any provision for compensation of the owner of the land benefiting from the solar sky space easement or compensation of the owner of the land burdened by the solar sky space easement for maintaining of the easement.

### **§ 266-82. Determination of impermissible interference.**

- A. Prior to consideration of a request for the granting of a zoning variance, change in

zoning category or similar action by the Zoning Hearing Board, a determination of potential impermissible interference shall be made by the Zoning Officer. The Zoning Officer shall notify the applicant and any protected solar energy system owner by registered or certified mail if he finds that the applicant is obligated not to interfere with the solar access of the solar energy system owner and that there is a reasonable possibility that the proposed development could create an impermissible interference. If the Zoning Officer determines that an impermissible interference could occur, all interested parties shall be allowed to appear and present evidence before the Zoning Hearing Board. The Zoning Hearing Board shall make a factual determination as to whether an impermissible interference will occur, but may request the recommendation of the Planning Commission in that determination, if it so chooses. <sup>241</sup>

- B. If the Zoning Hearing Board finds that no impermissible interference will occur, the zoning variance or change in zoning category may be granted, provided that all other requirements of this chapter have been met.
- C. If the Zoning Hearing Board finds that an impermissible interference will occur, the zoning variance or change in zoning category shall not be granted unless the parties reach a private agreement whereby the owner of the solar energy system waives all or part of the rights to solar access protected by this chapter.

**§ 266-83. Recording of affected properties.**

In addition to the recording and conveyancing requirements normally required of easements, the Zoning Officer shall keep a map showing the location of all solar energy systems for which building permits have been granted. This map shall indicate which properties are encumbered by easements to protect solar energy systems and shall be accessible to the general public upon request.

**§ 266-84. Removals.**

All solar energy access rights shall be extinguished if the solar energy unit is removed and not replaced or not used for a period of two years, excluding time spent on repairs or improvements.

**§ 266-85. Existing solar energy systems.**

Any solar energy system existing as of the effective date of this chapter and complying with the requirements of § 266-78 may acquire the protections hereunder by following the procedures indicated in § 266-80 of this chapter and by protection of access to solar energy pursuant to this chapter.

**ARTICLE XIII: Motor Vehicle Access**

**§ 266-86. General regulations.**

Wherever motor vehicle access is provided from the street (or private road) onto the lot, the

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<sup>241</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).



following regulations shall apply:

- A. Driveways and curbs. Access to the lot shall comply with the following regulations:
- (1) Access shall be by not more than two driveways for each 100 feet of frontage on any street.
  - (2) Each driveway shall be paved and shall be not more than 35 feet in width, measured at right angles to the center line of the driveway, except as increased by permissible curb return radii. The entire flare of any return radius shall fall within the right-of-way.
  - (3) Driveways shall not cross the street right-of-way line within 40 feet of the street right-of-way line of an intersecting street and in no case less than 10 feet from the point of tangency when the intersecting street lines are joined by a curve. Notwithstanding the above and when deemed necessary for safety by the Planning Commission and/or the governing body, this dimension shall be increased for driveways into commercial, public or institutional uses.
  - (4) Driveways shall not cross the street right-of-way within five feet of a fire hydrant, catch basin or drain inlet.
  - (5) Driveways shall not cross the street right-of-way within 40 feet of another driveway on the same lot, except that in the case where dual access drives are deemed necessary to permit safe ingress and egress, these dimensions may be reduced to not less than 12 feet between the two access drives.
  - (6) Driveways shall not cross the street right-of-way in all multifamily and commercial districts within 20 feet of a property line unless two adjoining property owners mutually agreed in a legally recorded instrument to a common driveway.
  - (7) For non-dwelling uses, where there is an existing curb and gutter or sidewalk on the street, a safety island along the entire frontage of the property shall be provided except for the permitted driveways. On the two ends and street side of each such island shall be constructed a concrete curb (accessible to the handicapped), the height, location and structural specifications of which shall be approved by the Borough Engineer. Maximum and minimum curb return radii permitted and minimum driveway approach angles to the center line of the street are required as shown on Plate 1, attached to this chapter as if fully described and detailed herein. <sup>242</sup>
  - (8) General safety requirements: sight distance. Driveways shall be located in safe relationship to sight distance and barriers to vision and shall not exceed a slope of 10% within 12 feet of the street line. Where drives enter a bank through a cut, unless a retaining wall is used, the side slopes of the cut shall be graded to not more than one foot vertical to three feet horizontal within 10

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**242. Editor's Note: Said Plate 1 is on file in the borough offices.**

feet of the point the drive intersects with the right-of-way line.

- (9) Submission of plan. A scale drawing of proposed off-street parking and loading areas, access drives and walks shall be submitted as part of the required plot plan. Any plan requiring access onto a state highway shall be approved by the Pennsylvania Department of Transportation in addition to Borough Council approval.
- B. Location of gasoline pumps. Gasoline pumps and all other service equipment shall be set back not less than 25 feet from any street line and shall be so located that vehicles stopped for service will not extend over the property line.

#### **ARTICLE XIV: Administration and Enforcement**

##### **§ 266-87. Amendments.**

The Borough Council may, from time to time, on its own motion or on petition or recommendation of the Planning Commission, amend, supplement or repeal any of the regulations and provisions of this chapter after public notice and hearing. Before the public hearing, each proposed amendment, except those coming from the Planning Commission, must be referred to the Planning Commission for its recommendations at least 30 days prior to the hearing on such amendment. If, after any public hearing held upon an amendment, the proposed amendment is reversed or further revised to include land not previously affected by it, the Borough Council shall hold another public hearing before proceeding to vote on the amendment. At least 30 days prior to the hearing on the ordinance or amendments by the local governing body, borough and planning agency shall submit the proposed ordinance or amendments to the county planning agency for recommendations.

##### **§ 266-88. Curative amendments.**

The procedures upon curative amendments shall be in accordance with the requirements of the Pennsylvania Municipalities Planning Code, Act 247, as amended, Section 609.1. <sup>243</sup>

##### **§ 266-89. Content of public notice.**

Public notices of proposed zoning ordinances and amendments shall include either the full text thereof or a brief summary setting forth the principal provisions in reasonable detail and a reference to a place within the municipality where copies of the proposed ordinance or amendment may be examined, in addition to the time and place of hearing.

##### **§ 266-90. Publication after enactment.**

After enactment, if the advertisement of a zoning ordinance or amendment is required by other laws, the advertisement may consist solely of a reference to the place or places within the municipality where copies of such ordinances or amendment shall be obtainable for a charge not greater than the cost thereof and available for examination without charge. Zoning ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.

