

CODIFIED ORDINANCES OF ERIE

PART THREE - BUSINESS REGULATION AND TAXATION CODE

TITLE ONE - Business Licensing and Taxation

- Art. 301. Amusements. (Repealed)
- Art. 302. Ambulance Service. (Repealed)
- Art. 303. Auctions. (Repealed)
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- Art. 301. Amusements. (Repealed)
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- Art. 305. Express Companies. (Repealed)
- Art. 307. Mechanical Amusement Device Distributors.
- Art. 309. Mechanical Amusement Devices.
- Art. 311. Miniature Billiard and Bowling Games; Jukeboxes.
- Art. 313. Peddlers and Sidewalk Vendors.
- Art. 315. Rubbish Hauling Contractors.
- Art. 317. Sidewalk and Curbing Contractors. (Repealed)
- Art. 319. Stationary Steam Engineers.
- Art. 321. Taxicabs. (Repealed)
- Art. 323. Telegraph Companies. (Repealed)
- Art. 325. Theaters and Public Halls. (Repealed)
- Art. 327. Transient Retail Merchants.
- Art. 329. Tobacco Vending Machines.

ARTICLE 301
Amusements

(EDITOR'S NOTE: Former Article 301 was repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 302
Ambulance Service

(EDITOR'S NOTE: Former Article 302 was repealed by
Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 303
Auctions

(EDITOR'S NOTE: Former Article 303 was repealed by Ordinance 28-2000, passed June 7, 2000.)

(NOTE: The next printed page is page 19.)

ARTICLE 305
Express Companies

(EDITOR'S NOTE: Former Article 305 was repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 307
Mechanical Amusement Device Distributors

307.01	Definitions.	307.06	License investigation and issuance.
307.02	Distributor's license required.	307.07	License year.
307.03	License application; fee.	307.99	Penalty.
307.04	Requirements of applicants.		
307.05	License revocation; notice; hearing.		

CROSS REFERENCES

Power to license - see 3rd Class §2601 (53 P.S. §37601)
 Mechanical amusement devices - see BUS. REG. Art. 309
 Miniature billiard and bowling games and jukeboxes - see BUS. REG. Art. 311

307.01 DEFINITIONS.

The following words, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

- (a) "Mechanical amusement device" means any mechanical device, machine or apparatus which, upon the insertion of a coin, token, slug or plate therein, or upon the payment of a fee, may be operated by the public generally for the playing of games and/or amusements, the object of which is to secure a special number, symbol, figure or groups thereof, arrangement, pattern or score by the exercise of skill in the operation or manipulation of such device.
- (b) "Miniature bowling game" means any platform, stand, table or structure for the playing of miniature bowling games, which is operated after the insertion of a coin, token, slug or plate in the machine or, upon payment of a fee, may be operated by the public generally for the playing of the bowling game. The operation of the bowling game is so mechanically arranged that the player, by propelling a small disc, puck or ball, can knock over any of the ten pins mechanically adjusted on the platform of the bowling game, and by a mechanical or electrically controlled device the score obtained by knocking over any of the pins is automatically registered after each operation by the player. The object of the game is to secure a score by the exercise of skill in the throwing of the disc, puck or ball at the ten pins.
- (c) "Billiard table game" means any platform, table or structure for playing the game of billiards or pool, which is operated after the insertion of a coin, token, slug or plate therein or, upon the payment of a fee, may be operated by the public generally for the playing of the billiard game, the insertion of the coin or the pay-

ment of the fee being necessary to release the billiard balls so that the players can use the billiard balls on the table by contacting the balls with a cue stick, and propel the balls across the table into the several pockets which are arranged on a billiard table. The object of the game is to secure a score by the exercise of skill in striking the billiard ball so as to propel the balls into the respective billiard pockets.

- (d) "Jukebox" means any device, machine or apparatus whatsoever for the playing or furnishing of music by means of records or tapes by the insertion of a coin or any other metal disc, slug or token whatsoever or, upon payment of a fee, may be operated by the public generally.
- (e) "Distributor" means any person, firm, corporation or association which has on hand, or in its possession, whether actually or constructively, and whether as supplier, owner, manufacturer, jobber or wholesaler, mechanical amusement devices, miniature bowling games, billiard table games and jukeboxes, for the purpose of distribution, sale, lease, loan, franchise or use among and to any person, firm, corporation or association which, in turn, makes such device available to the public. The singular includes the plural.
(Ord. 4-1965 §1. Passed 1-27-65.)

307.02 DISTRIBUTOR'S LICENSE REQUIRED.

No person shall engage in the business of distributor in the City without having first received a license in accordance with the terms and provisions of this article.
(Ord. 4-1965 §2. Passed 1-27-65.)

307.03 LICENSE APPLICATION; FEE.

Persons desiring to engage in the business of distributor under the terms of this article shall apply for a license in writing under oath to the Bureau of Regulation, Inspection and Licensing, setting forth the following information: name, citizenship, residences and occupations for the past five years of the applicant and of all partners, if the applicant is a partnership, and of all officers and directors if the applicant is a corporation, and the same information for all persons having financial interest in such business as owner, lessor, secured creditor or otherwise.

Each such application shall be supported by the actual signatures of three subscribing witnesses, together with their addresses and occupations, who by so signing attest to the good moral character of each applicant or each partner of a partnership applicant, or each officer and director of a corporate applicant. No officer or employee of the City may act as subscribing witness.

Such application shall be accompanied with the annual license fee of two hundred fifty dollars (\$250.00) which shall be refunded if the license is not granted.
(Ord. 4-1965 §3. Passed 1-27-65; Ord. 5-1979 §1. Passed 1-10-79.)

307.04 REQUIREMENTS OF APPLICANTS.

All applicants, including all partners of partnerships, must be over twenty-one years of age, citizens of the United States, residents of the City or County for five years immediately preceding the application, and of good moral character. Corporate applicants must be corporations created under the laws of Pennsylvania, and all stockholders, directors and officers thereof must meet the requirements of individual applicants. (Ord. 4-1965 §4. Passed 1-27-65.)

307.05 LICENSE REVOCATION; NOTICE; HEARING.

Every license issued under this article is subject to the right of revocation, which is hereby expressly reserved, should the licensee directly or indirectly fail to maintain good moral character and comply with all requirements of Federal and State laws and City ordinances during the term of this license, and such license may be revoked after ten days' written notice to the licensee, which notice shall specify the violation of the ordinance or law with which the licensee is charged.

Within such ten days, opportunity for a hearing shall be given the licensee, if requested in writing, and the licensee may present and submit evidence and witnesses in his behalf, personally or by counsel. (Ord. 4-1965 §5. Passed 1-27-65.)

307.06 LICENSE INVESTIGATION AND ISSUANCE.

No license shall be granted under the provisions of this article until a period of not less than ten days shall have elapsed from the date of application, during which time there shall be an investigation of the applicant. No license shall be issued unless the applicant meets the requirements of this article and there is no reason to believe that the devices to be distributed will be used for any illegal purpose. Upon the approval of the application for license as provided in this article, a license shall be issued authorizing such licensee to be a distributor. (Ord. 4-1965 §6. Passed 1-27-65.)

307.07 LICENSE YEAR.

The license hereby authorized shall entitle the licensee to be a distributor for the current license year. The amount aforesaid, when paid, shall be a license fee until December 31 of each year, but the amount imposed hereby shall be due and payable on or before February 1 in the applicable year. (Ord. 4-1965 §7. Passed 1-27-65.)

307.99 PENALTY.

Any person violating any of the provisions of this article, upon conviction, shall be fined not more than three hundred dollars (\$300.00) or imprisoned not more than ninety days, or both. (Ord. 47-1966 §1. Passed 9-28-66.)

ARTICLE 309
Mechanical Amusement Devices

309.01	Definitions.	309.05	License issuance; display.
309.02	Gambling devices prohibited.	309.99	Penalty.
309.03	License required; application; investigation.		
309.04	License fees, transferals, replacements; violations and confiscation.		

CROSS REFERENCES

Power to license - see 3rd Class §2601 (53 P. S. §37601)
 Amusement device distributors - see BUS. REG. Art. 307
 Miniature billiard and bowling games and jukeboxes - see
 BUS. REG. Art. 311

309.01 DEFINITIONS.

The following words, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

- (a) "Mechanical amusement device" means any mechanical device, machine or apparatus which, upon the insertion of a coin, token, slug or plate therein, or upon the payment of a fee, may be operated by the public generally for the playing of games and/or amusements, the object of which is to secure a special number, symbol, figure or groups thereof, arrangement, pattern or score, by the exercise of skill in the operation or manipulation of such device.
- (b) "Person", as used herein, includes any person, firm, corporation or association which shall, at any time, have in its possession for use or operation within the City any mechanical amusement device for use or operation by the general public of the City. (Ord. 5-1965 §1. Passed 1-27-65.)

309.02 GAMBLING DEVICES PROHIBITED.

Nothing in this article shall in any way be construed to authorize, license or permit any gambling devices whatsoever, or any mechanism that has been judicially determined to be a gambling device or in any way contrary to law, or that may be contrary to any future laws of the State of Pennsylvania. (Ord. 5-1965 §2. Passed 1-27-65.)

309.03 LICENSE REQUIRED; APPLICATION; INVESTIGATION.

No person shall have in his possession or control any mechanical amusement device, unless he shall have applied for and procured a license therefor from the Bureau of Regulation, Inspection and Licensing, and such application shall set forth the name and residence of the person so applying, together with the present and previous occupation of the applicant and the length of residence at the present and previous place of residence, the name of the owner of the premises upon which the aforesaid machines are to be used and installed and, if the owner of

the premises is not the applicant, then the applicant shall set forth the length of time for which the premises has been leased and whether the applicant is a citizen of the United States. The application shall also set forth the manufacturer and nature of the machine to be installed and used.

The foregoing information required in this section shall be furnished over the signature of the applicant and shall be made under oath or affirmation.

No license shall be granted until a period of seven days shall have elapsed from the date of application, during which time an investigation of the facts set forth in the application may be made, and no license shall be granted to any person not a citizen of the United States. (Ord. 5-1965 §3. Passed 1-27-65.)

309.04 LICENSE FEES, TRANSFERALS, REPLACEMENTS; VIOLATIONS AND CONFISCATION.

No license shall be issued until an annual fee therefor shall have been paid to the City Treasurer in the sum of seventy-five dollars (\$75.00) for each and every device so installed and used in the City, under the terms of this article, which amount, paid as aforesaid, shall be a license fee until December 31 of each year. The license fee hereby imposed shall be due and payable on or before February 1 in the applicable year for all mechanical amusement devices in operation on that date and shall thereafter become immediately due and payable on each mechanical amusement device placed in use or operation within the City.

However, upon application and notification to the Bureau of Regulation, Inspection and Licensing, any mechanical amusement device on which the foregoing tax has been paid may be transferred from the premises for which the aforesaid tax has been paid to any other premises. Further, upon application and notification to the Bureau of Regulation, Inspection and Licensing, any mechanical amusement device on which the foregoing tax has been paid may be replaced by another similar device as defined herein.

In the event of the nonpayment of the tax or failure to file application and notification of transfer or replacement, the particular mechanical amusement device shall be confiscated by the City, in addition to any other penalty herein provided. (Ord. 1-2003. Passed 1-8-03.)

309.05 LICENSE ISSUANCE; DISPLAY.

Upon the payment of the license fee provided by this article, the Bureau of Regulation, Inspection and Licensing shall issue a metal disc or plate setting forth the number of the license for each machine so licensed, which disc or plate shall be attached and fastened to the respective machine or device so that the same may be clearly observable and readable. (Ord. 5-1965 §5. Passed 1-27-65.)

309.99 PENALTY.

Any person violating any of the provisions of this article, upon conviction, shall be fined not more than three hundred dollars (\$300.00) or imprisoned not more than ninety days, or both. (Ord. 47-1966 §1. Passed 9-28-66.)

ARTICLE 311
Miniature Billiard and Bowling Games; Jukeboxes

311.01	Definitions.	311.05	License issuance and display.
311.02	Gambling devices prohibited.	311.99	Penalty.
311.03	License required; application; investigation.		
311.04	License fees, transferals, replacements; confiscation for violation.		

CROSS REFERENCES

Power to license - see 3rd Class §2601 (53 P. S. §37601)
Amusement device distributors - see BUS. REG. Art. 307
Mechanical amusement devices - see BUS. REG. Art. 309

311.01 DEFINITIONS.

The following words, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

- (a) "Miniature bowling game" means any platform, stand, table or structure for the playing of miniature bowling games, which is operated after the insertion of a coin, token, slug or plate in the machine or, upon payment of a fee, may be operated by the public generally for the playing of the bowling game. The operation of the bowling game is so mechanically arranged that the player, by propelling a small disc, puck or ball, can knock over any of the ten pins mechanically adjusted on the platform of the bowling ball game and, by a mechanical or electrically controlled device, the score obtained by knocking over any of the pins is automatically registered after each operation by the player. The object of the game is to secure a score by the exercise of skill in the throwing of the disc, puck or ball at the ten pins.
- (b) "Billiard table game" means any platform, table or structure for playing the game of billiards or pool, which is operated after the insertion of a coin, token, slug or plate therein or, upon the payment of a fee, may be operated by the public generally, for the playing of the billiard game, the insertion of the coin or the payment of the fee being necessary to release the billiard balls so that the players can use the billiard balls on the table by contacting the balls with a cue stick, and propel the balls across the table into the several pockets which are arranged on a billiard table. The object of the game is to secure a score by the exercise of skill in striking the billiard balls so as to propel the balls into the respective billiard pockets.
- (c) "Jukebox" means any device, machine or apparatus whatsoever for the playing or furnishing of music by means of records or tapes by the insertion of a coin or any other metal disc, slug or token whatsoever or, upon the payment of a fee, may be operated by the public generally.

- (d) "Persons", "firm", "corporation" or "association", as used herein, includes the following: any person, firm, corporation or association which shall, at any time, have in its possession for use or operation within the City any miniature bowling game, billiard table game or jukebox, for use or operation by the general public of the City. (Ord. 6-1965 §1. Passed 1-27-65.)

311.02 GAMBLING DEVICES PROHIBITED.

Nothing in this article shall in any way be construed to authorize, license or permit any gambling devices whatsoever, or any mechanism that has been judicially determined to be a gambling device, or in any way contrary to law, or that may be contrary to any future laws of the State of Pennsylvania. (Ord. 6-1965 §2. Passed 1-27-65.)

311.03 LICENSE REQUIRED; APPLICATION; INVESTIGATION.

No person shall have in his possession or control any miniature bowling game, billiard table game or jukebox, unless he shall have applied for and procured a license therefor from the Bureau of Regulation, Inspection and Licensing. Such application shall set forth the name and residence of the person so applying, together with the present and previous occupation of the applicant and the length of residence at the present and previous place of residence, the name of the owner of the premises upon which the aforesaid machines are to be used and installed and, if the owner of the premises is not the applicant, then the applicant shall set forth the length of time for which the premises have been leased and whether the applicant is a citizen of the United States. The application shall also set forth the manufacturer and nature of the machine to be installed and used.

The information required in this section shall be furnished over the signature of the applicant and shall be made under oath or affirmation.

No license shall be granted until a period of seven days shall have elapsed from the date of application, during which time an investigation of the facts set forth in the application may be made. No license shall be granted to any person not a citizen of the United States. (Ord. 6-1965 §3. Passed 1-27-65.)