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<sup>243</sup>. Editor's Note: See 53 P.S § 10101 et seq.

**§ 266-91. Appointment and powers of Zoning Officer.**

For the administration of this Zoning Ordinance, a Zoning Officer, who may not hold any elective office in the municipality, shall be appointed. The Zoning Officer shall administer the Zoning Ordinance in accordance with its literal terms and shall not have the power to permit any construction or any use or change of use which does not conform to the Zoning Ordinance.

**§ 266-92. Enforcement.**

It shall be the duty of the Zoning Officer and he is hereby given the power and authority to enforce the provisions of this chapter. The Zoning Officer shall examine all applications for permits, issue permits for construction and uses which are in accordance with the requirements of this chapter, record and file all applications for permits with accompanying plans and documents and make such reports as the Borough Council may require. Permits for construction and uses which require a variance or determination of impermissible interference shall be issued only upon written order of the Zoning Hearing Board.

**§ 266-93. Zoning appeals.**

All appeals from decisions of the Zoning Officer shall be taken in the manner set forth in Article X, Pennsylvania Municipalities Planning Code (Act 247), as amended. <sup>244</sup>

**§ 266-94. Zoning Hearing Board.**

The Borough Council shall appoint a Zoning Hearing Board, which shall have three members and such powers and authority as set forth in Article IX of Act 247 of the Commonwealth of Pennsylvania, as enacted or hereafter amended. <sup>245</sup> The duly established Zoning Hearing Board shall have the following functions:

- A. Hearings. The Board shall conduct hearings and make decisions in accordance with Section 908, Pennsylvania Municipalities Planning Code (Act 247), as amended. <sup>246</sup> Notice shall be given to the public, the applicant, the County Planning Agency, the Zoning Officer, such other persons as the Borough Council shall designate by ordinance and any person who has made timely request for the same. Upon the filing with the Zoning Hearing Board of an appeal or of an application for a variance from the terms of the Penbrook Borough Zoning Ordinance, the Zoning Hearing Board shall fix a time and place for a public hearing thereon and shall give notice thereof as follows:
- (1) By delivering or mailing notice thereof to the parties in interest.
  - (2) By posting a notice thereof in a conspicuous place on the premises in question and at least five notices thereof in other conspicuous places in the neighborhood, each such notice to be posted at least five days prior to the

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<sup>244</sup>. Editor's Note: See 53 P.S § 10101 et seq.

<sup>245</sup>. Editor's Note: See 53 P.S § 10101 et seq.

<sup>246</sup>. Editor's Note: See 53 P.S § 10101 et seq.

date fixed for the hearing.

- (3) When the Board shall so order, by mailing notice thereof to the owner or owners, if the residence is known, or to the occupier or occupiers of every lot on the same street within 500 feet of the lot or building in question and of every lot not on the same street within 150 feet of said lot or building, provided that failure to give a notice required by this subsection shall not invalidate any action taken by the Board.
  - (4) By mailing a notice thereof to every resident or association of residents of the borough who shall have registered their names and addresses for this purpose with the Zoning Hearing Board.
  - (5) That notice herein required shall state the location of the building or lot and the general nature of the question involved.
- B. Appeals. The Board shall hear and decide appeals where it is alleged by the appellant that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of this chapter or map or any valid rule or regulation governing the action of the Zoning Officer. Nothing contained herein shall be construed to deny to the appellant the right to proceed directly in court where appropriate.
- C. Challenge to validity. Except as provided in Subsection D below relating to variances, the Board shall have no power to pass upon the validity of any provision of an ordinance or map adopted by the Borough Council. Recognizing that challenges to the validity of an ordinance or map may present issues of fact and interpretation which may lie within the special competence of the Board and to facilitate speedy disposition of such challenges by a court, the Board may hear all challenges wherein the validity of the ordinance or map presents any issue of fact or interpretation not hitherto properly determined at a hearing before another competent agency or body and shall take evidence and make a record thereon as provided in Subsection A above. At the conclusion of the hearing, the Board shall decide all contested questions of interpretation and make findings on all relevant issues of fact, which shall become part of the record on appeal to court.
- D. Variances. The Board shall hear requests for variances where it is alleged that the provisions of the Zoning Ordinance inflict unnecessary hardship upon the applicant. The Board shall prescribe the form of application and require preliminary application to the Zoning Officer. The Board may grant a variance, provided that the following findings are made where they are relevant in a given case:
- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the Zoning Ordinance in the neighborhood or district in which the property is located;

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- (2) That, because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and the authorization of a variance is therefore necessary to enable the reasonable use of the property;
  - (3) That such unnecessary hardship had not been created by the appellant;
  - (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
  - (5) That the variance, if authorized, will represent the minimum variance which will afford relief and represent the least modification possible of the regulation in issue. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Zoning Ordinance.
- E. Parties appellant before the Board. Appeals under Subsection B above and proceedings to challenge an ordinance under Subsection C above may be filed with the Board, in writing, by any officer or agency of the Borough of Penbrook or any person aggrieved. Requests for a variance under Subsection D above may be filed with the Board by any landowner or any tenant with the permission of such landowner.
- (1) Time limitations. The time limitations for raising certain issues and filing certain proceedings with the Board shall be the following:
    - (a) No issue of alleged defect in the process of enactment of any ordinance or map or any amendment thereto shall be raised in any proceeding filed with the Board later than 30 days from the time such ordinance, map or amendment takes effect, unless the person raising such issues alleges and proves that he failed to receive adequate notice of the enactment or amendment. If such person has succeeded to his interest after the enactment of the ordinances, adequate notice to his predecessor in interest shall be deemed adequate notice to him.
    - (b) No person shall be allowed to file any proceeding with the Board later than 30 days after any application for development, preliminary or final, has been approved by an appropriate Borough of Penbrook officer, agency or body if such proceeding is designed to secure reversal or limit the approval in any manner, unless such person alleges and proves that he failed to receive adequate notice of such approval. If such person has succeeded to his interest after such approval, adequate notice to his predecessor in interest shall be deemed adequate notice to him.
  - (2) Stay of proceedings. Upon filing of any proceeding referred to in this subsection and during its pendency before the Board, all land development

pursuant to any challenged ordinance order or approval of the Zoning Officer or any agency or body and all official action thereunder shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the Board facts indicating that such stay would cause imminent peril to life or property; in which case, the development or official action shall not be stayed otherwise than by a restraining order which may be granted by the Board or the court having jurisdiction of zoning appeals on petition after notice to the Zoning Officer or other appropriate agency or body.

- F. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the Board. The question of whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court.

**§ 266-95. Permits.**

- A. Requirements of Permits. A zoning permit shall be required prior to the erection or addition of any building structure, or portions thereof:
1. Construction or installation of a solar energy system.
  2. Alteration or extension of a nonconforming use.
  3. Change of use.
  4. Operation of an in-home daycare or home occupation.

It shall be unlawful for any person to commence work for the erection or alteration of any building or for a change in land use until a permit has been duly issued therefor.<sup>247</sup>

- B. Application for permits. All applications for permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the exact size and location of any buildings existing on the lot, an indication, if required, of the shadows potentially cast by the proposed structures, existing buildings and mature landscaping at 9:00 a.m., 12:00 noon and 3:00 p.m. on the date of the winter solstice, the lines within which the proposed building or structure shall be erected or altered, the existing and intended use of each building or part of a building, the number of families or dwelling units the building is designed to accommodate; plot diagrams for structures proposed to use solar energy systems shall also require an indication of each neighboring property potentially posing an impermissible interference; and such information as may be necessary to determine

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<sup>247</sup> Amended Ordinance 2019-5 on October 7 2019, Update section A

compliance with this chapter and all other pertinent ordinances. One copy of such plans shall be returned to the owner when such plans shall be approved by the Zoning Officer. All applications with accompanying plans and documents shall become a public record after a permit is issued or denied.

- C. Issuance of permits. No permit shall be issued until the Zoning Officer has certified that the proposed building, addition or alteration does not represent an impermissible interference with a protected solar energy system and if, in the case of a solar building permit, no objections have been filed and a determination of an impermissible interference with a solar building permit for which valid objections have been filed complies with all the provisions of this chapter, as well as with all the provisions of an existing or hereafter enacted Building Code. If the Zoning Officer determines that there is a reasonable possibility that the proposed development could create an impermissible interference, he shall so notify the applicant as provided in Article XII. A permit issued hereunder shall become void 12 months after the issuance date.
- D. Temporary zoning permits. A temporary zoning permit may be authorized by the Zoning Hearing Board for a nonconforming structure or use which it deems necessary to promote the proper development of the community, provided that such nonconforming structure or use shall be completely removed upon expiration of the permit without cost to the municipality. Such permits shall be issued for a specified period of time not to exceed one year and may be renewed annually for an aggregate period not exceeding three years.
- E. Certificate of nonconformance. A certificate of nonconformance shall be issued by the Zoning Officer to the owner of any property which, at the time of the effective date of this chapter, is identified as a nonconforming use. The owner's property and the issuance of such certificates shall be registered in the records of the municipality as follows:
  - (1) Such certificates of nonconformance shall be issued within 180 days after the effective date of this chapter.
  - (2) The certificate of nonconformance shall set forth in detail all of the nonconforming conditions of said property.
  - (3) A copy of the certificate of nonconformance shall be retained by the Zoning Officer for the municipal registration.
  - (4) The certificate shall be for the purposes of ensuring the owner the right to continue a nonconforming use in accordance with the regulations of this chapter.

**§ 266-96. Fees.**

- A. The Borough Council shall establish a schedule of fees, charges and expenses, as well as collection procedure for zoning permits, certificates of occupancy, appeals, variances, conditional uses, special exceptions, amendments, bonds and other matters pertaining to this chapter. The schedule of fees shall be posted in the office of the Zoning Officer.

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- B. Such fees shall be payable to the borough, and until all applicable fees, charges and expenses have been paid in full, the applications shall be considered incomplete and no action shall be taken on any application of appeal.

### **§ 266-97. Inspection by the Zoning Officer.**

It shall be the duty of the Zoning Officer or his duly appointed representative to make the following minimum number of inspections of the property:

- A. A meeting at the site prior to the issuance of a building permit.
- B. At the beginning of construction.
  - (1) A record shall be made indicating the time and date of inspection and the finding of the Zoning Officer in regard to conformance of the construction with plans submitted with the application for the building.
  - (2) If the actual construction does not conform to the application, a written notice of a violation shall be issued by the Zoning Officer and such violation shall be discontinued. Upon proper correction of the violation and receipt of written notice from the Zoning Officer, construction shall proceed.
- C. At the completion of construction. A record shall be made indicating the time and date of the inspection, the findings of the Zoning Officer in regard to conformance to this chapter and the opinion of the Zoning Officer in regard to the issuance of a certificate of use permit.

### **§ 266-98. Certificate of use.**

- A. A certificate of use shall be a statement issued by the Zoning Officer setting forth either that a building, structure or parcel of land complies with the provisions of this chapter or that a building or structure lawfully may be employed for specified uses under the provisions of this chapter, or both.
- B. No vacant land shall be occupied or used and no structure or part of a structure hereafter erected, substantial improved or changed in use shall be occupied or used until a certificate of use shall have been issued by the Zoning Officer.
- C. A certificate of use for the use or occupancy of vacant land or for a change in the use of land or for a change in the use of an existing building, either for whole or part of a new building, shall be applied for coincident with the application for a building permit and shall be issued within 15 days after a final inspection and approval by the Zoning Officer.
- D. A certificate of use for changing or extending a nonconforming use, existing at the time of the passage of this chapter or of an amendment thereto, shall be applied for and issued before any such nonconforming use shall be changed or extended. Such certificate shall be changed or extended. Such certificate shall be issued within 15 days after a final inspection and approval by the Zoning Officer.
- E. A record of all certificates of use shall be kept on file in the office of the Zoning Officer and a copy shall be furnished on request to any person having a proprietary



or tenancy interest in the building or land affected.

**§ 266-99. Violations and penalties.**

Failure to comply with any provision of this chapter, failure to secure a building permit or Zoning Hearing Board certificate, when required, previous to the erection, construction, extension or addition to a building or failure to secure a certificate of use shall be violations of this chapter.

- A. Notice of violation. When written notice of a violation of any of the provisions of this chapter has been served by the Zoning Officer on the owner, agent, occupant or contractor of a building, such violation shall be discontinued immediately.
- B. Causes of action. In case any building, structure, landscaping or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained or used in violation of this chapter, the proper officer of the borough or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land or to prevent in or about such premises any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the municipality at least 30 days prior to the time the action is begun by serving a copy of the complaint on the governing body of the municipality. No such action may be maintained until such notice has been given.
- C. Enforcement remedies.
  - (1) Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this chapter shall, upon being found liable therefor in a civil enforcement proceeding commenced by the municipality, pay a judgment of not more than \$500, plus all court costs, including reasonable attorney fees incurred by the municipality as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the District Justice determining that there has been a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the District Justice, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of zoning ordinances shall be paid over to the municipality.
  - (2) The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the

violation and judgment.