311.04 LICENSE FEES, TRANSFERALS, REPLACEMENTS; CONFISCATION FOR VIOLATION.

No license shall be issued until an annual fee therefor shall have been paid to the City Treasurer in the sum of twenty-five dollars (\$25.00) for every jukebox and sixty dollars (\$60.00) for every miniature bowling game and billiard table game so installed and used in the City, under the terms of this article, which amount paid as aforesaid shall be a license fee until December 31 of each year. The license fee hereby imposed shall be due and payable on or before February 1 in the applicable year for all miniature bowling games, billiard table games and jukeboxes in operation on that date and shall thereafter become immediately due and payable on each and every miniature bowling game, billiard table game and jukebox placed in use or operation within the City.

However, upon application and notification to the Bureau of Regulation, Inspection and Licensing, any miniature bowling game, billiard table game or jukebox on which the foregoing tax has been paid may be transferred from the premises for which the aforesaid tax has been paid to any other premises. Further, upon application and notification to the Bureau of Regulation, Inspection and Licensing, any miniature bowling game, billiard table game or jukebox on which the foregoing tax has been paid may be replaced by another similar device as defined herein.

In the event of the nonpayment of the tax or failure to file application and notification of transfer or replacement, the particular miniature bowling game, billiard table game or jukebox shall be confiscated by the City, in addition to any other penalty herein provided. (Ord. 6-1965 §4. Passed 1-27-65; Ord. 5-1979 §1. Passed 1-10-79; Ord. 10-1982 §1. Passed 2-3-82.)

311.05 LICENSE ISSUANCE AND DISPLAY.

Upon the payment of the license fee provided by this article, the Bureau of Regulation, Inspection and Licensing shall issue a metal disc or plate setting forth the number of the license for each machine so licensed, which disc or plate shall be attached and fastened to the respective machine or device so that the same may be clearly observable and readable. (Ord. 6-1965 §5. Passed 1-27-65.)

311.99 PENALTY.

Any person violating any of the provisions of this article, upon conviction, shall be fined not more than three hundred dollars (\$300.00) or imprisoned not more than ninety days, or both. (Ord. 47-1966 §1. Passed 9-28-66.)

ARTICLE 313
Peddlers and Sidewalk Vendors

313.01	Definitions.	313.06	License display.
313.02	License required.	313.07	Exceptions.
313.03	Application information; fee.	313.08	License renewal.
313.04	Investigation and license issuance.	313.09	Rules and regulations.
313.05	Prohibited conduct.	313.99	Penalty.

CROSS REFERENCES

General power to levy license taxes - see 3rd Class §2601
(53 P.S. §37601)

Farmers excepted - see 3rd Class §2610 (53 P.S. §37610)

313.01 DEFINITIONS.

As used in this article, certain terms are defined as follows:

- (a) "Person" includes the singular and the plural and shall also mean and include any person, firm or corporation, association, club, partnership or society, or any other organization.
- (b) "Peddler" includes any person, whether a resident of the City or not, traveling by foot, wagon, motor vehicle or any other type of conveyance, from place to place, house to house or street to street, carrying, conveying or transporting goods, merchandise, food or beverages, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling, shall sell or offer the same for sale.
- (c) "Stand" means any table, showcase, bench, rack, pushcart, wagon or any other wheeled vehicle or device which may be moved and which is used for the displaying, storing or transporting of articles offered for sale by a vendor.
- (d) "Vendor" means any person engaged in the selling, or offering for sale, of food, beverages or merchandise on the public streets or sidewalks from a stand or motor vehicle or from his person. (Ord. 12-1983 §2. Passed 2-23-83.)

313.02 LICENSE REQUIRED.

No person shall engage in the business of peddler or sidewalk vendor as defined in this article within the corporate limits of the City without first obtaining a license therefor as provided herein. (Ord. 12-1983 §1. Passed 2-23-83.)

313.03 APPLICATION INFORMATION; FEE.

(a) Applicants for a license under this article shall file with the Licensing Bureau a sworn application in writing, which shall give the following information:

- (1) Name and description of the applicant;
- (2) Address, legal and local;
- (3) A brief description of the nature of the business and the goods to be sold and in the case of products of farm or orchard, whether produced or grown by the applicant;
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (5) The length of time for which the right to do business is desired;
- (6) If a vehicle is to be used, a description of the same together with the license number or other means of identification;
- (7) A photograph of the applicant taken within sixty days immediately prior to the date of the filing of the application, which picture shall be approximately two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguishing manner;
- (8) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore;
- (9) A statement by the Health Department of Erie County, dated not more than ten days prior to the submission of the application, certifying the applicant to be free of infectious, contagious or communicable disease; and
- (10) A description of the proposed location of the vending business, except that vendors from motor vehicles shall describe the general area in which they propose to vend, if less than the entire City; (Ord. 12-1983 §3. Passed 2-23-83.)
- (11) Proof of an insurance policy, issued by an insurance company licensed to do business in the State of Pennsylvania, protecting the licensee and the City, as co-insured, from all claims for damages to property and bodily injury including death, which may arise from the operations under or in connection with the license. Such insurance shall name as an additional insured the City, and shall provide that the policy shall not terminate or be canceled prior to the expiration date without thirty days advance written notice to the City. The limits of liability of such policy shall be at least five hundred thousand dollars (\$500,000), per occurrence. The proof of insurance shall be reviewed by the Office of the City Solicitor. (Ord. 58-1991 §1. Passed 7-17-91.)

(b) At the time of filing the application, a fee of one hundred dollars (\$100.00) shall be paid to the Bureau of Licensing to cover the cost of investigation and issuance of the license. (Ord. 12-1983 §3. Passed 2-23-83.)

313.04 INVESTIGATION AND LICENSE ISSUANCE

Upon receipt of such application, the Bureau of Licensing shall make such investigation as it deems necessary for the protection of the public good. If the issuance of the license is approved, the License Officer shall issue the license. If the license is denied, the applicant shall be provided with a statement of the reasons therefor which reasons shall be entered in writing on the application. A license issued pursuant to this section is valid for a period of one year, from January 1 of each year to December 31 of that same year. (Ord. 12-1983 §4. Passed 2-23-83.)

313.05 PROHIBITED CONDUCT.

No vendor or peddler shall:

- (a) Store, park or leave any stand overnight on any street or sidewalk, or park any motor vehicle other than in a lawful parking place, in conformance with City and State parking regulations;
- (b) Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales by him;
- (c) Sound or permit the sounding of any device which produces a loud noise, or use and operate any loud speaker, public address system, radio, sound amplifier or similar device to attract the attention of the public;
- (d) Vend without the insurance coverage as specified in Section 313.03(a)(11), or in any other manner contrary to the provisions contained in this article; or
- (e) Vend or peddle contrary to any rules or regulations promulgated by the Bureau of Licensing. (Ord. 12-1983 §5. Passed 2-23-83.)

313.06 LICENSE DISPLAY.

A license as issued by the Bureau of Licensing, shall be displayed at all times during the operation of the business in a conspicuous place. (Ord. 12-1983 §6. Passed 2-23-83.)

313.07 EXCEPTIONS.

Farmers selling their own produce and sidewalk vendors or peddlers being operated by or on behalf of nonprofit organizations or charitable organizations, shall be exempt from the payment of the license fee, but shall otherwise comply with all provisions of this article. (Ord. 12-1983 §7. Passed 2-23-83.)

313.08 LICENSE RENEWAL.

All licenses are valid for the current year, unless revoked or suspended prior to expiration. An application to renew a license shall be made not later than thirty days before the expiration of the current license year. (Ord. 12-1983 §8. Passed 2-23-83.)

313.09 RULES AND REGULATIONS.

The City License Officer shall promulgate and enforce all reasonable rules and regulations necessary to the operation and enforcement of this article. (Ord. 12-1983 §9. Passed 2-23-83.)

313.99 PENALTY.

Any person violating any provision of this article shall be guilty of a summary offense and upon conviction, shall be fined not more than three hundred dollars (\$300.00) or imprisoned not more than ninety days or both. (Ord. 12-1983 §10. Passed 2-23-83.)

ARTICLE 315
Rubbish Hauling Contractors

315.01	Definitions.	315.05	Requirement to affix license to rubbish haulers.
315.02	License required.	315.99	Penalty.
315.03	License application, fee; certificate and tag.		
315.04	Marking of rubbish hauling equipment.		

CROSS REFERENCES

Power to license - see 53 P.S. §37601
Bureau of Refuse Disposal - see ADM. 117.05(c)
Garbage and rubbish - see S.U. & P.S. Art. 951

315.01 DEFINITIONS.

(a) "Rubbish" as used in this article, includes paper, rags, excelsior, straw, boxes, cartons, old clothes, mattresses, old shoes, leather scraps, oilcloth, carpet, Christmas trees, prunings, home vines, ashes and any and all other waste materials, whether flammable or otherwise, which result from the ordinary conduct of business, manufacturing or housekeeping, and excludes all substances commonly designated as "garbage", such as any offal or refuse of fish, fruit, vegetables, animal matter or any organic substance subject to fermentation or decay.

(b) "Person" includes any person, firm or corporation.
(Ord. 16-1964 §1. Passed 4-8-64.)

315.02 LICENSE REQUIRED.

Any person, before using the streets of the City for the purpose of collecting and hauling rubbish, shall make application to and receive from the Bureau of Regulations, Inspection and Licensing a license authorizing the holder thereof to haul rubbish.
(Ord. 16-1964 §2. Passed 4-8-64.)

315.03 LICENSE APPLICATION, FEE; CERTIFICATE AND TAG.

Each applicant shall, before a license is granted to him, exhibit his signed application therefor to the City Treasurer and pay to the Treasurer the sum of fifty dollars (\$50.00) per vehicle and, upon the applicant's production to the Bureau of a receipt from the City Treasurer for the license fee, the Bureau is authorized and directed to issue a sticker to be placed on the windshield of the licensed vehicle.
(Ord.61-1991 §2. Passed 7-17-91.)

Each applicant shall, before a license is granted to him, exhibit his signed application therefor to the City Treasurer and pay to the Treasurer the sum of fifty dollars (\$50.00) and, upon the applicant's production to the Bureau of a receipt from the City Treasurer for the license fee, the Bureau is authorized and directed to issue a numbered license certificate, the stub for which shall be retained in the office of the Bureau. This certificate shall be under the seal of the City and the license certificate shall be given to the applicant therefor, together with a correspondingly numbered tag or badge, and also a correspondingly numbered placard to be attached to each vehicle used by the applicant in hauling rubbish. (Ord. 16-1964 Sec. 3. Passed 4-8-64; Ord. 5-1979 Sec. 1. Passed 1-10-79.)

315.04 MARKING OF RUBBISH HAULING EQUIPMENT.

No rubbish hauling vehicle shall operate without first having legibly inscribed on the hauling vehicle the name, address and telephone number of the business or person operating such rubbish hauling vehicle; the letters and numerals of which shall be not less than one and one-half inches in height. (Ord. 66-1997 Sec. 1. Passed 11-5-97.)

315.05 REQUIREMENT TO AFFIX LICENSE TO RUBBISH HAULERS.

A license sticker to operate a rubbish hauling service shall be affixed to the windshield of the hauler or vehicle using an alternative hauling method at all times when engaged in rubbish hauling functions. This licensed sticker is nontransferable. It shall be used only by the person to whom it is issued. (Ord. 66-1997 Sec. 1. Passed 11-5-97.)

315.99 PENALTY.

Any person violating any provision of this article or any rule or regulation adopted by the Board of Health pursuant to the authority granted herein, shall be fined not more than three hundred dollars (\$300.00) or imprisoned not more than ninety days, or both, and in addition thereto, for repeated violations or a continuous violation, have his license forfeited. (Ord. 16-1964 §8. Passed 4-8-64.)

ARTICLE 317
Sidewalk and Curbing Contractors

(EDITOR'S NOTE: Former Article 317 was repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 319
Stationary Steam Engineers

319.01	Board of License Examiners.	319.05	Fees and fines.
319.02	Enforcement.	319.06	Coordinator.
319.03	Rules and regulations.		
319.04	General requirements.		

CROSS REFERENCES

Power to license - see 3rd Class §2601 (53 P.S. §37601)

319.01 BOARD OF LICENSE EXAMINERS.

(a) There is established a Board of License Examiners consisting of seven members, who shall be appointed by Council. Each member shall serve for a period of two years from the date of his appointment. The seven current members of the Board were previously appointed to serve two year terms. Notwithstanding anything to the contrary herein, each of those terms will be deemed to expire on December 31st of the year which is two years following the date of their most recent appointment. Upon the expiration of those terms, Council shall fill the positions in a manner consistent with the provisions set forth herein and in other apposite City of Erie ordinances. The coordinator of City Services (hereinafter known as "Coordinator") shall be an ex officio member of such Board.

(b) It shall be the duty of the Board of License Examiners to examine all applicants for license to perform the duties of engineers and water tenders having charge of steam boilers, steam-driven machinery and/or ammonia refrigeration machinery, in the City and review all violations of this article. It shall be the further duty of the Board of License Examiners to advise the Coordinator on matters concerning enforcement of this article.

(c) The qualifications of a member of the Board shall be either to have a first class engineer's license or be similarly qualified by education and training.
(Ord. 60-1994 §1. Passed 7-6-94.)

319.02 ENFORCEMENT.

(a) This article shall be administered and controlled by the Coordinator and the Board of License Examiners, subject to the supervision of the Office of the Mayor.

(b) The Coordinator shall keep in his office an accurate record of all applications made and a complete record of all licenses issued by him.

(c) The Coordinator shall keep an accurate record of all violations of this article.

(d) The Coordinator shall have the right to enter and inspect any and all premises:

(1) Wherein a licensed operator is or may be required; or

(2) Whenever the Coordinator has reason to believe a violation of this article is being or has been committed therein.

(e) No person shall in any manner hinder, obstruct, delay, resist, prevent or in any way interfere or attempt to interfere with the Coordinator in the performance of any duty herein required, or refuse to permit such authorized person to perform his duty by refusing him entrance to the premises upon identification.

(f) It shall be unlawful for any person to have charge of or to operate a steam boiler, steam driven machinery or ammonia refrigeration machinery in the City, unless such person or persons hold a license as hereinafter provided for.

(g) It shall be unlawful for any owner or owners, user or users of any steam boiler, steam driven machinery, or ammonia refrigeration machinery of the hereinafter specified capacity, to operate or cause to be operated the same, without having a duly qualified, licensed person in charge of such operation.

(Ord. 60-1994 §2. Passed 7-6-94.)

319.03 RULES AND REGULATIONS.

(a) These regulations shall apply to:

(1) All steam boilers, except those in private dwellings, within the City having a safety valve setting above fifteen pounds per square inch, or an aggregate of 60 boiler HP (horsepower) or more, or the equivalent BTU (British Thermal Unit) output. (Aggregate will be determined by the number of units sharing a common header);

(2) All steam driven machinery within the City;

(3) All ammonia refrigeration machinery within the City; and

(4) Notwithstanding the above, every owner or lessor of any steam boiler, regardless of its size, in theaters, motion picture theaters, hospitals, schools, hotels, motels, organized homes or public buildings within the City not requiring a licensed operator shall cause the boiler to be inspected annually in accordance with State law and a certificate of pressure vessel operation shall be made available to the Coordinator when requested.

- (b) Licenses shall be granted in three classes as follows:
- (1) Class 1 - Chief Stationary Engineer. This class entitles the licensee to have charge of or operate without limitation by pressure, horsepower or equivalent BTU's any and all steam boilers, steam driven machinery and ammonia refrigeration machinery. To qualify, an applicant shall hold a Class 2 Stationary Engineer's license for a period of two years. A two year associate degree in a related field held by the applicant from any recognized school can be substituted in lieu of one years experience for this class of license.
 - (2) Class 2 - Stationary Engineer. This class entitles the licensee to have charge of or operate steam driven machinery up to and including 200 HP or equivalent BTU's. This class also entitles the licensee to have charge of or operate steam boilers having an aggregate horsepower not exceeding 400 HP or equivalent BTU's; provided however the licensee may without limitation by horsepower operate steam driven machinery, steam boilers, or ammonia refrigeration machinery if he does so under the supervision of a Chief Stationary Engineer who is present and in charge or who is not present but is assigned to the steam driven machinery, steam boilers, or ammonia refrigeration machinery and on call and readily available. To qualify, an applicant shall hold a Water Tender's license for a period of two years. A two year associate degree in a related field held by the applicant from any recognized school can be substituted in lieu of one years experience for this class of license.
 - (3) Class 3 - Water Tender. This class entitles the licensee to have charge of, or operate steam driven machinery, up to and including 100 HP or equivalent BTU's. This class also entitles licensee to have charge of or operate steam boilers, having an aggregate horsepower not exceeding 200 HP and 150 PSI (pounds per square inch); provided however the licensee may without limitation by horsepower or PSI operate any steam boilers, if he does so under the supervision of a licensed engineer who is qualified hereunder to operate the steam boilers in question. To qualify an applicant shall have experience in and around steam generating equipment and auxiliaries for a period of one year. A two year Associate Degree in a related field held by the applicant from any recognized school can be substituted in lieu of one year's experience for this class of license provided the applicant can pass the written examination, and a hands-on examination administered by the Licensing Board.
 - (4) Refrigeration license. This license entitles the licensee to have charge of or operate any ammonia refrigeration machinery. To qualify an applicant shall have experience in and around ammonia refrigeration machinery for a period of one year.

(c) The Board shall have the power to promulgate such additional rules and regulations as may be necessary to accomplish the intent of this article.
(Ord. 60-1994 §3. Passed 7-6-94.)

319.04 GENERAL REQUIREMENTS.

- (a) All applicants shall be eighteen years of age and have a high school education or its equivalent.
- (b) All applicants shall pass a written examination for each class of license.
- (c) All licenses shall be framed under glass, in a conspicuous place where they can be readily seen.
- (d) All licensees shall assist the State Inspector in his examination of any equipment covered under this section. He shall apprise the State Inspector of any known defects.
- (e) It shall be the responsibility of a licensee when on duty to thoroughly examine all equipment and any defects or sign of neglect shall be reported to the Licensed Engineer in charge.
- (f) This article requires that all steam boilers or steam-driven machinery, except those in private dwellings, within the City having a safety valve setting above fifteen pounds per square inch, or an aggregate of sixty boiler HP, or the equivalent BTU output be manned by a duly licensed Stationary Steam Engineer. It further requires all steam-driven machinery and all ammonia refrigeration machinery be manned by a duly licensed Stationary Steam Engineer. Within the meaning of this article a covered steam boiler, steam-driven machinery or an ammonia refrigeration machinery is properly manned as follows:
- (1) If the covered steam boiler(s) or steam driven machinery has an aggregate boiler horsepower between sixty and 149.9, a licensed engineer, as required by Section 319.03, above, shall be in charge and on call. The boiler(s) shall be maintained daily according to the manufacture specifications or the ASME Code, Section 6, by same. If the building housing the boiler(s) or steam driven machinery is occupied by school children* and/or incapacitated individuals, the licensed engineer, as required by Section 319.03, shall be present in the building when the building is occupied and the machinery is in operation. He may, however, perform other duties in the building provided he checks the boiler(s) every two hours.

* Buildings occupied by school children shall be defined as buildings used for preschool, elementary or secondary education of children and shall not include buildings utilized for providing programs of post-secondary education.
 - (2) If the covered steam boiler(s) or steam-driven machinery has an aggregate boiler HP of 150 and above and is used for heating purposes only, the licensed engineer, as required by Section 319.03, shall have his primary post of duty in the building housing the machinery. He is further required to be present in the building when the machinery is in operation. He may, however, perform other duties in the building, provided he checks the machinery every two hours. If the boiler(s) is also used for steam processes, the licensed engineer shall check the boiler(s) every hour or more if deemed necessary by the operation.

- (3) If the covered machinery is ammonia refrigeration machinery, the licensed operator required by Section 319.03, shall have his primary post of duty within the building housing the ammonia refrigeration machinery. The licensed operator is further required to be present in the building when the ammonia refrigeration machinery is in operation and the building is occupied. The licensed operator may, however, perform other duties in the building, provided he checks the ammonia refrigeration machinery at least once every hour.

(g) Any person seeking to be licensed as an Engineer under this article shall submit an application to the Coordinator, who shall forward it to the Board of License Examiners. Upon receipt, the Board of License Examiners shall review the applications to insure eligibility requirements are met.
(Ord. 60-1994 §4. Passed 7-6-94.)

319.05 FEES AND FINES.

(a) Application for license shall include a nonrefundable fee payable to the City in the following amounts: thirty dollars (\$30.00) for Water Tender; forty dollars (\$40.00) for Second Class Engineer; and fifty dollars (\$50.00) for Chief Engineer and Refrigeration Engineer.

(b) All licenses expire December 31st of each year.

(c) All licenses shall be renewed on or before December 31st of each year by remitting, to the Coordinator, payment in the amount set forth in subsection (a) hereof.

(d) The license of any operator who enters active duty in the armed services shall remain in effect, without payment of renewal fee, until discharge; provided however, the license shall be renewed within six months of discharge, in the manner set forth above in subsection (c) hereof.

(e) Any person violating any provision of this article shall on conviction thereof, be liable to pay a fine of not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) and costs of prosecution to be collected by summary proceedings before any duly authorized magistrate. In default of payment of any such fine and cost, a violator may be committed to Erie County Jail for a period not to exceed ninety days. In addition, such person shall be liable to a suspension or revocation of his license as the Board of License Examiners shall determine.
(Ord. 60-1994 §5. Passed 7-6-94.)

319.06 COORDINATOR.

(a) The term Coordinator of City Services shall include the Coordinator, his authorized designee(s) or agent(s).

(b) The Coordinator shall be an ex-officio member of the Board of Examiners created in Section 319.01.
(Ord. 60-1994 §6. Passed 7-6-94.)

ARTICLE 321
Taxicabs

(EDITOR'S NOTE: Former Article 321 was repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 323
Telegraph Companies

(EDITOR'S NOTE: Former Article 323 was repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 325
Theaters and Public Halls

(EDITOR'S NOTE: Former Article 325 was repealed by Ordinance 28-2000, passed June 7, 2000.)

(NOTE: The next printed page is page 45.)

ARTICLE 327
Transient Retail Merchants

- | | | | |
|--------|---------------------------|--------|-------------|
| 327.01 | Definition. | 327.04 | Exceptions. |
| 327.02 | License required. | 327.99 | Penalty. |
| 327.03 | License application; fee. | | |

CROSS REFERENCES

Power to regulate and license - see 3rd Class §2620 et seq. (53 P.S. §37620 et seq.)

327.01 DEFINITION.

For the purpose of this article, “transient retail business” and “transient wholesale business” means and includes any business in which any goods, wares or merchandise whatsoever are sold or offered for sale at retail and wholesale by any person, firm and/or corporation, whether by principal or agent, which at the time of the commencement of the business shall be intended by the party commencing the same to continue for a period of less than one year. (Ord. 8033 §2. Passed 9-24-40.)

327.02 LICENSE REQUIRED.

No person shall engage in any transient retail and wholesale business, without first having procured a license as hereinafter provided. (Ord. 8033 §1. Passed 9-24-40.)

327.03 LICENSE APPLICATION; FEE.

The Bureau of Regulation, Inspection and Licensing is authorized to grant a transient merchant's license upon payment by the applicant of a license fee of two hundred dollars (\$200.00), for each month or fractional part thereof during which such transient merchant is engaged in the business of soliciting, taking, peddling, selling or delivering goods, wares and/or merchandise within the City. Each applicant shall state the name, residence and length of time for which it is desired to do business and the number of persons so engaged. Each and every person, agent, employee or solicitor so engaged shall secure a separate license and be required to pay a license fee therefor not exceeding two hundred dollars (\$200.00) for each month or fractional part thereof, for the period engaged in such soliciting, taking, peddling, selling or delivering goods, wares or merchandise.
(Ord. 7513 §3. Passed 12-8-31.)

327.04 EXCEPTIONS.

Nothing contained in this article shall be construed to apply to farmers selling their own produce, or for the selling of goods, wares or merchandise donated by the owners thereof, the proceeds whereof are to be applied to any charitable or philanthropic purpose.
(Ord. 7513 §4. Passed 12-8-31.)

327.99 PENALTY.

Any person violating any of the provisions of this article, upon conviction, shall be fined not more than three hundred dollars (\$300.00) or imprisoned not more than ninety days, or both.
(Ord. 47-1966 §1. Passed 9-28-66.)

ARTICLE 329
Tobacco Vending Machines

329.01	Definitions.	329.03	Exceptions.
329.02	License required; fee.	329.99	Penalty.

CROSS REFERENCES
Smoking prohibited in public places - see Art. 1127

329.01 DEFINITIONS.

(a) "Tobacco vending machine" is a device which, upon the insertion of cash, credit card, token or other means of payment, automatically dispenses or unlocks to allow the purchaser to obtain one or more tobacco products, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or other items generally recognized and regulated as smoking or tobacco products.

(b) "Actual control" of a tobacco vending machine refers to the person or entity, or the employees of such person or entity, which places merchandise in and physically takes revenue from the machine, regardless of the number of others who share the distribution of revenue. (Ord. 2-2003. Passed 1-8-03.)

329.02 LICENSE REQUIRED; FEE.

(a) No person, corporation or other entity shall own, keep or operate any vending machine for the sale of tobacco products without having first obtained the license and paid the fee required by this ordinance. While the license and fee may be required of either the owner, operator, distributor or lessee of any vending machine, there shall only be one such fee per machine per year, and it is the person or entity having actual control of the machine's merchandise and revenue who shall be required to obtain the license and pay the license tax.

(b) Applicants for a license under this article shall file with the Bureau of Regulations and Licensing a sworn application in writing, which shall contain:

- (1) The name and physical description of the applicant;
- (2) A legal and local address which shall be valid for the period of the license, with immediate notice required if any change is made;
- (3) A statement of any convictions of the applicant in any jurisdiction for a felony, misdemeanor or municipal ordinance, identifying the place and nature of the charge and disposition thereof;

- (4) The proposed or actual location of every vending machine which will be included in the license; and
- (5) A certificate of general liability insurance in an amount not less than five hundred thousand dollars (\$500,000) per occurrence of any machines which are to be placed on City-owned property or in the City's right-of-way, naming the City of Erie as additional insured.

(c) At the time of presenting the application, a fee of seventy-five dollars (\$75.00) shall be tendered for each such machine. These fees shall be for one calendar year from the time of application, and intended to include the cost of investigation and license as well as general revenue as authorized by the Third Class City Code at 53 P.S. 37601. At the beginning of each subsequent year from application, the applicant shall file a renewal notice with any changes of location, number or type of machine, or other change from the original application information, and pay the appropriate fee for the year. The license officer shall affix an identification tag or sticker to each machine properly licensed for the current year.

(d) Upon the completion of the original application, the License Officer shall commence an appropriate investigation to validate the information provided by the applicant. A license shall be issued to the applicant as soon as practical, and shall be denied only in the event that the investigation shows a significant history of criminal conduct, lack of honesty or financial responsibility by the applicant evidencing a disregard for the public health, safety or welfare. If a license has been issued pending the outcome of such an investigation, it may be revoked for such reasons or a renewal may be refused. In the case of any such denial, revocation or refusal to renew, the applicant shall be provided with a written statement from the licensing officer clearly setting forth the reasons for such action. Any applicant or licensee aggrieved by such denial, revocation or refusal to renew may, within ten calendar days of the written notice from the License Officer, request in writing a hearing before the Director of Public Works or his designee, at which testimony and evidence may be presented and transcribed with the License Officer being required to present sufficient evidence to support the action taken and a written determination made.

(Ord. 2-2003. Passed 1-8-03; Ord. 3-2004. Passed 1-15-04.)

329.03 EXCEPTIONS.

The license tax provided by this ordinance shall not be assessed against the person, corporation or other entity which manufactures the vending machine itself, as the term "manufacture" is construed under Pennsylvania tax law; nor against vending machines neither usable by the general public nor located in commercial, industrial, governmental or institutional buildings or grounds; nor against machines whose entire net revenue is devoted to the maintenance of an institution of purely public charity as defined by Pennsylvania law. Such manufacturers and charitable organizations must otherwise comply with the license application and renewal requirements. (Ord. 2-2003. Passed 1-8-03.)

329.99 PENALTY.

Any person violating any provision of this article shall be guilty of a summary offense, and upon conviction shall be fined not more than six hundred dollars (\$600.00) or imprisoned not more than ninety days or both. (Ord. 2-2003. Passed 1-8-03.)

TITLE THREE - Business Regulation

- Art. 341. Barbershops. (Repealed)
- Art. 343. Cable Communications Systems.
- Art. 345. Pawnshops and Secondhand Stores.
- Art. 347. Smoke Abatement. (Repealed)
- Art. 348. Self-Service Filling Stations. (Repealed)
- Art. 349. Alarm Systems.
- Art. 351. Private Security Companies.

ARTICLE 341
Barbershops

(EDITOR'S NOTE: Former Article 341 was repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 343
Cable Communications Systems

<p>343.01 Purpose and intent. 343.02 Title. 343.03 Definitions. 343.04 Grant of authority. 343.05 Authority not exclusive. 343.06 Franchise agreement. 343.07 Pole use agreements. 343.08 Previous rights subordinated. 343.09 Relocation and construction costs. 343.10 Clear access ways. 343.11 Taxes. 343.12 Transfer of rights. 343.13 Security fund. 343.14 Indemnity and insurance. 343.15 Service of notice. 343.16 Reports. 343.17 Review and renewal. 343.18 Breach and termination of franchise agreement. 343.19 Judicial review.</p>	<p>343.20 Compliance with State and Federal laws; separability. 343.21 Continuity of service. 343.22 System design. 343.23 Regulation of rates. 343.24 Public, governmental and educational access channels. 343.25 Support for public, educational and government access. 343.26 Municipal and school service. 343.27 Subscriber complaints. 343.28 Fees. 343.29 Service to customers. 343.30 Force majeure. 343.31 Franchise extension. 343.32 Applicable law. 343.33 Severability. 343.34 Erie Cable Television Access Board.</p>
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343.01 PURPOSE AND INTENT.

In consideration of the grant of a franchise pursuant to Section 343.04, the grantee hereby promises to comply with the provisions of this franchise agreement. In consideration of the grantee's promises, the City hereby grants to the grantee a franchise pursuant to Section 343.04. (Ord. 109-1991. Passed 12-4-91.)

343.02 TITLE.

This agreement may be referred to as the "City of Erie Cable Communications Franchise Agreement" or the "franchise agreement". (Ord. 109-1991. Passed 12-4-91.)

343.03 DEFINITIONS.

As used in this article, certain terms are defined as follows:

- (a) "Access authority" means the entity designated by the City as having responsibility for the production of public access programming utilizing the funds and equipment provided in this agreement. This entity may be a Municipal Authority, a private nonprofit corporation or an agency of City government, at the option of the City.

In the event that a Municipal Authority or private nonprofit corporation is terminated or abandons public access, and the City affirmatively chooses not to administer public access, then all of the public access equipment, funds and property provided by the grantee, other than from the public access portion of the franchise fee, shall become the property of the grantee. The parties shall continue to perform under the franchise agreement in all other respects. The full franchise fee of five percent (5%) will be paid to the City for general revenue purposes.