- (3) Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the municipality the right to commence any action for enforcement pursuant to this section.

**§ 266-100. Appeals.**

- A. An appeal or application for a variance from the terms of this chapter may be filed with the Zoning Officer and shall state:
  - (1) The name and address of the applicant.
  - (2) The name and address of the owner of the real estate to be affected by such variance.
  - (3) A brief description and location of the real estate to be affected by such proposed change.
  - (4) A statement of the section of this chapter under which the variance may be allowed and reasons why it should be granted.
  - (5) A reasonably accurate description of the present improvements and the additions intended to be made under this application, indicating the size of such proposed improvements, materials and general construction thereof. In addition, there shall be attached a plat of the real estate to be affected, as required to accompany applications for building permits, indicating the location and size of the lot and size of improvements now erected and proposed to be erected thereon.
- B. All appeals from determinations by the Zoning Officer under this section shall be to the Zoning Hearing Board within 30 days of the date of the determination.

**§ 266-101. Interpretation, purpose and conflict.**

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare. It is not intended to interfere with or abrogate or annul other rules, regulations or ordinances, provided that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of a building or requires larger open spaces than are imposed by such other rules, easements, covenants, restrictions, regulations or ordinances, the provisions of this chapter shall control.

**Appendix A: Joint Parking Agreement, Borough of Penbrook**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, with principal offices at \_\_\_\_\_ the owner real estate on which parking is being provided (hereinafter "Grantor") and \_\_\_\_\_ with principal offices at \_\_\_\_\_, to whom parking is being supplied (hereinafter "Grantee" Grantor certifies that all parties with ownership or equitable interest in the property herein have joined in this Agreement.

WHEREAS, the Borough of Penbrook has certain parking requirements by Ordinance for each business in the Borough; and

WHEREAS, Grantee wishes to establish a business in the Borough of Penbrook, which businesses is identified as \_\_\_\_\_, requiring \_\_\_\_\_ parking spaces under existing Borough Codes, which business shall be operated in the Borough of Penbrook at \_\_\_\_\_; and.

WHEREAS, without this Agreement Grantee has only \_\_\_\_\_ qualifying parking spaces or \_\_\_\_\_ fewer than required by Ordinance; and

WHEREAS, Grantor is the owner of real property in the Borough of Penbrook at \_\_\_\_\_, being the owner of the same by deed dated the \_\_\_\_\_ day of \_\_\_\_\_ and recorded in the office of the Recorder of Deeds in Dauphin County in Deed Book \_\_\_\_\_, Volume \_\_\_\_\_, Page \_\_\_\_\_; and

WHEREAS, Grantor has excess parking space beyond that required by Ordinance by his or her own property or used during different hours than Grantee's grant of use, adequate to accommodate Grantee and has made no prior commitment to rent, lease or jointly park or otherwise encumbering the use of such area; and

WHEREAS, both Grantor And Grantee understand that this deed will be recorded in the office of the Recorder of Deeds and will run in perpetuity so long as Grantee or its successor operates a business at the location set forth herein and requires parking; and

WHEREAS, Grantor and Grantee both understand and agree that this Agreement shall have the benefit of the Borough of Penbrook and shall be enforceable by the Borough of Penbrook.

NOW, THEREFORE, in exchange for One (\$1.00) Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Recitals: The recitals set forth above are incorporated herein.

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2. Grant of Joint Parking Agreement: The Grantor herein, the owner of real property at \_\_\_\_\_ in the Borough of Penbrook, Dauphin County, Pennsylvania hereby grants a permanent and perpetual easement and right of use to Grantee, its business invitees and employees and others visiting the business set forth herein run by Grantee or its successors, and no less than \_\_\_\_\_ spaces being located as follows: \_\_\_\_\_

The use of such parking area is not restricted (or if restricted is restricted to the extent:

---

3. Maintenance: The parties understand that the identified parking which exists in the Borough of Penbrook must be maintained including capital maintenance such as paving and periodic maintenance such as cleaning, trimming vegetation or removing snow. The parties agree that the same shall be performed and paid for as follows:

---

4. Enforcement: It is the intent of the parties that this Agreement be recorded in the Office of the Recorder of Deeds of Dauphin County and that, to be effective, the Borough of Penbrook may require a recorded copy be supplied to it. It is further intended that the Borough of Penbrook has the right to enforce this Agreement, including the right to require the parking set forth herein be provided from Grantor to Grantee or its successors and that all cost of enforcement, including court costs, filing fees, service charges and reasonable attorney fees shall be paid by either party hereto breaching this Agreement.

5. Termination: This Agreement may be terminated only with the written agreement of Grantee or its successor and assign and the written agreement of the Borough of Penbrook.

6. In Perpetuity: The Agreement shall run for so long as Grantee or its successor operates the use set forth herein or any successor use requiring parking and shall bind Grantor(s) and Grantee(s) and their successors and assigns.

7. Governing Law: This Agreement shall be governed under the laws of the Commonwealth of Pennsylvania with jurisdiction and venue for all disputes vesting in the Dauphin County Court of Common Pleas. This Agreement is the entire agreement between the parties with regard to the subject matter hereof.

8. Certification: Grantee certifies that the parking spaces identified herein are no further than six hundred (600) feet from the primary entrance of the business identified as the business of the Grantee to be served by such parking spaces. See attached drawing. The parties attach hereto, as Exhibit "A", drawn to scale showing the location of each of the uses for the parking for the facility identified herein, the parking area covered by this agreement and the primary entrance of each use.

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ATTEST:

\_\_\_\_\_

\_\_\_\_\_

Grantor

\_\_\_\_\_

Grantor

\_\_\_\_\_

\_\_\_\_\_

Grantor

\_\_\_\_\_

Grantor

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ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF \_\_\_\_\_ :

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public, in and for the county and state, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires:

\*\*\*\*\*

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF \_\_\_\_\_:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public, in and for the county and state, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires:

**Appendix B: Regulation of Medical Marijuana**

**[HISTORY: Adopted by the Borough Council of the Borough of Penbrook 10-3-2016 by Ord. No. 2006-5.]**

**§ Section 1 - DISTRICT REGULATION**

- A. Academic Clinical Research Centers are permitted in the Commercial Zone with consideration for the applicable performance standards found in the Section 3 of this ordinance.
- B. Medical Marijuana Grower/Processors are permitted in the Commercial Zone with consideration for the applicable performance standards found in the Section 3 of this ordinance.
- C. Medical Marijuana Delivery Vehicle Offices are permitted in the Commercial Zone, with consideration for the applicable performance standards found in the Section 3 of this ordinance.
- D. Medical Marijuana Dispensaries are permitted in the Commercial Zone with consideration for the applicable performance standards found in the Section 3 of this ordinance.