- (b) "Additional service" means programming or other services for which an additional charge is made beyond the charge for basic subscriber services, including, but not limited to, movies, concerts, variety acts, sporting events, programming sales to satellite dish owners, pay-per-view programs, interactive services, leased access and any other service that may be legally offered utilizing any facility or equipment of a cable television system operating pursuant to a franchise granted under this franchise agreement. The City reserves the right to charge the grantee any franchise fee, tax or other assessment on any additional service which is not a cable service as defined in the Cable Communications Policy Act of 1984 ("the Cable Act"), provided that such franchise fee, tax or other assessment is generally applicable to other providers of a similar additional service.
- (c) "Agreement" means this franchise agreement and any amendment or renewals thereof.
- (d) "Basic cable television service" means any tier of service which includes the retransmission of local television broadcast signals, and access channels as specified herein, or as otherwise defined by the Federal law.
- (e) "Broadcast signal" means a television or radio signal that is licensed by the FCC and is transmitted over the air and is received by the cable system off the air or by direct connection to a broadcasting system.
- (f) "Cable communications system" means 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:
- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

- (2) A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public rights of way;
 - (3) A facility of a common carrier which is subject, in whole or in part, to the provision of Title II of the Cable Communications Policy Act, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers;
 - or
 - (4) Any facilities of any electric utility used solely for operating its electric utility systems.
- (g) "Cable facilities" means a system of antennae, coaxial cables, wires, wave guides or other conductors, equipment and facilities designed, constructed or used for the production of radio, television, optical or other signals, audio, video or other form of electronic or electric interception and receipt of television or radio signals directly or indirectly received off the air and the distribution or transmission of such signals by means of cable, wire, radio frequency devices, optical fibers or other similar devices to subscribers.
 - (h) "Channel" means any bandwidth which generates a full volt peak to peak providing NTSC picture and sound which is capable of carrying either one standard video signal, a number of audio, digital or other nonvideo signals or some combination of such signals.
 - (i) "City" means the City of Erie, Pennsylvania, or its designee.
 - (j) "Communications Policy Act or Cable Act" means the Cable Communications Policy Act of 1984 as it may be amended or succeeded.
 - (k) "Converter" means an electronic device which converts signal carriers from one frequency to another for display on a television set of any subscriber.
 - (l) "Council" means the present governing body of the City, any successor to the legislative powers of the present City Council, or Council's or its successor's designee.
 - (m) "Decoder" means an electronic device which translates an otherwise encoded or scrambled signal into a signal suitable for viewing by a subscriber.
 - (n) "Downstream" means signals travelling from a cable system's head-end.
 - (o) "Education access channel" means a channel on which public elementary and secondary schools, nonprofit educational institutions and other institutions or organizations deemed to be qualified by Council may cablecast educational programs. Channel capacity reserved for use by educational agencies, designated by the franchising authority.
 - (p) "FCC" means the Federal Communications Commission and any legally appointed designee, agent or successor.
 - (q) "Franchising authority" means the City or its designee and its successors.

- (r) "Government access channel" means a channel on which City, County, State or Federal governments may cablecast programs concerning government activities. Channel capacity reserved for use by governmental agencies of the City of Erie, and other governmental agencies designated by the City of Erie.
- (s) "Grantee" means Erie Telecommunications, Inc., also dba Erie Cablevision, its successors and assigns.
- (t) "Grantor" means the City or its designee and its successors.
- (u) "Gross annual revenue" means all revenue derived directly or indirectly by the grantee, from or in connection with the operation of a cable system pursuant to this franchise agreement and the Cable Act; provided, however, that this term shall not include any taxes on services furnished by the grantee imposed directly upon any subscriber or user by the Federal, State, City or other governmental unit and collected by the grantee on behalf of such governmental unit or any money collected by grantee and paid as a franchise fee; provided, however, that grantee may not argue based on this provision that the franchise fee paid pursuant to this agreement is a tax and not a franchise fee.
- (v) "Head end" means the location which houses the electronic equipment that transmits the necessary signals and services for the cable system, and includes sub-head-ends and similar facilities.
- (w) "Input point" means a geographical location within the City of Erie that has access to the institutional cable. Each input point shall be capable of accepting the television signal produced at any of the points referred to in Section 343.22. Following acceptance of the program material by the institutional cable at the input point, the program material will be transmitted upstream from the input point to the head end.
- (x) "Institutional cable" means that part of the cable system which was constructed by grantee during the prior franchise term and a map of which is attached as Appendix A - Institutional Cable Map and incorporated by reference, to original Ordinance 109-1991.
- (y) "Leased access" means channel capacity used for commercial use, this capacity shall meet all provisions of Sect. 612 of Public Law 98-549, commonly known as "the Cable Communications Policy Act of 1984".
- (z) "May" is permissive.
- (aa) "Mayor" means the present Chief Executive Officer of the City, or his/her designee, or any successor to the executive power of the present Mayor.
- (ab) "Pay channel" means any channel which is used for pay service.
- (ac) "Pay service" means the delivery to subscribers, over the cable system, of television signals for a fee or charge to subscribers on a per premium program or per premium channel basis over and above the charge for basic cable television service.
- (ad) "Person" means any individual, association, firm, corporation or other entity whether for profit or not for profit.

- (ae) "Public access channels" means channel capacity is reserved for use by the general public of the City of Erie for noncommercial programming. The rules for public access use will be formulated by the franchising authority, or any agency so designated by the franchising authority.
- (af) "Residential subscriber" means a subscriber who receives any service of the grantee in an individual dwelling unit or multiple dwelling, where the service is not to be utilized in connection with a business, trade or profession.
- (ag) "School" means any institution of the Erie public school system.
- (ah) "Section" means any section, subsection or provision of this agreement.
- (ai) "Shall" and "will" are mandatory, not merely directive.
- (aj) "Signal" means any transmission of radio frequency energy or of optical information.
- (ak) "Street" means the surface of as well as the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement, or any extension thereof, now or hereafter held by the City for any public purpose and shall include such other easements or rights of way or extensions thereof as shall be now held or hereafter held by the City which shall within their proper use and meaning entitle the City and its grantee to the use thereof for the purpose of installing, or transmitting cable transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a cable system.
- (al) "Subscriber" means any person or entity lawfully receiving for any purpose any service of the grantee herein.
- (am) "Upstream" means signals traveling on the cable system to the head-end.
(Ord. 109-1991. Passed 12-4-91.)

343.04 GRANT OF AUTHORITY.

There is hereby granted by the City, where it has the power to do so, to the grantee the right, privilege and franchise to construct, operate, modify and maintain a cable system in order to provide cable service and additional service, in the City of Erie, Pennsylvania for a period or term ending September 30, 2001 subject to the conditions and restrictions as herein provided. No privilege or power of eminent domain is bestowed by this grant of authority.
(Ord. 109-1991. Passed 12-4-91.)

343.05 AUTHORITY NOT EXCLUSIVE.

The right to use and occupy the streets of the City for the purposes set forth in this franchise agreement shall not be exclusive and the City reserves the right to grant one or more similar uses of such streets to any person at any time. The City covenants that it will not create an unfair competitive advantage to any grantee or grantees in relation to other grantees to the extent allowable by applicable law.
(Ord. 109-1991. Passed 12-4-91.)

343.06 FRANCHISE AGREEMENT.

(a) The grantor and grantee may amend the scope of the franchise as set forth in this franchise agreement from time to time, at the grantee's request or grantor's request or where otherwise allowed by law, to allow the grantee to innovate and implement new services and developments or to impose any terms allowed by law or delete any terms no longer allowed by law.

(b) In addition to those matters required elsewhere in this franchise agreement, grantee expressly represents that it recognizes the right of the City to exercise its police power to make reasonable amendments to the franchise agreement during this term or any renewal term thereof without notice with respect to an emergency involving clear and present danger to human life or significant property interests for the period of such emergency.

(c) This franchise agreement is a bilateral contract between the grantee and the City and may be supplemented or amended by mutual agreement.

(d) All terms and conditions of this franchise agreement are subject to applicable laws, rules and regulations. If any provision of this franchise agreement is held by any court or Federal or State agency of competent jurisdiction to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct and independent part of this franchise agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof. In such case, the grantee shall promptly bargain with the City in good faith to agree upon a substitute provision, which shall be consistent with all applicable laws. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, provided that the party seeking compliance shall give the other party thirty (30) days written notice of such change before requiring compliance with such provision.

(e) Either party shall, upon the request of the other party and in its name if necessary, promptly apply for, and use its best efforts to obtain, any waiver of the rules of the FCC or any State agency which is enacted after the effective date of the franchise, in order to permit full performance of all of the provisions of this franchise agreement and all accompanying agreements between the grantee and the City. Failure of the grantee to apply in good faith for any such waiver promptly upon request, or failure to use such best efforts shall constitute a material breach of the franchise agreement.

(Ord. 109-1991. Passed 12-4-91.)

343.07 POLE USE AGREEMENTS.

(a) Before commencing construction in, above, over, under, across, through any or in any way connected with the streets, public ways or public places of the City, the grantee shall first obtain the written approval of all appropriate City agencies (including, but not limited to, the City's Department of Public Works), which approval shall not be unreasonably withheld or delayed. Applications for such approval shall be made in the form, and with payment of any fee of general applicability prescribed by the appropriate agency.

(b) It shall be unlawful for the grantee or any other person acting on its behalf to open or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without obtaining approval to do so after proceeding in the manner prescribed in subsection (a) hereof.

(c) The grantee shall restore any street it has disturbed, and shall, at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured by or on account of its activities to as good a condition as such property was in immediately prior to the disturbance, damage or injury.

(d) The grantee shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place, any of its property when required to do so by the City within twenty-four (24) hours of notification from the City because of a violation of subsection (b) hereof.

(e) The grantee shall obtain written approval from appropriate City agencies before erecting any new poles or installing underground conduits where none exist at the time that the grantee seeks to install its cable system. Such approval shall not be unreasonably withheld or delayed.

(f) The grantee shall maintain all wires, conduits, cables, and other real and personal property and facilities in good condition, order and repair.

(g) The grantee shall keep accurate, complete and current maps and records of its system and facilities. The grantee shall furnish two (2) complete copies of such maps and records to the City's Department of Public Works annually, on or before March 31 of each year, submit maps reflecting any changes to or additions made to the system. Such maps and records shall be available for inspection by the public during normal business hours at the Department of Public Works.

(h) The grantee shall not place, or cause to be placed, poles or other equipment in such a manner as to interfere with the rights of adjoining property owners without securing their written approval in advance, or with any gas, electric or telephone utilities' fixtures or property.

(i) The grantee shall comply with all FCC and National Electric Code rules and regulations governing the construction, operation and installation of cable communications systems. In addition:

- (1) All cables and wires shall be installed parallel with existing telephone and electric utility wires whenever possible; and
- (2) Multiple configurations shall be in parallel arrangement and bundled, in accordance with engineering and safety considerations; and
- (3) All installations shall be underground in those areas of the City where both telephone and electric utilities' facilities are underground at the time of the installation of the grantee's cable system. In areas where both telephone and electric utilities' facilities are above ground at the time of the installation of the grantee's cable system, the grantee may install its service above ground only upon the condition that within sixty (60) days after those facilities are placed underground by both the telephone and electric utility companies or are required by the City to be placed underground, the grantee shall likewise place its facilities underground at its sole cost and expense.

(j) The Director of the City's Department of Public Works or his or her successor shall give the grantee reasonable notice of street improvements where paving, regrading, grading or resurfacing of a permanent nature is involved in accordance with current prevailing law and practice, including but not limited to, the Pennsylvania One Call System.

- (1) Such notice shall describe the nature and character of such improvements, the streets upon which they shall be made, the extent of the improvements and the work schedule for the project.
- (2) The City shall allow the grantee a reasonable time to make such additions, alterations or repairs to its facilities as the grantee deems necessary in advance of the City's commencement of such improvements so as to permit the grantee to maintain continuity of service.
- (3) Notice shall be given as provided in Section 343.14 and in accordance with current prevailing law.

(k) The grantee shall, at the request of any person holding a permit to move a building, temporarily raise or lower its wires to permit the moving of such building.

- (1) Such temporary removal, raising, or lowering of wires shall be at the sole cost and expense of the person requesting the same, and the grantee shall have the authority to require payment for the same in advance before complying with such request.
- (2) Any person making such a request from the grantee shall give not less than fourteen (14) business days written notice of the contemplated move and shall provide the grantee with a copy of the permit issued by the City.

- (3) Any interruption in service occasioned by the temporary removal, raising or lowering of the grantee's wires in accordance with this section shall not subject the grantee to any penalty provided under Section 343.17. (Ord. 109-1991. Passed 12-4-91.)

343.08 PREVIOUS RIGHTS SUBORDINATED.

This franchise as set forth in this franchise agreement is the primary source of all rights, powers, duties and obligations of the grantee regarding the construction, operation, modification or maintenance of a cable system in the City. In the event of any dispute between grantee (or its successor) and the City arising under this agreement, it is the intent of both parties that the adjudicator of such dispute seek first to resolve the dispute based on the provisions of this franchise agreement and refer to other authorities only if a claim raised in the dispute cannot be completely resolved by reference to this franchise agreement. (Ord. 109-1991. Passed 12-4-91.)

343.09 RELOCATION AND CONSTRUCTION COSTS.

In the event the relocation, construction, reconstruction, maintenance or repair by the City of any of its facilities or services now or hereafter acquired (including but not limited to any street, alley or other public place, sewer, electric, water, fire alarm, police communication, civil defense system or traffic control facilities or any part thereof), or in the event that access to any street, alley or other public place to or from any property of the City is required, and it is necessary to move, alter or relocate, either permanently or temporarily, any of the grantee's property or part thereof on public property, public rights of way or public easement (including but not limited to posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances and appurtenances), in order for the City to relocate, construct, reconstruct, maintain or repair any such facility, sewer, street, alley or other public place or any such sewer or electric, water, fire alarm, police communications, civil defense system or traffic control facility, or any part thereof, or to obtain access to or from such property, upon fifteen (15) days written notice from the City, the grantee will move, relocate or otherwise alter any such property or part thereof, at the grantee's cost and expense; and should the grantee fail, refuse or neglect to comply with such notice, such property or part thereof may be removed, altered or relocated by the City at the sole cost of the grantee, and the City shall not be liable to the grantee for damages resulting from such removal, alteration or relocation. The grantee agrees as a condition of this franchise agreement that it will do everything reasonably necessary, in a timely manner, to prevent any delays in City construction projects. Exempted from the notice requirement herein are circumstances involving bona fide emergencies involving substantial risk of damage to property or human life. (Ord. 109-1991. Passed 12-4-91.)

343.10 CLEAR ACCESS WAYS.

(a) The grantee may trim trees or other vegetation in the City's rights of way to prevent their branches or leaves from touching or otherwise interfering with its wires, cables or other structures.

- (1) All trimming or pruning shall be at the sole cost of the grantee.
- (2) The grantee may contract for such trimming or pruning services with any reputable tree trimming service. Any person engaged by the grantee to provide tree trimming or pruning services shall be deemed for the purpose of this franchise agreement to be an agent of the grantee when engaged in such activity.

(b) The grantee shall obtain the written permission of the owner of any tree not in the City's right of way or other vegetation before it trims or prunes the same, unless otherwise provided by agreement.

(c) The grantee shall comply with all ordinances and resolutions concerning City property.

(Ord. 109-1991. Passed 12-4-91.)

343.11 TAXES.

Nothing contained in this franchise agreement shall be construed to exempt the grantee from any Federal, State or City tax, levy or assessment which is or may be hereafter authorized by law.

(Ord. 109-1991. Passed 12-4-91.)