**§ Section 2 - DEFINITIONS**

**ACADEMIC CLINICAL RESEARCH CENTER (LAB)** - An accredited medical school within this Commonwealth that operates or partners with an acute care hospital licensed within this Commonwealth.

**CAREGIVER** - The individual designated by a patient to deliver medical marijuana.

**CERTIFIED MEDICAL USE** - The acquisition, possession, use or transportation of medical marijuana by a patient, or the acquisition, possession, delivery, transportation or administration of medical marijuana by a caregiver, for use as part of the treatment of the patient's serious medical condition, as authorized by the certification by the Commonwealth

**CLINICAL REGISTRANT** - An entity that:

- 1. Holds a permit both as a grower/processor and a dispensary; and
- 2. Has a contractual relationship with an academic clinical research center under which the academic clinical research center or its affiliate provides advice to the entity, regarding, among other areas, patient health and safety, medical applications and dispensing and management of controlled substances.

**DISPENSARY** - A person, including a natural person, corporation, partner association, trust or other entity, or any combination thereof, which holds a permit issued by the Department of Health

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(DOH) of the Commonwealth to dispense medical marijuana.

**FORM OF MEDICAL MARIJUANA** - The characteristics of the medical marijuana recommended or limited for a particular patient, including the method of consumption and any particular dosage, strain, variety and quantity or percentage of medical marijuana or particular active ingredient.

**GROWER/PROCESSOR** - A person, including a natural person, corporation, partnership, association, trust or entity, or any combination thereof, which holds a permit from the DOH to grow and process medical marijuana.

**IDENTIFICATION CARD** - A document issued by the DOH that permits access to medical marijuana.

**MEDICAL MARIJUANA** - Marijuana for certified medical use as legally prescribed by the Commonwealth of Pennsylvania with Act 16 of 2016.

**MEDICAL MARIJUANA ORGANIZATION** - A dispensary or a grower/processor of marijuana for medical purposes.

**MEDICAL-MARIJUANA DELIVERY VEHICLE OFFICE** - Any facility used to house delivery vehicles for supplying marijuana plants or seeds to one or more marijuana grower/processors and/or dispensaries.

**REGISTRY** - The registry established by the DOH for all medical marijuana organizations and practitioners.

### **§ Section 3 - USE REGULATIONS**

#### **A. ACADEMIC CLINICAL RESEARCH CENTERS**

- (1) The requirements for parking shall be as stated in Article X of this Chapter for Churches and Schools, as appropriate.
- (2) An Academic Clinical Research Center may only grow medical marijuana in an indoor, enclosed and secure building which includes electronic locking systems, electronic surveillance and other features required by the DOH. The grower/processor facility shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle or other motor vehicle.
- (3) All lighting serving a medical grower/processor must be shielded in such a manner to not allow light to be emitted skyward or onto adjoining properties.
- (4) A buffer yard is required is required where a medical marijuana delivery vehicle service adjoins a residential use or district.



B. MEDICAL MARIJUANA GROWER/PROCESSOR

- (1) A Medical Marijuana Grower/Processor may only grow medical marijuana in an indoor, enclosed and secure building which includes electronic locking systems, electronic surveillance and other features required by the DOH. The grower/processor facility shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle or other motor vehicle.
- (2) The maximum floor area of a Medical Marijuana Grower/Processor shall be limited to 10,000 square feet, of which sufficient space must be set aside for secure storage of marijuana seeds, related finish product, and marijuana related materials used in production or for required laboratory testing.
- (3) There shall be no emission of dust, fumes, vapors, odors or waste into the environment from any facility where medical marijuana growing, processing or testing occurs.
- (4) Marijuana remnants and byproducts shall be secured and properly disposed of in accordance with the DOH policy and shall not be placed within the facility's exterior refuse containers. No disposal of marijuana remnants and byproducts shall be permitted into the sanitary sewer system of the Borough of Penbrook.
- (5) The grower/processor shall provide only wholesale products to other medical marijuana facilities. Retail sales and dispensing of medical marijuana and related products is prohibited at the Medical Marijuana Grower/Processor facilities.
- (6) Grower/processors shall not operate any closer than 1,000 feet from a school (public, private, or parochial), or college or university or 250 feet from a recreation area, park or playground.
- (7) All lighting serving a Medical Marijuana Grower/Processor must be shielded in such a manner as to not allow light to be emitted skyward or onto adjoining properties.
- (8) The requirements for parking shall be as stated in Article X of this Chapter for wholesale establishments or warehouses.
- (9) A buffer yard is required where a Medical Marijuana Grower/Processor adjoins a residential use or district.
- (10) Entrances and driveways to a Medical Marijuana Grower/Processor must be designed to accommodate the anticipated vehicles used to service the facility.
  - (a) All accesses must secure the appropriate Highway occupancy permit (state or Borough).

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- (b) The clear sight triangle requirements found in Section 266-16 of this chapter must be considered and maintained.
  - (c) The driveway must be designed and improved to the standards expressly described in Article XIII of this chapter.
- (11) Loading and offloading areas within the structure are preferred. If an external loading dock arrangement is designed it should be from within a secure environment.

### C. MEDICAL MARIJUANA DELIVERY VEHICLE SERVICE

- (1) A traffic impact study is required where the office is operated. The study shall be performed by the Penbrook Police Department or its designee at the expense of the service requesting the study.
- (2) The requirement for parking shall be as stated in Article X of this chapter for research or testing laboratories,
- (3) All lighting serving a medical marijuana delivery vehicle service must be shielded in such a manner as to not allow light to be emitted skyward or onto adjoining properties.
- (4) A buffer yard is required where a medical marijuana delivery vehicle service adjoins a residential use or district.
- (5) Entrances and driveways to a medical marijuana delivery vehicle service must be designed to accommodate the anticipated vehicle use to enter and exit the premises.
  - (a) All accesses must secure the appropriate Highway Occupancy Permit.
  - (b) The clear sight triangle requirements found in Section 266-16 of this chapter must be considered and maintained.
  - (c) The driveway must be designed and improved to the standards expressly described in Article XIII of this chapter.
- (6) If for any reason a medical marijuana product is to be temporarily stored at a medical marijuana delivery vehicle service facility, the facility must be secured to the same level as a medical marijuana grower/producer and dispensary.
- (7) Loading and offloading areas within the structure are preferred. If an external loading dock arrangement is designed it should be from within a secure environment.