343.12 TRANSFER OF RIGHTS.

(a) The rights granted to the grantee by this franchise agreement may be exercised by any successor or successors, assignee or assignees of the grantee, but such successor or successors, assignee or assignees shall be subject to and bound by all of the provisions, terms, conditions and limitations prescribed in this franchise agreement.

(b) During the term of this franchise agreement, the grantee shall not sell, transfer, exchange, exchange of stock, assign, release or permit the sale, transfer, exchange, assignment or release of:

- (1) More than twenty percent (20%) of the ownership of grantee at any one time or cumulatively over the franchise term; or
- (2) Actual working control of the grantee to any person without the prior written authorization of the Council, which authorization shall not be unreasonably withheld or delayed.

The City shall be notified of any change of more than five percent (5%) of the ownership. For purposes of this section, a merger or consolidation or the formation of a joint venture or partnership which results in transfer of more than twenty percent (20%) of the ownership or a change in actual working control of the grantee shall be deemed a transfer or assignment. However, no authorization by the City shall be required for the transfer of any ownership interest to American Television and Communications Corporation ("ATC") or to any entity under common control with ATC.

- (c) The City shall grant written authorization under subsection (b) hereof, unless the grantee fails:
- (1) To show to the satisfaction of the City whether the proposed purchaser, transferee or assignee (the "proposed transferee"), which, in the case of a corporation, shall include all officers, directors, employees and all persons having a legal or equitable interest in five percent (5%) or more of its voting stock, or any of the principals of such proposed transferee;
 - A. Has ever been convicted or held liable for acts involving moral turpitude (including, but not limited to, fraud, misrepresentation to any Federal or State agency, violation of any securities law);
 - B. Has ever had a judgment in an action of fraud, deceit or misrepresentation entered against it, her, him or them in any court of competent jurisdiction; or
 - C. Has pending any material legal claim, law suit or administrative proceeding arising out of or involving a cable system.
 - (2) To establish to the satisfaction of the City the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee which the grantee is required to submit in Sections 343.16(a)(2) to (4) and (d) of this franchise agreement, the most recent Standard and Poor and/or Moody's Investment Advisory Services Report on and rating of the proposed transferee and such other data as the City may reasonably request.
 - (3) To establish to the satisfaction of the City that the financial standing of the proposed transferee indicates that the transferee has the financial ability to maintain and operate the cable system for the remaining term of the franchise agreement.
 - (4) To establish to the satisfaction of the City that the proposed transferee has the character and technical ability to maintain and operate the cable system under the terms of this franchise agreement for the remaining term.
- (d) Any proposed transferee shall execute an agreement, in a form and containing the conditions approved by the City Solicitor or the Council, that it will assume and be bound by all of the provisions, terms and conditions of this franchise agreement and all applicable Federal, State and local laws, and further that the transferee shall be primarily liable and obligated under such documents without, however, relieving the grantee from its obligations to the City under this franchise agreement.
- (e) Nothing in any approval by the Council or execution by the Mayor of any authorization of any transfer or assignment of any ownership interest pursuant to this section shall be construed to waive or release any rights of the City in and to the streets, public ways and public places of the City, or as a release of any of the City's police powers, or as an exercise of eminent domain.

(f) The occurrence of any event which constitutes: an act of bankruptcy by the grantee as defined in the Federal Bankruptcy Act; or placement of the grantee into receivership; or the issuance of any order to the grantee by a government agency or court of competent jurisdiction to divest any interest related to the cable system hereunder; or the entry of any judgment against the grantee which, in the opinion of an objective financial institution, impairs the grantee's credit thereby materially endangering grantee's ability to perform its obligation hereunder; or grantee's failure to meet its financial obligations on a continuing basis, shall be deemed an unauthorized transfer and assignment under the provisions of this section and shall:

- (1) Be deemed a material breach and default of this franchise agreement; and
- (2) Subject the grantee to all penalties and remedies prescribed in this franchise agreement and to all other remedies, legal and equitable, which are available to the City.

(g) The occurrence of an unauthorized transfer or assignment may, at the option of the City, terminate this franchise agreement pursuant to the provisions of this section, and accelerate all of the obligations and rights thereunder, including but not limited to the right of the City to purchase the cable system for fair market value or to award additional franchises. The grantee shall notify the City of any occurrence which constitutes an unauthorized transfer under the provisions of this section and of the entry of any judgment against it which materially endangers grantee's ability to perform its obligations hereunder within twenty-four (24) hours of knowledge of such occurrence or of when the grantee should have knowledge of such occurrence.

(h) To the extent permitted by law, from and after any of the occurrences enumerated in subsection (f) hereof, the grantee shall not make, execute or enter into any deed, deed of trust, mortgage, contract, conditional sales contract or any loan, lease, pledge, sale, pole agreement or any other agreement or hypothecation concerning any of the facilities or property, real or personal, of the cable system without the written approval of the Council, if such approval is permitted under bankruptcy law, such approval not to be unreasonably withheld.
(Ord. 109-1991. Passed 12-4-91.)

343.13 SECURITY FUND.

(a) The grantee shall leave on deposit with the City, the sum of twenty-five thousand dollars (\$25,000) as further security for the faithful performance by the grantee of the provision of this agreement and compliance with all orders, permits, and directions of any agency of the City and the payment of all claims, liens, fees, penalties or taxes to the City arising by reason of the construction, operations, maintenance, or repair of the grantee's cable system. Failure to make such deposit with the City in a timely fashion shall constitute a material breach of this agreement.

The grantee shall deposit with the City a performance bond in the amount of one hundred thousand dollars (\$100,000) with a surety or trust company or companies authorized to transact business in Pennsylvania as surety or sureties. Such bond shall be for the protection of the City with respect to all obligations under this franchise agreement for the balance of the franchise term and any renewal or extensions thereof. Such bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety, until thirty (30) days after receipt by the City of Erie by certified or registered mail of the written notice of such intent to cancel or not to renew." Such performance bond shall be in addition to the twenty-five thousand dollars (\$25,000) security fund provided for above.

(b) Any interest earned from the security fund shall be paid to the grantee semi-annually, not later than July 15 and January 15 following the end of each semiannual calendar period. The City shall pay interest equal to the rate established by the bank for the period. Payment will be accompanied by documentation acceptable to grantee showing interest calculations.

(c) If the grantee fails to make timely payment to the City or its designee of any amount due as a result of this agreement or of other agreements incorporating this agreement by reference between the grantee and the City, or fails to make timely payment to the City or its designee of any penalty due under this franchise, or fails to make timely payment to the City of any taxes due; or fails to repay to the City for damages, costs, or expenses which the City shall be compelled to pay by reason of any such act or default of the grantee; or fails to comply with any provisions of the franchise which the City reasonably determines can be remedied by an expenditure of the security fund the City may withdraw the amount thereof with interest and any penalties, from the security fund. Interest shall be calculated as in subsection (b) hereof.

(d) At least three (3) working days prior to a withdrawal from the fund, the City shall mail written notification of the amount, date and purpose of such withdrawal to the grantee. The grantee shall have the right to contest the withdrawal by the City and if such right is exercised, the grantee shall mail written notification thereof to the City within fourteen (14) days of receipt of the City's notice of the withdrawal. Upon receipt of the grantee's notice of contest as to the withdrawal, the City shall place the withdrawal in a separate interest bearing escrow account until the dispute is resolved between the City and grantee by final judicial determination or otherwise. The grantee shall commence legal action or seek arbitration with the City within fourteen (14) days of the City's receipt of notice of contest or the grantee shall forfeit its right to contest the withdrawal which shall then revert to the City.

(e) If at the time of withdrawal from the fund by the City, the amount of the fund is insufficient to provide the total payment toward which the withdrawal is directed, the balance of such payment shall continue as an obligation of the grantee to the City, until paid with interest at prime rate.

(f) No later than thirty (30) days after mailing of notification to the grantee, the grantee shall deliver to the City for deposit in the fund an amount equal to the amount so withdrawn, or due if in excess of amount drawn plus interest.

(g) Upon termination of this agreement under conditions other than those stipulating forfeiture of the security fund, the balance then remaining in the fund with interest as stated in subsection (b) hereof, shall be delivered to the grantee within ninety (90) days of such termination, provided that there is then no outstanding default on the part of the grantee.

(h) The rights reserved to the City with respect to this section are in addition to all other rights of the City whether reserved by this agreement or authorized by law, and no actions, proceeding or exercise of a right with respect to such sections shall affect any other rights the City may have.

(i) Notice under this section shall be in writing and personally delivered to either the City or grantee by certified or registered United States mail to either party. (Ord. 109-1991. Passed 12-4-91.)

343.14 INDEMNITY AND INSURANCE.

(a) The City shall not at any time be liable for any injury or damage occurring to any person or property from any cause whatsoever arising from the use, operation or condition of the grantee's cable system. The City shall within fifteen (15) days of its receipt of any notice of claim or suit for injury or damage notify the grantee thereof.

(b) The grantee shall indemnify, save and hold harmless and defend the City from all liens; charges; claims (including but not limited to libel, slander, invasion of privacy, and unauthorized use of any trademark, trade name or service mark); demands; suits; actions; fines; penalties; losses; costs (including but not limited to legal fees and court costs); judgments; injuries; liabilities or damages, in law or equity, of any and every kind and nature whatsoever arising out of or in any way connected with the installation, operation, maintenance or condition of the grantee's cable system.

(c) The grantee shall obtain and keep in force and effect during the entire term of this franchise agreement, and any renewal or extension thereof, a policy of insurance in a minimum amount of one million dollars (\$1,000,000), duly executed by the officers or authorized representatives of a responsible and nonassessable insurance company, insuring the above indemnification requirements for the benefit of the City. Such insurance in compliance with this subsection shall be obtained as soon as commercially available in keeping with the general practices of the indemnity insurance industry.

(d) The grantee shall obtain, effective from the date of execution of this franchise agreement and shall keep in force and effect during the entire term of this franchise agreement and any renewal or extension thereof, a policy of comprehensive general liability insurance, duly executed by the officers or authorized representatives of a responsible and nonassessable insurance company, evidencing the following minimum coverage for the benefit of the City as an additional insured, as its interest may appear:

- (1) Bodily injury, including death:
\$5,000,000 Each occurrence
\$5,000,000 Aggregate
- (2) Property damage:
\$2,500,000 Each occurrence
\$2,500,000 Aggregate

(e) The grantee shall obtain, effective from thirty (30) days after execution of this franchise agreement and shall keep in force and effect during the entire term of this franchise agreement and any renewal or extension thereof, a policy of physical damage insurance, duly executed by the officers or authorized representatives of a responsible and nonassessable insurance company, covering losses arising in respect of the following realty and personalty incident to the grantee's cable system: All buildings, offices, studios or other realty and equipment contained herein; the head-end and subhead-ends; the transmission tower; all earth stations and all vehicles. No physical damage insurance shall be required for trunk, distribution, feeder or associated drop lines, converters or amplifiers. Physical damage insurance shall be in such amount as to provide the replacement value of the property required to be covered herein, subject to such deductible amount purchased by the grantee, for any loss arising from any and all damage to and destruction of the property insured. For purposes of this franchise agreement, "physical damage insurance" means insurance covering loss arising from fire, lightning, windstorm, hail, snow, explosion, riot and civil commotion, smoke and such other perils as are customarily covered by extended coverage insurance, including vandalism and malicious mischief.

(f) With respect to each policy of insurance required to be obtained and kept in force by the grantee and described in this section, the grantee shall be solely responsible for the payment of premiums due for the insurance thereunder. Upon its request, the grantee shall furnish written proof to the City of the payment of such premiums.

(g) No policy of insurance required under the provisions of this section shall be canceled or materially changed or expire in any way or be permitted to expire by the grantee. No change shall be made by grantee which would violate the provisions of this section or which would materially affect the protection and policies afforded the City. The cancellation, replacement, or material change of any policy of insurance required under this section which violates the provision shall be deemed a material breach of this franchise agreement and shall subject the grantee to all penalties and remedies prescribed herein to the City. All coverage shall be placed with an insurer with at least an "A" rating by Best's Insurance Guide.

(h) Each policy of insurance required by this franchise agreement shall provide for at least thirty (30) days prior written notice to the City of the insurer's intention not to renew such policy, or to cancel, replace or materially alter, or change the same, such notice to be given as provided in this section, and shall be noncancelable except upon giving such notice to the City.

(i) The grantee shall deliver to the City a copy of each insurance policy required by this franchise agreement, or a certificate of insurance evidencing the effectiveness of such policy, no later than the date upon which such policy is hereby required to be effective. The grantee shall thereafter at all times, continuously throughout the term of this franchise agreement and any renewal or extension thereof, maintain on deposit with the City copies of such policies or certificates of insurance evidencing that all required insurance is in effect.

(j) None of the provisions of this franchise agreement or of any insurance policy required by the City hereunder, nor the receipt of any proceeds recovered by the City under any such policy, nor any term or condition of this franchise agreement shall be construed to excuse the grantee from the faithful performance of its obligation or limit its liability under any of the provisions of this agreement.

(Ord. 109-1991. Passed 12-4-91.)

343.15 SERVICE OF NOTICE.

(a) Except as specifically provided otherwise in other sections of this agreement, all notices required to be given to the City under any provision of this franchise agreement shall be in writing and shall be deemed served:

- (1) When delivered by hand to the City Clerk during normal business hours; and
- (2) When mailed to any other person designated herein to receive such notice by registered or certified United States mail.

(b) Except as specifically provided otherwise in other sections of this agreement, all notices required to be given to the grantee under any provision of this franchise agreement shall be deemed served:

- (1) When delivered by hand or mailed to the grantee's address for service of notice; and
- (2) When mailed to any other person designated to receive such notice on behalf of the grantee by registered or certified United States mail.

(c) The grantee shall maintain within the City, throughout the term of this franchise an address for service of notices by mail. The grantee shall also maintain a local telephone number for the conduct of matter related to this franchise agreement during normal business hours.

(Ord. 109-1991. Passed 12-4-91.)

343.16 REPORTS.

(a) On or before April 30 of each year during the term of this franchise agreement, the grantee shall submit two (2) copies of a written annual report to the City, in a form approved by Council, including, but not limited to, the following information:

- (1) A summary of the previous year's activities in development of the cable system, including but not limited to, services begun or discontinued, and total number of subscribers, subscribers added or discontinued during the reporting year;
- (2) A set of audited financial statements prepared in accordance with GAAP, which relates to the operation of the cable system, including a statement of revenues and expenses, value of plant, annual capital expenditures, depreciation with an attached depreciation schedule, interest paid, taxes paid, balance sheet and a statement of cash flows;
- (3) A list of the grantee's officers and members of the Board of Directors of the grantee or any partner thereof;
- (4) A list of stockholders holding five percent (5%) or more of the voting stock of: (1) the grantee; (2) the majority stockholder of the grantee; or (3) any subsidiary or other affiliated entity of grantee with significant involvement in the local operations of the grantee.
- (5) A report on the results of technical testing as required in this franchise agreement.

(b) Simultaneously with the annual report required by subsection (a) hereof, grantee shall submit to the City an annual plant survey report which shall be a complete survey of the grantee's plant and a full report thereon. Such report shall include, but not be limited to, an engineering evaluation and the results of proof of performance testing and shall be conducted in conformance with such requirements, including supervision, as the City may prescribe. Such report shall be in sufficient detail to enable the City to ascertain that the technical standards of the FCC and/or the City are achieved and maintained.

(c) Upon request, the grantee shall submit to the City, copies of all pleadings, applications, reports, communications and documents of any kind, except tax returns submitted by the grantee to, as well as copies of any decisions, correspondence and actions by, any Federal, State and local courts, regulatory agencies and other government bodies relating to its cable television operations within the City. However, information otherwise confidential by law and so designated by the grantee which is submitted to the City shall be retained in confidence by the City and its authorized agents and shall not be made available for public inspection.

(d) Grantee shall provide to the City a copy of each of the annual and other periodic or special financial reports of the grantee and any parent, subsidiary or affiliated company with significant involvement in the operations of the grantee, including but not limited to all reports filed with the Securities and Exchange

Commission, which are publicly disclosed, and a copy of each press release or other information which is disseminated to the financial community, the press, or the general public related to grantee's cable television operation within the City.

(e) An accurate and comprehensive file shall be kept by the grantee of any and all repair service requests regarding the cable system. A procedure shall be established by the grantee to quickly and reasonably respond to repair service requests. Records of grantee's actions in response to all repair service requests shall be kept for a reasonable period of time.

- (1) A summary of repair service requests identifying the number and nature of the requests and their disposition in a form agreed by the City and grantee, shall be completed for each month and submitted to the City by the tenth day of the succeeding month.
- (2) An annual opinion survey report which identifies satisfaction and dissatisfaction among subscribers with grantees performance hereunder shall be submitted to the City on or before March 31 of each year. The survey shall be conducted by mail or phone at grantee's option by employees or agents of grantee. The City may monitor all phases of the survey. The City and the grantee shall agree on the questions posed in the survey. The survey shall include a representative sampling of subscribers.

(f) Grantee shall submit to the City, on a monthly basis, the following:

- (1) Monthly management reports, including the number of service calls, disconnects, downgrades and upgrades; and
- (2) Monthly telephone management reports, including average speed of answering, abandonment rate and percent receiving busy signals.

(g) Grantee shall submit to the City such other information or reports in such forms and at such times as Council in order to review the grantee compliance with the terms of the franchise agreement may request or require.

(h) The grantee shall allow the City to make inspections of any of the grantee's facilities and equipment at any time during the grantee's normal business hours, or, in case of emergency, upon demand without prior notice. In cases where grantees personnel are needed for the inspection, City will give the grantee reasonable notice.

(i) The grantee shall maintain an office within the City at which it shall maintain for public inspection all records required to be so maintained by the FCC or any State agency as well as any other records which are or would have been required to be so maintained under Section 76.305 of the rules of the FCC as currently in effect. The City shall have the right to inspect at any time upon reasonable advanced notice during normal business hours all books, and records, maps, plans, income tax returns, financial statements, repair service request logs, performance test results and other like materials of the grantee which

relate to grantees compliance with the terms of this franchise agreement. Subject to applicable law, including, without limitation, laws concerning subscriber privacy, access by the City to the aforementioned records shall not be denied by the grantee on the basis that such records contain confidential or proprietary information; however, confidential or proprietary information shall be held in confidence by the City and not disclosed to any third party.

(j) All reports required under this section, except as otherwise herein provided, shall be available for public inspection in the City Clerk's office during normal business hours.

(k) The continuing and willful refusal, failure, or neglect of the grantee to file any of the reports required under this section, shall be deemed breach of this franchise agreement, shall subject the grantee to the provisions of Section 343.18 and shall subject the grantee to all other penalties and remedies, legal or equitable, which are available to the City under this franchise agreement or otherwise.

(l) Any material false or misleading statement or representation made knowingly by the grantee in any report required under this franchise agreement shall be deemed a material breach of this franchise agreement, shall subject the grantee to the provisions of Section 343.18, and all penalties and remedies, legal or equitable, which are available to the City under the franchise agreement or otherwise.

(m) All reports and records required under this or any other section shall be furnished at the sole expense of the grantee.
(Ord. 109-1991. Passed 12-4-91.)

343.17 REVIEW AND RENEWAL.

(a) To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system and to achieve a continuing, advanced, modern system for the City, the City and the grantee shall comply with the following review provisions:

- (1) Review sessions shall be scheduled by Council as deemed necessary. All such review sessions shall be open to the public and notice shall be given by advertisement twice in a newspaper of general circulation at least one (1) week before each session. In addition, the grantee shall announce the date and time of each such session on the cable system.
- (2) Topics for discussion and review at the review sessions shall include, but shall not be limited to, the following: services, system performance, service provided, subscriber complaints, rights of privacy, amendments to this agreement, and developments in the law. The grantee shall receive a written agenda for the review session at least seven (7) days prior to the date of the review session.

- (3) The City or the grantee may select additional topics, other than those described in subsection (a)(2) hereof, for discussion at any review session.
 - (4) Any topic proposed for discussion at any review session by a resident of the City and supported by a petition bearing the signatures of one percent (1%) of subscribers shall be included in the list of topics for discussion.
- (b) The renewal or termination of this franchise agreement shall be in accordance with the provisions of the Cable Communications Policy Act of 1984.
- (1) If grantee chooses not to seek to renew this franchise agreement, this franchise agreement shall terminate at the end of its initial or any renewal term.
 - (2) If the franchise of the grantee is not renewed, the Council may exercise the City's option provided in Section 343.18, to purchase the cable system from the grantee, or Council may direct the grantee to remove and dismantle its cable system.
- (c) In the event that the City exercises its option provided in Section 343.18 to purchase the cable system at the expiration of the term of this franchise agreement or any renewal thereof, the purchase price to be paid by the City shall be the system's fair market value as a going concern on the date of the expiration of the term of the franchise agreement or any renewal thereof as agreed upon by the parties. Disputes regarding the fair market value shall first be referred to the arbitration system provisions of Section 343.18(i). (Ord. 109-1991. Passed 12-4-91.)

343.18 BREACH AND TERMINATION OF FRANCHISE AGREEMENT.

- (a) In the event Council determines that the grantee has in any manner violated, breached or failed, refused or neglected to abide by any material provision hereto, or of any applicable Federal, State or local law, rule or regulation, then Council may make a written demand on the grantee that it remedy such violation. The written demand on the grantee shall be personally served upon the grantee and sent by registered or certified United States mail.
- (b) If the action to remedy the violation, breach, failure, refusal or neglect is not commenced within thirty (30) days by the grantee following such written demand, then the grantee shall be considered to be in material breach of the franchise agreement. Both the City and the grantee agree that a violation, breach failure, refusal or neglect shall be deemed excusable if it is caused by any of the following:
- (1) Acts of God;
 - (2) Riots or other civil disturbances;
 - (3) Strikes or other labor disputes;
 - (4) Emergencies declared by the President of the United States of America, the Governor of the Commonwealth of Pennsylvania or the City's Mayor;
or
 - (5) Other causes or circumstances beyond the grantee's control.

(c) Upon the grantee's failure to commence a remedy or cure as set forth in subsection (b) hereof, then Council shall notify the grantee, in writing, of the specific material breach which shall state the precise nature of the violation, with time and date of the violation, if identifiable, as well as the section or sections in this franchise agreement alleged to have been violated, and direct the grantee to comply with all the provisions of this agreement or of any applicable Federal, State or local law, rule or regulation.

(d) Within forty-five (45) days after such written notice is given to the grantee concerning the grantee's material breach pursuant to subsection (c) hereof, Council shall conduct a public hearing on the matter. The Council shall provide at least thirty (30) days written notice to the grantee of the time and place of the public hearing by serving the grantee with the written notice in person or by depositing the notice in the United States mail, either registered or certified mail properly addressed to the grantee.

(e) At the time of the public hearing the grantee and the City may present information on the current status of the alleged breach of the franchise agreement.

(f) Council may, after the public hearing, direct the grantee to take corrective action within a specified period of time, or may declare the grantee in default of the franchise agreement, and thereafter, have such remedies as set forth hereinafter. If Council directs that corrective action take place within a specified time or declares the grantee in default of the franchise agreement, then that declaration shall be reduced to writing and written notice of the corrective action or default shall be personally served or mailed by registered or certified mail to the grantee within ten (10) working days of Council's action.

(g) If within thirty (30) days of receipt of the declaration of the corrective action or default the grantee fails or refuses to rectify the breach, or submit a plan detailing how the grantee will eliminate the breach, then Council may revoke the grantee's franchise. The grantee shall have the right to appeal the declaration of Council to a court of competent jurisdiction within the aforesaid thirty (30) day period.

(h) The grantee and the City hereby agree that certain violations of this agreement by grantee would cause particular and appreciable damages to the City of Erie, and should be remedied by specific payments, set forth herein as liquidated damages. Such liquidated damages may be assessed in addition to and not in substitution for any other remedies available to the City under this agreement or by law.

Should Council by resolution determine that a violation exists which is listed in the following schedule as liquidated damages, Council shall notify grantee in writing, and shall permit grantee to remedy the violation within a specified period of time, which shall not be less than ten (10) days. Should grantee comply within the time specified, the liquidated damages specified herein shall be waived by the City.

However, should grantee fail to comply within the specified time period, the liquidated damages shall be assessed as stated herein without any period of grace or abatement. The liquidated damages may be assessed against the Security Fund or the performance bond provided by this agreement.

Grantee may dispute the assessment of the liquidated damages herein by invoking the arbitration provision of the franchise agreement.

The schedule of liquidated damages is as follows:

- (1) Failure to render payment of: Franchise fee or liquidated damages or specific consideration payments ... \$50.00 per day from time due until paid.
- (2) Failure to deposit with the City the security fund within the specified thirty (30) days or failure to obtain and maintain the performance bond ... \$100.00 per day from time due until paid.
- (3) Failure to provide access equipment, facilities or services ... \$100.00 per day from time due until paid.
- (4) Failure to make timely filing of annual financial report ... \$50.00 per day.
- (5) Failure, unless beyond the grantee's control, of the emergency override system to perform, or of the grantee to remove any hazardous conditions caused by its cable system in the event of a public emergency or other situation requiring dissemination of vital information to the public ... \$250.00 per occurrence.
- (6) Failure to restore damaged property ... cost of restoration.
- (7) Failure to make timely applications, registration or any other filing with the appropriate governmental authorities ... \$25.00 per day per filing from time due until filed.
- (8) Failure to deliver evidence to the City of grantee insurance within the specified sixty (60) days and the performance bond within forty-five (45) days ... \$100.00 per day from time due until restored.
- (9) Failure to complete system construction or conversion as outlined in the franchise agreement ... \$100.00 per day from time of lapse until restored.
- (10) Occurrence of multiple similar unresolved service oriented complaints unless beyond the grantee's control ... \$10.00 per occurrence up to \$250.00 per month.
- (11) City Rights. The City shall reduce or waive any of the above-listed liquidated damages where the City finds conditions beyond the control of the grantee are deemed to exist. The City retains the right to reduce or waive any of the above-listed liquidated damages, where conditions beyond the control of the grantee do not exist.

(i) In the event of any dispute between the parties regarding the performance of this agreement, there shall be a system of arbitration which shall be mandatory and must be utilized prior to the institution of any litigation. Nothing in this franchise agreement, however, shall be construed as limiting the right of either party to seek judicial resolution of any dispute after arbitration.

The party desiring to utilize the arbitration system shall notify the other party in writing. Within seven (7) days of receipt of such notice, the parties shall each select one arbitrator, neither of whom may be an officer, director or employee of either party. The two (2) arbitrators so selected shall then choose a third arbitrator within seven (7) days of notice of their selection. The panel of arbitrators shall then designate a chairman, and within three (3) days of the selection of the third arbitrator, shall contact both parties to schedule a date acceptable to all participants for the hearing or other disposal of the matter. Both parties shall be afforded sufficient opportunity for discovery and their right to compel the production of evidence and testimony from the adverse party. The hearing shall be conducted in a manner which provides due process to all parties and shall be concluded in a prompt and efficient manner.

It shall generally be presumed that all disputes arising under this agreement can be brought to a hearing within ninety (90) days of the selection of the third arbitrator. Shorter time periods will be encouraged in every instance, and longer periods shall be granted only under extraordinary circumstances for dilatory tactics of one party which frustrate discovery or other due process. Upon conclusion of the hearing, or submission to arbitrators, or stipulation or other disposition agreed upon by the parties, the arbitrators shall render the determination within ten (10) days unless both parties agree to an extension of time. Should arbitrators fail to render a decision within ten (10) days or other period agreed by the parties, the arbitrators may be penalized by the forfeiture of some or all of the payment due them for services rendered. Such forfeiture may be sought only if both parties agree.

The first two arbitrators shall be paid by the party selecting them. The third arbitrator shall be paid by either or both parties as the panel of arbitrators determines with reference to its determination in the matter before it.
(Ord. 109-1991. Passed 12-4-91.)

343.19 JUDICIAL REVIEW.

Nothing in this franchise agreement may be construed to deny to grantee its rights of judicial review of any action by the City under the terms of this franchise agreement.
(Ord. 109-1991. Passed 12-4-91.)

343.20 COMPLIANCE WITH STATE AND FEDERAL LAWS; SEPARABILITY.

Notwithstanding any other provision of this franchise agreement to the contrary, the grantee shall at all times comply with all laws and regulations of the State and Federal Government or any administrative agency thereof provided however, if any such State or Federal law or regulation shall require the grantee to perform any service, or shall prohibit the grantee from performing any service, in conflict with the terms of this franchise agreement or of any law or regulation of the City, then as soon as possible following knowledge thereof, the grantee shall notify the City of the point of conflict believed to exist between such regulation or law and the laws or regulations of the City or this franchise agreement.
(Ord. 109-1991. Passed 12-4-91.)

343.21 CONTINUITY OF SERVICE.

It shall be the right of all subscribers to receive all available video programming services insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to overbuild, rebuild, modify or sell the system to the City or fails to renew this franchise agreement within a reasonable time, or the City elects to purchase the system, the grantee shall use reasonable effort to ensure that all subscribers receive continuous, uninterrupted service. In the event that interruption of service is required by the grantee for modification, repairs or the like, the interruption shall be as brief as possible and at times when the viewing audience is at a minimum. Records of such interruption shall be kept.
(Ord. 109-1991. Passed 12-4-91.)

343.22 SYSTEM DESIGN.

(a) Channel Capacity.

- (1) The grantee shall maintain a cable system with sufficient bandwidth that, when used in conjunction with an appropriate device at the subscriber's receiver, shall enable the reception of a minimum of eighty-four (84) channels downstream and four (4) activated channels upstream.
- (2) The cable system shall provide, on the existing institutional cable the ability for upstream audio-visual signal input on six (6) channels for cablecast transmission downstream.
 - A. Existing locations and new locations for the signal input points shall be as previously determined by the City and the grantee and listed on Appendix B attached and incorporated by reference by original Ordinance 109-1991.
 - B. New locations for signal input points shall be constructed and operational within six months of the effective date of the franchise.
 - C. A facilities fund worth fifteen thousand dollars (\$15,000) will be maintained by the grantee for the grantees construction of additional institutional cable sites as such need is determined by the access authority. The grantee shall deduct all the costs of construction from this fund, but shall deduct no funds as profit to the grantee.
- (3) The cable system shall provide the capability of cablecasting, on the governmental and educational channels, from all signal input points on the institutional network, existing institutional network points and new points, located in buildings utilized by the City and City public school system to any and all of the public buildings and public schools as provided in Section 343.26 on a closed circuit basis or primarily for dissemination to all subscribers.