D. MEDICAL MARIJUANA DISPENSARY

- (1) A Medical Marijuana Dispensary must be legally registered in the Commonwealth and possess a current valid Medical Marijuana Permit from the DOH.
- (2) A Medical Marijuana Dispensary may only dispense medical marijuana in an enclosed, permanent, and secure building and shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle or other motor vehicle.
- (3) A Medical Marijuana Dispensary may not operate on the same site as a facility used for growing and processing medical marijuana.
- (4) A Medical Marijuana Dispensary shall have a single secure entrance and shall implement appropriate security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana.
- (5) Permitted hours of operation of a dispensary shall be 8 AM to 8 PM (of the same calendar day).
- (6) A Medical Marijuana Dispensary shall be a maximum of 3,000 gross square feet, of more than 500 square feet shall be used for a secure storage of product and shall have an interior customer waiting area equal to a minimum of twenty-five percent (25%) of the gross floor space.
- (7) A Medical Marijuana Dispensary shall:
  - (a) Not have a drive-through service;
  - (b) Not have outdoor seating areas;
  - (c) Not have outdoor vending machines;
  - (d) Prohibit the administration of, or the consumption of medical marijuana on the premises, and e. Not offer direct or home delivery service.
- (8) A Medical Marijuana Dispensary may dispense only medical marijuana to certified patients and caregivers and shall comply with all lawful applicable health regulations.
- (9) A Medical Marijuana Dispensary may not be located within 1,000 feet of the property line of a public, private or parochial school or a day care center. This distance shall be measured in a straight line from the closest exterior wall of the building or portion thereof in which the business is conducted or proposed to be conducted, to the closest property line of the protected use, regardless of

municipality in which it is located.

- (10) A Medical Marijuana Dispensary shall be a minimum distance of 1,000 feet from the next nearest medical marijuana facility. This does not include complementing or supporting businesses covered by different definitions. This distance shall be measured in a straight line from the closest exterior wall of the building or portion thereof in which the businesses are conducted or proposed to be conducted, regardless of municipality in which it is located. This separation distance does not apply to the distance between the grower/processor and the specific dispensary served by that grower/processor.
- (11) A medical marijuana dispensary shall not operate closer than 1,000 feet from a school (public, private, or parochial), or college or university or 250 feet from a recreation area, park or playground.
- (12) Any medical marijuana facility lawfully operating shall not be rendered in violation of these provisions by the subsequent location of a public, private or parochial school or day care center.
- (13) All lighting serving a Medical Marijuana Dispensary must be shielded in such a manner as to not allow light to be emitted skyward or onto adjoining properties.
- (14) The requirement for parking shall be as stated in Article X of this chapter for research or testing laboratories.
- (15) A buffer yard is required where a Medical Marijuana Dispensary adjoins a residential use or district.
- (16) Entrances and driveways to a Medical Marijuana Dispensary must be designed to accommodate the anticipated vehicles used to service the facility.
  - (a) All accesses must secure the appropriate highway occupancy permit.
  - (b) The clear sight triangle requirements found in Section 266-16 of this chapter must be considered and maintained.
  - (c) The driveway must be designed and improved to the standards expressly described in Article XIII of this chapter,
- (17) Loading and offloading areas within the structure are preferred. If an external loading dock arrangement is designed it should be from within a secure environment

**§ Section 4 - ADMINISTRATION AND ENFORCEMENT**

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### A. Zoning Permits.

- (1) The zoning permit shall be required prior to obtaining a building permit for the construction or erection of a building; the alteration of a building or portion thereof; the use or change in use of a building or land; or any adjustments to a nonconforming use.
- (2) The municipal zoning permit application must be completed.
- (3) Permit fees shall be as stipulated in the fee schedule adopted by resolution of the Borough Council in effect at the time of application.
- (4) Permits may be denied if the applicant, in the reasonable opinion of the Borough Council, is failing to comply with any state or local law or regulation.
- (5) In the case of new construction, meeting the PA Municipalities Planning Code definition land development plan application is required to be submitted and an approval secured prior to establishment of the use.
- (6) If the application is to change the use of a building, or needs to demonstrate allocation of space within a structure, the applicant shall provide architectural drawings prepared by an architect registered in the Commonwealth of Pennsylvania.
- (7) A Medical Marijuana Grower/Processor must be legally registered in the Commonwealth and possess a current valid Medical Marijuana Permit from the DOH.

### **§ Section 5 - SEVERABILITY**

If any section, subsection, sentence, clause or phrase or other portion of this document is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof,