- (b) Personnel. The grantee shall, at all times, provide sufficient personnel for the administration, operation, maintenance and repair of the system.
- (1) The grantee's business office shall be staffed during normal business hours by at least one (1) person in sole responsible charge of the grantee's operation in the City.
 - (2) At least one (1) person in responsible charge of the grantee's operation in the City shall be available by telephone during such hours as the business office is closed.
- (c) Emergency Override.
- (1) The cable system shall include an emergency alert capability which shall permit the Mayor or the Mayor's designee to override the audio on all television channels simultaneously, in the case of public emergencies as determined by the Mayor. The grantee shall bear the cost of installing and maintaining the alert capability.
- (d) Standby Power.
- (1) The grantee shall maintain in constant readiness equipment capable of providing standby power for the head-end and trunk amplifiers. The power supply on the distribution system will be capable of providing power for two and a half hours.
 - (2) Such equipment shall be constructed so as to revert automatically to a normal mode when alternating current power returns.
- (e) Maintenance and Repair.
- (1) The grantee shall promulgate and adhere to a preventive maintenance policy directed toward maximizing the reliability and maintainability of the cable system with respect to its delivery of service as set forth in Appendix C and incorporated by reference by original Ordinance 109-1991.
 - (2) The grantee shall maintain service to subscribers at or above the performance standards set forth in Appendix D and incorporated by reference by original Ordinance 109-1991.
 - (3) The grantee shall maintain a repair department comprising qualified technicians, service vehicles and equipment to provide prompt and efficient repair service within the parameters set forth below.
 - A. Whenever it is necessary to interrupt service for the purpose of making repairs, adjustments or installation, the grantee shall do so at such time as will cause the least inconvenience to the subscribers.
 - (4) In constructing, upgrading, rebuilding, operating and maintaining the system, grantee shall at all times comply with this franchise agreement and all applicable laws.

- (5) Equipment used for the distribution system, headend and reception facilities shall be of good and durable quality and be serviced and repaired on a regular basis and shall at all times be of equal or better quality than the equipment utilized in the system on the effective date of the franchise. In cases of equipment replacement not covered above, equipment shall be of equal or better quality than the equipment being replaced.

(f) Parental Control Devices. The grantee shall provide subscribers with parental control devices so that parents can lock out channels that they desire to have such control over. Such devices on addressable converters shall block both the video and the audio portion of such channels to the extent that both are unintelligible.

(g) Minimum Interference. All transmission lines, equipment, and structures shall be installed and located so as to cause minimum interference with the rights and reasonable convenience of property owners and at all times kept and maintained in a safe and adequate condition, and in good order and repair. Grantee shall, at all times, employ necessary and reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisances to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public.

(h) Technical Standards. The cable communications system permitted to be installed and operated hereunder shall be installed and operated in conformance with FCC rules and regulations, the National Electric Code, Guidelines of the National Cable Television Association, all applicable telephone company codes and regulations, and those in Appendix E, attached and incorporated by reference by original Ordinance 109-1991.

(i) Performance Testing. Annual performance tests shall be conducted in accordance with standards set forth in subsection (h) hereof. The cost of such tests shall be borne by the grantee. The results of all tests and measurements which under this franchise agreement are to be taken by the grantee shall be submitted to the City within thirty (30) calendar days after completion of such testing. The reports of the results of the tests and measurements shall include without limitation: the name of the engineer who supervised the test; a description of test equipment; procedures used and evidence of calibration of the test equipment; measurement of locally receivable signals; measurement of access channels; measurements of system performance as prescribed in this franchise agreement; a statement of the grantees adherence to technical standards; and, if technical standards are not satisfactorily met, a statement as to what corrective measures are to be instituted and, if necessary, a recommendation as to action to be taken by the grantee with respect thereto. Such action shall bring the system into compliance with these standards within a reasonable period of time.

(j) Employee Identification. The grantee shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. Such documents shall include a telephone number that can be used to verify identification. In addition, the grantee shall use its best efforts to clearly identify all personnel, vehicles, and other major equipment that are operating under the authority of, or under contract to, the grantee.

(k) Right of Inspections. The City shall have the right to inspect all construction and installation work performed subject to the provisions of this franchise agreement, and shall make such tests as it shall find necessary to ensure compliance with the terms of this franchise agreement and other applicable laws and regulations. The City's inspections shall not unreasonably interfere with the functions of the system.

(l) Construction Manual. The grantee shall construct the system in accordance with the grantee's Construction Specification and Safety Manual attached as Appendix F and incorporated by reference by original Ordinance 109-1991. Should construction practices be utilized within the cable industry which exceed those attached hereto, the grantee shall utilize construction standards equivalent to the highest standards utilized by any other multiple systems operator. Underground drops will be buried as soon as possible, but in any event, weather permitting, no later than fifteen (15) days after the temporary drop has been installed.

(m) Closed Captioned Programming. All closed-captioned programming shall be retransmitted by the system.

(n) Drop Replacement. Drop replacement shall be conducted as set forth in Appendix G attached and incorporated by reference by original Ordinance 109-1991.

(o) System Outages. System outages shall not exceed the standards set forth in Appendix H attached and incorporated by reference by original Ordinance 109-1991. If outages exceed the level specified in the aforementioned Appendix, the grantee shall promptly take corrective action.

(p) Programming and Program Change Notification. The grantee shall initially provide programming on service tiers, as indicated on Appendix I, attached and incorporated by reference by original Ordinance 109-1991. The grantee reserves the right to change the selection of programs and to reconfigure service level tiers. However, those local broadcast stations which are carried on the system and the access channels (to the extent provided in this franchise agreement) shall be placed on the lowest tier of service throughout the term of this franchise. Grantee shall at all times, keep the City and its subscribers informed of its programming line-up. The City shall have a reasonable opportunity for review and comment upon any information provided prior to any changes implemented. Any proposed changes in the programming line-up under grantee's control shall be reported to the City at least thirty (30) days prior to the proposed implementation, except when circumstances beyond the grantee's control do not allow. Grantee shall provide notice to the City and to subscribers of any other major programming changes as soon as reasonably possible.

(q) Electrical Work. Performance of electrical work on the cable system. The grantee shall be permitted to perform electrical work on their own equipment, or facilities notwithstanding any City ordinance to the contrary, with the following conditions:

- (1) Grantee must apply for permits for all off premise construction.
- (2) All off premise electrical work must be inspected.
- (3) Off premise electrical work may be performed by grantee staff after proper permit is issued by the City.
- (4) Grantee staff, or properly licensed contractor may perform emergency work, when necessary, with the understanding that a permit will be secured as soon as possible.

(r) Institutional Network Assistance. The grantee shall provide the headend equipment necessary to permit switching of signals originating on the institutional network to selected access channels so that they can be viewed on the subscriber network. The programmer originating the signal will give the grantee a minimum of three (3) working days notice in writing of any switching that may need to occur.

(Ord. 109-1991. Passed 12-4-91.)

343.23 REGULATION OF RATES.

The City shall have no authority to regulate the grantee's rates, prices, and charges except as specifically permitted under the Cable Communications Policy Act of 1984. The grantee shall have the authority and discretion to establish its rates, prices, and charges provided such rates, prices, and charges are not inconsistent with the Cable Communications Policy Act of 1984. Should local rate regulation subsequently be re-authorized by act of Congress or by FCC rules or regulations, such authorized rate regulation shall become a part of this agreement automatically. (Ord. 109-1991. Passed 12-4-91.)

343.24 PUBLIC, GOVERNMENTAL AND EDUCATIONAL ACCESS CHANNELS.

(a) The grantee shall dedicate six (6) channels for public, educational and governmental access. These channels shall be allocated and made available for viewing in the following manner:

- (1) Public. One channel shall be allocated for public access in Erie. This channel shall be located in the lowest twelve (12) channels (Broadcast VHF Band) on the subscriber network. This channel and all facilities and revenues relating to public access shall be under the complete control of a local access authority to be created by Council pursuant to the Authority Act of 1945.
- (2) Educational. Two (2) channels shall be allocated for educational access in Erie. One (1) channel shall be located in the lowest twelve (12) channels with a second channel placed on the system on the subscriber network at the grantee's discretion. The second channel will be encoded using channel jamming, or other such method, with the grantee making decoders available to any school or public building requesting them.

- (3) Government. Two (2) channels shall be allocated for government access in Erie. One (1) channel shall be allocated to the City of Erie, for governmental programming, and one (1) channel shall be allocated to the Erie County Library and County Government. Both channels shall be located in the lowest twelve (12) channels on the subscriber network. In the event cable systems serving the adjoining municipalities request to carry the "County Channel", the grantee shall allow its carriage.
- (4) Future use. One channel shall be reserved for future access use by the access authority.

(b) No charge shall be made for use of the public, educational or government access channels.

(Ord. 109-1991. Passed 12-4-91.)

343.25 SUPPORT FOR PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS.

(a) The grantee will provide to the access authority the equipment as set forth in Appendix J which is attached and incorporated by reference by original Ordinance 109-1991 or equipment of similar type and value to be used exclusively for the production of public, government and educational access programming.

(b) The grantee shall install the equipment at a site designated by the City, consistent with good engineering practice, within one (1) month of receipt from supplier or of a request by the City to install the equipment whichever is later.

(c) The grantee shall provide the access authority with grants for the purchase of equipment in the amounts specified and on the dates indicated in Appendix K, attached and incorporated by reference by original Ordinance 109-1991. The access authority shall determine what equipment shall be purchased, maintained or replaced with the grants.

(d) The grantee shall provide grants for equipment maintenance and other access services in the form of the following to the access authority:

- (1) At the commencement of the franchise term, a payment of \$60,000;
- (2) July 1, 1996 a payment of \$60,000; and
- (3) July 1, 2001 a payment of \$60,000 provided that the grantee has exercised its option pursuant to Section 343.31 and the City has not objected.

(e) The July 1, 1996 and 2001 payments shall be increased by \$30,000 if the following criteria is met:

- (1) That prior to the 1996 payment, the access authority shall have produced and cablecast 900 hours of programming on the public access channels during the previous year; and

- (2) That prior to the 2001 payment, the access authority shall have produced and cablecast 1700 hours of programming on the public access channels during the previous year.
- (f) The payments shall be made to the access authority.
 - (1) The dollar amounts specified above for 1996 through 2001 payments, shall be increased annually beginning in 1991 by the revised Regional Consumer Price Index as published by the Bureau of Vital Statistics of the U.S. Department of Labor.
 - (2) Such funds for access equipment maintenance and services are in addition to the franchise fee payment.
 - (g) The public access facility will be located at a site to be provided by the City and with the City making the necessary electrical and structural changes. The City may elect to satisfy this obligation by providing to the authority the accumulated funds in the access programming grant fund account at January 1, 1992, rather than providing a site and electrical and structural changes.
 - (h) The grantee will operate access in accordance with previous practice until December 13, 1991, and thereafter the grantee shall check-out access equipment and permit program editing during the hours during which the access facility was previously operated until April 30, 1992.
 - (i) The five percent (5%) franchise fees due the City of Erie pursuant to Section 343.28 shall be allocated in the following manner:
 - (1) Four percent (4%) shall be due the City of Erie; and
 - (2) One percent (1%) shall be devoted to public access and paid into an interest bearing escrow account at a local bank selected by the City. The funds may only be drawn by the public access authority or its successor, but shall revert to the City should the public access authority or its successor entirely no longer function as the administrator of the public access funds and facilities.
(Ord. 109-1991. Passed 12-4-91.)

343.26 MUNICIPAL AND SCHOOL SERVICE.

- (a) Upon request, the grantee shall provide within forty-five (45) days and without installation and monthly service charge, cable service to a single receiver location in each government building which abuts or is accessible to a right of way along which trunk and/or feeder cable has been installed and energized. Such installation shall be capable of providing service to multiple drops within each building and shall have a minimum drop length of 250 feet.

(b) Upon request, the grantee shall provide within forty-five (45) days and without installation and monthly charge, cable service to a single location in each public school in the City which abuts or is accessible to a right of way along which trunk and/or feeder cable has been installed and energized. Such installation shall be capable of providing service to multiple drops within each building and shall have a maximum drop length of 250 feet. (Ord. 109-1991. Passed 12-4-91.)

343.27 SUBSCRIBER COMPLAINTS.

(a) The grantee shall maintain in effect a written policy statement setting forth the procedure for reporting and resolving subscriber complaints and shall furnish a copy thereof to each new subscriber, to all subscribers at least annually, and to all subscribers at such time as there is a change in such policy.

(b) The grantee shall receive all subscriber complaints at its business office servicing the City through grantees field personnel or agents, and shall handle all such complaints promptly but in no event later than as set forth in Section 343.29.

(c) The grantee shall cooperate with the City to resolve any complaints received by the City within a twenty-four (24) hour period. (Ord. 109-1991. Passed 12-4-91.)

343.28 FEES.

(a) As compensation for permission to use the streets and public ways of the City for the construction, operation and maintenance, of a cable system, and for the City's costs in establishing a regulatory program for grantee, the grantee shall collect from subscribers and pay to the City an annual amount equal to four percent (4%) of grantee's gross annual revenues and to the local access authority an annual amount equal to one percent (1%) of grantees gross annual revenues.

(b) Payments due to the City under this provision shall be computed quarterly for the preceding quarter, as of March 31, June 30, September 30 and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the above dates. Each payment shall be accompanied by a brief report showing the basis for the computation.

(c) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this franchise agreement. All amounts paid shall be subject to audit and recomputation by the City at the City's sole cost and expense.

(d) Upon the termination for any reason of this franchise agreement, the grantee shall reasonably submit to the City a detailed financial statement showing the gross receipts of the grantee for the time elapsed since the last period for which the grantee has paid the required fee; and the grantee shall pay to the City, not later

than thirty (30) days following the termination, the appropriate franchise fee due. The grantor or its designee may audit, examine and verify all such financial statements and financial records of the grantee and to that end shall be entitled to a full inspection of the grantee's relevant books, records and documents.

(e) In addition to the payment of franchise fees and other payments set forth herein, grantee will pay to the City immediately upon signing this agreement the sum of forty-five thousand dollars (\$45,000) with two checks being made out for the following amounts to the City of Erie: General Fund, twelve thousand dollars (\$12,000); Access Fund, thirty-three thousand dollars (\$33,000), in consideration for the City's release of any and all claims which have been made or could be made against grantee by the City relating to grantees performance under the prior franchise agreement.

The City will specifically terminate the litigation filed against grantee in the Court of Common Pleas of Erie County, Pennsylvania at No. 1892-A-1989. Grantee will also terminate its counter claim in that action.

(Ord. 109-1991. Passed 12-4-91.)

343.29 SERVICE TO CUSTOMERS.

(a) The cable system shall be designed for operation twenty-four (24) hours per day and shall undergo service interruptions only for good cause. Interruptions of service shall be for the shortest possible time.

(b) The grantee shall not deny, delay or otherwise burden service or use of access facilities or otherwise discriminate against subscribers or users on the basis of age, race, creed, color, sex, national origin or marital status. The grantee shall adhere strictly to the equal employment opportunity regulations of the FCC, to all Federal, State and local laws, and executive orders pertaining to discrimination, equal employment opportunity and affirmative action, and to its own affirmative action program.

(c) Grantee shall meet the following standards for telephone availability:

- (1) The grantee shall have a local office, within the City to be open weekdays from 8:30 a.m. to 5:00 p.m. Additional payment centers, with a minimum of three (3), to be located elsewhere in the City, shall be provided throughout the term of the franchise provided such service is available through other institutions.
- (2) The grantee shall have a local listed telephone so operated that requests for repairs or adjustments can be received at any time, twenty-four (24) hours per day, seven (7) days per week. Knowledgeable, qualified representatives of the grantee will be available to respond to subscriber telephone inquiries Monday through Friday during normal business hours.