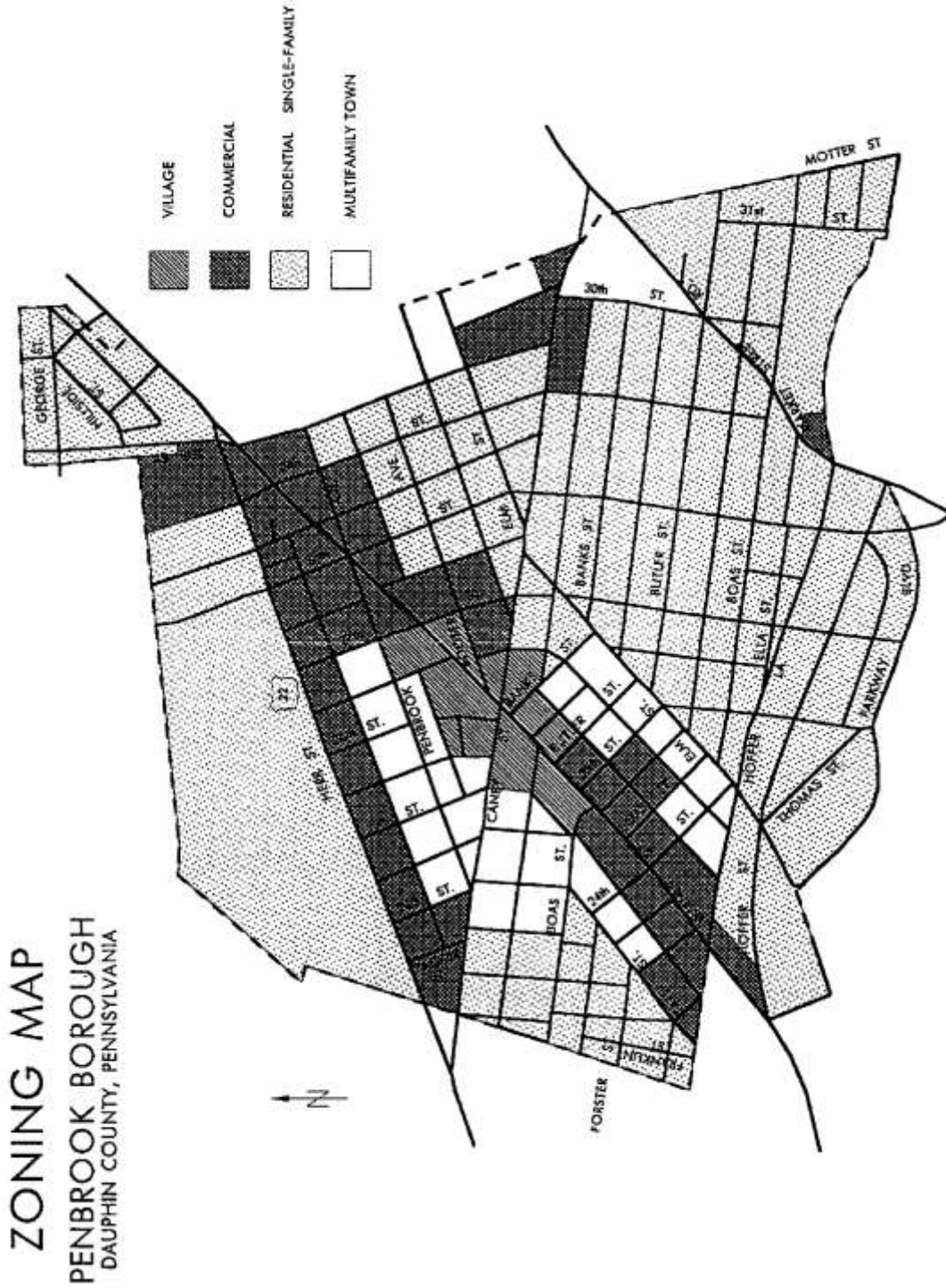
### **§ Section 6 -- PENALTIES**

Any owner, operator, or other person who violates or permits a violation of this chapter shall upon being found liable therefore in a civil enforcement proceeding before a Magisterial District Judge pay to Penbrook Borough a fine of not more than \$500 plus all court costs, including but not limited to reasonable attorney's fees incurred by the Borough of Penbrook on account of such violation. No penalty or cost shall be imposed until the date the determination of the violation by the Magisterial District Judge becomes final. If the defendant neither pays nor timely appeals the judgment the Borough of Penbrook may enforce the judgment as provided by law. Each day a violation exists after final judgment shall constitute a separate offense. The amount of the fine imposed shall be multiplied by the number of such days and may be charged and collected by the Borough of Penbrook without further judicial proceedings. Further the appropriate officers or

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agents of the Borough of Penbrook are hereby authorized, to issue a cease and desist notice and/or to seek equitable relief, including injunction, to enforce compliance herewith, no bond will be required if injunctive relief is sought by the Borough of Penbrook. A person who violates this ordinance shall be responsible for the Borough of Penbrook's attorney's fees, engineering fees, expert fees and court costs reasonably incurred by the Borough of Penbrook on account of such violation

Attachment 1: Zoning Map



## Chapter DL: DISPOSITION LIST

[HISTORY: Text in file]

### § DL-1. Disposition of legislation.

The following is a chronological listing of the ordinances of the Borough of Penbrook adopted since the publication of the Code, indicating their inclusion in the Code or the reason for exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] Information regarding legislation which is not included in the Code nor on this list is available from the office of the Borough Secretary. The last ordinance reviewed for the original publication of the Code was Ord. No. 97-3, adopted 8-4-1997. A complete listing, including disposition, of all legislation reviewed in conjunction with the original publication of the Code is on file in the office of the Borough Secretary.

<b>Ord. No.</b>	<b>Adoption Date</b>	<b>Subject</b>	<b>Disposition</b>
97-5	12-29-1997	Sewers user charges amendment	Ch. 210, Part 2
98-1	1-8-1998	Vehicles and traffic amendment	Superseded by Ord. No. 2002-6
98-2	12-7-1998	Industrial/commercial waste pretreatment	Ch. 210, Part 4
98-3	12-7-1998	Vehicles and traffic amendment	Superseded by Ord. No. 2002-6
99-1	9-8-1999	Vehicles and traffic amendment	Superseded by Ord. No. 2002-6
99-2	12-27-1999	Tax rate for 2000	Expired
2000-1	10-2-2000	Vehicles and traffic amendment	Superseded by Ord. No. 2002-6
2000-2	10-2-2000	Vehicles and traffic amendment	Superseded by Ord. No. 2002-6
2000-3	8-28-2000	Bond	NCM
2000-4	12-4-2000	Noise	Ch. 174
2000-5	12-27-2000	Tax rate for 2001	Expired
2001-1	7-2-2001	Vehicles and traffic amendment	Ch. 254
2001-2	7-2-2001	Vehicles and traffic amendment	Ch. 254
2001-3	12-20-2001	Tax rate for 2002	Expired
2002-1	2-4-2002	Adoption of Code	Ch. 1, Art. I
2002-2	2-4-2002	Building construction	Ch. 104
2002-3	4-1-2002	Buyer notification certificates	Repealed by Ord. No. 2002-8



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2002-4	4-1-2002	Property maintenance	Ch. 200
2002-5	4-1-2002	Attorney's fees for collection of delinquent accounts	Ch. 135, Art. I
2002-6	1-6-2003	Vehicles and traffic	Ch. 254
2002-7	4-1-2002	Hazardous wastes: cleanup costs	Ch. 150, Art. I
2002-8	5-6-2002	Buyer notification certificates	Ch. 113
2002-9		Hazardous materials cleanup costs amendment	Tabled
2002-10	8-5-2002	Bond	NCM
2002-11	12-18-2002	Tax rate for 2003	Ch. 238, Art. VI
2002-12	1-6-2003	Salary of Mayor amendment	Ch. 51
2002-13	1-6-2003	Salaries of Council members amendment	Ch. 51
2003-1	7-7-2003	Bond	NCM
2003-2	10-6-2003	Cable rates	Ch. 114
2004-1	1-7-2004	Subdivision and land development	Ch. 233
2004-2	6-7-2004	Uniform construction code	Ch. 104, Art. II
2004-3	6-7-2004	Property maintenance	Ch. 200
2004-4	6-7-2004	Buyer notification certificates amendment	Ch. 113
2004-5	12-6-2004	Sewer user charges amendment	Ch. 210, Part 2
2004-6	12-29-2004	Tax rate for 2005	Ch. 238, Art. VI
2004-7	12-6-2004	Salary of Mayor amendment	Ch. 51
2005-1	12-5-2005	Traffic Code amendment	Ch. 254
2005-2	12-28-2005	Tax rate for 2006	Ch. 238, Art. VI
2006-1	7-3-2006	Tenant registration	Ch. 242
2006-2	7-3-2006	Sewer user charges amendment	Ch. 210, Part 2
2006-3	8-7-2006	Stormwater	C. 226
2006-4	12-27-06	Sewer user charges amendment	Ch. 210, Part 2
2006-5	12-27-06	Tax rate for 2007	Ch. 238, Art. VI
2007-1	3-5-2007	Residential access drives and driveways	Ch. 233
2007-2	4-2-2007	Time limit parking	Ch. 254
2007-3	5-7-2007	UCC	Ch. 104
2007-4	7-2-2007	Use of parks	Ch. 184
2007-5	7-2-2007	Outdoor burning	Ch. 122
2007-6	7-2-2007	Land development plans	Ch. 233

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2007-7	7-2-2007	Density Characteristics	Ch. 266
2007-8	8-6-2007	Blockage of Driveways	Ch. 254
2007-9	10-1-2007	Use of Self-propelled Vehicles	Ch. 184
2007-10	11-5-2007	Inter-governmental Cooperation	Ch. 32
2007-11	12-26-2007	Sewer user charges amendment	Ch. 210
2007-12	12-26-2007	Tax rate for 2008	Ch. 238
2007-13	12-26-2007	Emergency Municipal tax	Ch. 238
2007-14	12-26-2007	PMHIC Agreement	Ch. 32
2008-1	2-4-2008	Buyer notification/rental inspections	Ch. 113
2008-2	3-3-2008	Booser Ave parking	Ch. 254
2008-3	4-7-2008	Traffic Flow Changes	Ch. 254
2008-4	11-3-2008	Water treatment	Ch. 210
2008-5	12-1-2008	Communications Towers	Ch. 266
2008-6	12-22-2008	Tax rate for 2009	Ch. 238
2009-1	7-6-2009	Uninspected vehicles	Ch. 254
2009-2	7-6-2009	Commercial vehicles restrictions	Ch. 254
2009-3	8-3-2009	Rental unit occupancy and inspections	Ch. 243
2009-4	12-28-2009	Tax rate for 2010	Ch. 238
2009-5	12-28-2009	Sewer user charges amendment	Ch. 210
2010-1	6-7-2010	Non-uniform pension plan	-----
2010-2	5-3-2010	Non-commercial signs	Ch. 266
2010-3	10-4-2010	Police Lieutenant	Ch. 45
2010-6	12-30-2010	Sewer user charges amendment	Ch. 210
2010-7	12-30-2010	Tax rate for 2011	Ch. 238
2011-1	3-7-2011	Parking restrictions	Ch. 254
2011-2	6-6-2011	Sewage treatment	Ch. 210
2011-3	6-6-2011	Comcast agreement	-----
2011-4	8-1-2011	Stormwater management	C. 226
2011-5	10-3-2011	Stagnant Water	C. 201
2011-6	12-28-2011	Sewer user charges amendment	Ch. 210
2011-7	12-28-2011	Tax rate for 2012	Ch. 238
2012-1	5-7-2012	Parking changes	Ch. 266
2012-2	7-2-2012	Ward boundaries change	Ch. 73
2012-3	9-5-2012	Building code board of appeals	Ch. 104

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2012-5	12-3-2012	Sewer user charges amendment	Ch. 210
2012-6	12-2-2012	Tax rate for 2013	Ch. 238
2013-1	3-4-2013	Booser Ave Parking restrictions	Ch. 254
2013-2	9-4-2013	Prohibit discarding grass clippings	Ch. 226
2013-3	10-7-2013	Playground prohibitions	Ch. 184
2013-4	12-2-2013	Street intersection obstructions	Ch. 266
2013-6	12-18-2013	Tax rate for 2014	Ch. 238
2014-1	9-3-2014	Parade permits	C. 231
2014-2	12-1-2014	Special events permit	C. 231
2014-3	12-1-2014	Snow and Ice emergencies	Ch. 254
2014-4	12-1-2014	Tax rate for 2015	Ch. 238
2014-5	12-1-2014	Sewer user charges amendment	Ch. 210
2015-1	3-2-2015	Residential occupancy	Ch. 243
2015-2	6-1-2015	Business sign requirements	Ch. 266
2015-3	6-1-2015	Dog leash requirements	Ch. 92
2015-4	6-1-2015	Outdoor burning	Ch. 112
2015-7	12-7-2015	Tax rate for 2016	Ch. 238
2015-8	12-7-2015	Sewer user charges amendment	Ch. 210
2016-1	2-1-2016	Abandoned and foreclosed real-estate	Ch. 241
2016-2	2-1-2016	Dog barking	Ch. 92
2016-4	6-6-2016	Respite care center	Ch. 266
2016-5	10-3-2016	Medical Marijuana	Ch. 266
2016-6	12-5-2016	Sewer user charges amendment	Ch. 210
2016-7	12-5-2016	Tax rate for 2017	Ch. 238
2017-1	12-4-2017	Tax rate for 2018	Ch. 238
2017-2	12-4-2017	Sewer user charges amendment	Ch. 210
2018-1	5-7-2018	Disorderly conduct	Ch. 126
2018-2	5-7-2018	Recycling	Ch. 218
2018-3	12-3-2018	Tax rate for 2019	Ch. 238
2018-4	12-3-2018	Sewer user charges amendment	Ch. 210
2019-1	1-7-2019	Business privilege fee	Ch. 238
2019-3	6-3-2019	Repeal chapter 100, add to 200	Ch. 200
2019-4	10-7-2019	Building permits	C. 104
2019-5	10-7-2019	Zoning Permits	C. 266

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2019-7	12-2-2019	Non-uniform pension plan	C. 37
2019-8	12-2-2019	Sewer user charges amendment	Ch. 210
2021-1	4-5-2021	Replace Entire Chapter	Ch. 241
2022-1	2-2-2022	Add Feral Cat Ordinance	Ch. 92
2022-2	7-5-2022	Update Article 2 Section 12	Ch. 238
2022-3	11-7-2022	Add Chapter 265	Ch. 265
2023-1	01-05-2023	Update 184 and 226	Ch. 184-226
2024-1	2/24/2024	Add all 2023 ordinances	
2024-2	4/15/2024	Chpt 202 add QOL	Ch 202
2024-3	2/5/2024	Chpt 254 change Herr St. restriction	Ch 254