- (3) The grantee shall notify subscribers of routine maintenance activities through methods such as notes in the monthly guide, bill inserts, and video commercials. Whenever possible, routine maintenance that interferes with customer service should be done by the grantee in the early morning so that the subscribers are inconvenienced the least amount possible.
 - (4) The grantee shall dispatch technicians to outages (five (5) or more service calls in one area) immediately during normal business hours and within thirty (30) minutes during off hours, maintaining the standard that service will be restored within four (4) hours on eighty percent (80%) of the outages (five (5) or more service calls in one area).
 - (5) Under normal operating conditions, telephone answer time by a customer service representative, including wait time, and the time required to transfer the call, shall not exceed thirty (30) seconds.
In the event that grantee utilizes automated answering and distributing equipment, the number of routine rings will be limited to four (4) or fewer.
The standards set forth in this subsection (c)(5) shall be met not less than ninety percent (90%) of the time measured on an annual basis.
 - (6) Under normal operating conditions, the subscriber will receive a busy signal less than three percent (3%) of the total time that the grantee's office is open for business.
- (d) Under normal operating conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time measured on an annual basis.
- (1) Standard installations will be performed within seven (7) business days after an order has been placed, unless otherwise requested by the customer. "Standard" installations are those no more than 125 feet from the existing distribution systems.
 - (2) Excluding those situations beyond the control of the grantee, and insofar as possible, the grantee's response to a request for repairs or adjustments shall be on a same day basis, but in no event later than the next business day after the grantee's receipt of such a request, unless otherwise requested by the customer.
 - (3) The appointment window alternatives for installations, service calls, and other installation activities will be (a) morning, (b) afternoon, or if the subscriber does not choose (a) or (b), the grantee may offer all day during normal business hours.
 - (4) If, at any time an installer or technician is running late, an attempt to contact the subscriber will be made and the appointment rescheduled as necessary at a time which is convenient for the subscriber.

- (e) Grantee shall meet the following standards for notification and billing.
- (1) The grantee will provide to a subscriber written information regarding each of the following subjects at the time of installation and at any future time upon request, and annually:
 - A. All products and services offered.
 - B. Prices and service options.
 - C. Installation and service policies.
 - D. How to use the cable service.
 - E. Any additional costs (e.g., installation, A.O., lost converter charges).
 - F. How to connect cable to VCRs.
 - G. Parental control devices.
 - H. Office hours.
 - I. Telephone number and address for the grantee's office.
 - (2) Bills will be clear, concise and understandable.
 - (3) The grantee at maximum shall bill subscribers monthly, but this shall not preclude other payment arrangements agreed upon by the grantee and the subscriber with the exception of a change in billing services used by the grantee which may cause subscribers to receive two bills in one month.
 - (4) Grantee will issue refund checks promptly, but no later than the earlier of forty-five (45) days or the subscriber's next billing cycle following the resolution of the claim for such refund, and the return of equipment supplied by the grantee in situations when service is terminated.
 - (5) Grantee shall notify the City and subscribers a minimum of thirty (30) days in advance of any rate or channel change, provided the change is within the control of the grantee.
 - (6) Upon failure of the grantee to remedy a loss of service attributable to the cable system within twenty-four (24) hours of receipt of notification of such loss, the grantee shall rebate one-thirtieth (1/30) of the regular monthly charge to each subscriber so affected, for each twenty-four (24) hours or fraction thereof, following the first twenty-four (24) hours after receipt of notification, until service is restored, unless such restoration is prevented by strike, injunction, or other cause beyond the control of the grantee. Such rebate shall be made by the grantee only following written notification to the grantee by the subscriber, identifying the loss of service by date and time.

(f) Grantee Corrective Action. If at any point during the franchise term, the grantee is aware that it will not meet the aforementioned standards, the grantee will take the necessary corrective action (e.g., add trunk lines, customer service representatives or repair personnel). (Ord. 109-1991. Passed 12-4-91.)

343.30 FORCE MAJEURE.

Any obligation or duty imposed by this franchise agreement upon either party shall be subject to excuse by reason of circumstances beyond the reasonable control of each party, such as "force majeure", as well as Acts of God, riots or other civil disturbances, strikes or other labor disputes, emergencies declared by the President of the United States of America, the Governor of the Commonwealth of Pennsylvania, or the Mayor of the City of Erie, or other causes or circumstances beyond the control of either party.
(Ord. 109-1991. Passed 12-4-91.)

343.31 FRANCHISE EXTENSION.

(a) The parties hereto do hereby agree to allow the grantee the option of extending the franchise to September 30, 2006 under the various conditions set forth in this section. The grantee shall notify the City of its intention to exercise this option, if it so chooses, between August 1, 1998 and September 30, 1998. The City shall have until December 31, 1998 to object to such an extension. The City shall have the right to object only if the Company has failed to:

- (1) Substantially comply with the technical provisions of this franchise agreement.
- (2) Substantially comply with customer service standards set forth in this franchise agreement.
- (3) Substantially comply with other material provisions of this franchise agreement.
- (4) Commence to rebuild the trunk lines of the cable system with fiber optic technology capable of transmitting the same or more channels as the existing coaxial cable system or failed to provide the City with plans demonstrating to the City's reasonable satisfaction that the rebuild will be completed September 30, 2001.
- (5) Design the rebuild in accordance with good engineering practice and the prevailing industry standard of multiple system operators at the commencement of the rebuild.

(b) If the grantee fails to meet these conditions and the City objects on the above grounds, the grantee shall not have the option to extend the term and the term will end on September 30, 2001. (Ord. 109-1991. Passed 12-4-91.)

343.32 APPLICABLE LAW.

This agreement shall be governed in all respects by the laws of the State of Pennsylvania.
(Ord. 109-1991. Passed 12-4-91.)

343.33 SEVERABILITY.

Should any individual portion or portions of this franchise agreement be adjudicated as a violation of any applicable ordinance, statute, regulation, or Constitutional provision by a court of competent jurisdiction, such adjudication shall not invalidate the remaining portions of this agreement. The offensive portion or portions shall be severed from this agreement, which will otherwise remain in full force and effect.
(Ord. 109-1991. Passed 12-4-91.)

343.34 ERIE CABLE TELEVISION ACCESS BOARD.

(a) The Cable Television Access Board shall consist of eleven members appointed by Council. The Board shall manage and control the facilities, studio and other assets dedicated to Public Access for the Cable Television Franchisee's Cable Television System in the City.

(b) The members first appointed to the Board by Council by its Resolution of July 6, 1994 shall serve a staggered series of terms; with three members serving a three year term; three members serving a two year term and one member a one year term. The length of each member's term shall be determined by drawing lots. After the expiration of the initial terms of the first seven members, each membership will be for three years. Any member appointed subsequent to the initial enactment of this section and prior to the expiration of the initial term of the first seven members shall serve for a term of three years.

Additional members shall serve a term of three years.
(Ord. 16-1996 §1. Passed 3-6-96.)

(c) In order to carry out their mission, as authorized and directed by Council, the Cable Television Access Board is empowered to have all administrative powers that may be delegated to the Board by Council under the Pennsylvania Law which includes the authority to:

- (1) Do all things necessary and proper to the effectual establishment of functioning Cable Television Access for Erie and from time to time, or when requested, report to Council as to matters concerning the Board.
- (2) Initiate policies, establish procedures, establish programming guidelines, establish access user qualifications, establish a budget, marshal the assets and oversee financial matters in regard to the operation of the facility; with the approval of Council if legally necessary under the Third Class City Code.
- (3) Select personnel for Council to hire or discharge.
- (4) Develop appropriate policies for and administer local public access television channels;
- (5) Promote basic and experimental uses, to furnish equipment, to establish training programs and to do all those things which it may deem necessary to encourage and promote citizen, business, educational and all private and commercial uses that may be related thereto, where lawful;
- (6) Promote the evolution of the Erie area into a television training center, and a center for educational and governmental cable television research and demonstration;
- (7) Resolve any disputes which may arise over first-come, first-served time allocations, or other questions concerning the equal treatment of access users;
- (8) Select for Council all contracts which the Board may deem necessary or desirable to carry out the purposes of the Board; with the approval of Council if legally necessary under the Third Class City Code.
- (9) Investigate and conduct or arrange for the conducting of a financial audit regarding the use of funds received from the Cable Company operator. This audit should cover past expenditures, etc., and a report shall be given to Council in reasonable time.

(d) Both the City and the Board will comply with all applicable laws, constitutional provisions, regulations and court decisions regarding the uses of public access equipment and funds, and the protection of First Amendment freedom of expression on public access channels.

(e) The Board remains at all times the creation of Council, and Council, by proper ordinance at any time enacted, reserves the right to alter or eliminate the City's support for public access, if Council determines it necessary for the public good.
(Ord. 80-1994 §1. Passed 10-12-94.)

(f) All members of the City of Erie Cable Television Access Corporation (CETAC), which was formed in October 1996 and serves as the City's Public Access authority as defined by this article, shall be appointed by a majority vote of City Council.
(Ord. 61-1998. Passed 11-18-98.)

ARTICLE 347
Smoke Abatement

(EDITOR'S NOTE: Former Article 347 was repealed by Ordinance 28-2000, passed June 7, 2000.)

CROSS REFERENCES

Power to regulate - see 3rd Class §2403(10) (53 P.S. §37403(10))
Stationary steam engineers - see BUS. REG. Art. 319

ARTICLE 348
Self-Service Filling Stations

(EDITOR'S NOTE: Former Article 348 was repealed by Ordinance 28-2000, passed June 7, 2000.)

ARTICLE 349
Alarm Systems

349.01	Definitions.	349.04	Severability.
349.02	False alarms.	349.99	Penalty.
349.03	Procedure.		

CROSS REFERENCES

Fire alarms - see 18 C.P.S.A. §4905
False fire alarms - see GEN. OFF. 701.02

349.01 DEFINITIONS.

As used in this article, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

- (a) "Alarm system device" means one or more alarm devices which transmit an alarm by wire, telephone, radio or other means:
- (1) Directly to the Department;
 - (2) To a person who is instructed to notify the Department of the alarm; or
 - (3) To activate a bell or sounding device to be heard outside a building which is intended to alert the Department or others to the existence of a crime, fire or other emergency situation warranting action.
- This definition specifically excludes any such device used exclusively to protect a residential premises. This definition also excludes City of Erie master fire alarm box devices.
- (b) "Alarm system device user" means the person who occupies a premises on which an alarm device is operated, or if no person occupies the premises, the person having the right to possession of the premises on which the alarm device is operated.
- (c) "Department" means the City of Erie Fire Communications Center and/or the City of Erie Police Department, as applicable.
- (d) "Director" means the Director of the City Department of Public Safety or his duly appointed designee.
- (e) "False alarm" means an alarm to which the Department responds resulting from the activation of an alarm device when a crime, fire or other emergency warranting immediate action by the Department has not in fact occurred.
- (f) "Person" means an individual, firm, partnership, association, corporation, company or business of any kind.
(Ord. 70-1995 §1. Passed 12-13-95.)

349.02 FALSE ALARMS.

(a) False Alarms. Any person causing a false alarm for any reason shall pay to the City a fine for each and every false alarm to which the Police and/or Fire Departments respond, except as provided in subsection (b) hereof.

(b) Fine Exceptions. No fine shall be levied for the first three false alarms occurring within a given calendar year.

(c) False Alarm Fines. The alarm device user shall pay a false alarm fee in the amount of twenty-five dollars (\$25.00) for the fourth false alarm and a fee of one hundred dollars (\$100.00) for the fifth false alarm and a fee of two hundred dollars (\$200.00) for each and every false alarm thereafter occurring within a given calendar year.

(d) Notice. The Director or his duly appointed designee shall notify the user of the assessment of each false alarm and shall invoice the alarm device user. Such notice shall be in writing and mailed to the alarm device user at his last known address by regular mail, postage prepaid.

(e) Due Date. The false alarm fine shall be due and payable at the office of the Department thirty (30) days from the date of the mailing of the notice of assessment. Failure to pay a false alarm fine shall subject the alarm device user to the penalty provision of this article.

(f) Exceptions. A false alarm shall not include an alarm activated by the following:

- (1) Testing or repairing telephone lines or electrical lines or equipment outside the premises; or
- (2) Unusually violent conditions of nature such as extreme weather conditions, power outages or water pressure changes; or
- (3) Other extraordinary circumstances not reasonably subject to control by the alarm user.

(Ord. 70-1995 §2. Passed 12-13-95.)

349.03 PROCEDURE.

(a) Any entity covered by this article shall within thirty (30) days of the enactment of this amendment, provide the Bureaus of Police and Fire with a list of at least three (3) contact persons. This list shall include the name, address and telephone number, and shall be updated annually.

(b) When keyholder response is required, a response shall be within forty-five (45) minutes of notification.

(c) If the alarm is "false" twice within a twenty-four (24) hour period, the Bureaus of Police and Fire have authorization to notify the alarm subscriber that they shall not respond to further alarms unless the Bureaus are notified that the system has been repaired.

(d) All alarm companies doing business within the City of Erie shall be responsible for installation of a direct "ring down" telephone connection to the Bureaus of Police and Fire. Companies located outside of the 814 area code shall maintain "800" telephone service. (Ord. 70-1995 §3. Passed 12-13-95.)

349.04 SEVERABILITY.

If any sentence, clause, section or part of this article is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions. (Ord. 70-1995 §4. Passed 12-13-95.)

349.99 PENALTY.

Any person, partnership or corporation who violates any provision of this article, upon conviction in a summary proceeding before the District Magistrate in the jurisdiction where the violation occurred, shall be fined not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) or imprisoned not more than ninety days, in addition to paying court costs and fines assessed under Section 349.02(c). (Ord. 70-1995 §5. Passed 12-13-95.)

ARTICLE 351
Private Security Companies

- 351.01 Registration. 351.99 Penalty.
351.02 Privately employed agents.

CROSS REFERENCES

Uniform Firearms Act - see 18 Pa. C.S.A. §6101 et seq.
License required to carry - see 18 Pa. C.S.A. §6106
Licenses - see 18 Pa. C.S.A. §6109
Licensing dealers - see 18 Pa. C.S.A. §6112, 6113

351.01 REGISTRATION.

No person or corporation shall operate, maintain or conduct any private security company within the corporate limits of the City without first registering such company within the Bureau of Police/Chief of Police. Such individual or corporation shall register either its fictitious name or its corporate name, its local address, principal address and the principal owners of such business. Such information is to be updated annually.
(Ord. 58-1987 § 1. Passed 8-26-87.)

351.02 PRIVATELY EMPLOYED AGENTS.

In addition to the information required in Section 351.01, such proprietor or corporation shall also register the names of all privately employed agents authorized to carry a weapon pursuant to Act 235 (22 P.S. Section 41 et seq.) Lethal Weapons Training. Such person or corporation shall provide this information on a quarterly basis.
(Ord. 58-1987 §1. Passed 8-26-87.)

351.99 PENALTY.

Whoever violates any provision of this article shall be subject to a fine of not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) and/or ninety days imprisonment as well as all costs associated with the prosecution.
(Ord. 58-1987 §1. Passed 8-26-87.)

TITLE FIVE - Act 511 Taxes

- Art. 371. Earned Income Tax.
- Art. 373. Realty Transfer Tax.
- Art. 375. Emergency and Municipal Services Tax.
- Art. 376. Taxpayers Bill of Rights.
- Art. 377. Parking Tax.

ARTICLE 371
Earned Income Tax

EDITOR'S NOTE: Act 160 of 1967 removed from Act 511, the Local Tax Enabling Act, the provisions of Sections 4, 5, and 7 of the act relating to annual re-enactment of taxes and specifies that every tax levied under the provisions of the act would continue in force on a calendar or fiscal year basis without annual re-enactment unless the rate of the tax was subsequently changed.

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|--------|--|--------|-------------------------------|
| 371.01 | Definitions. | 371.08 | Interest on delinquent taxes. |
| 371.02 | General provisions. | 371.09 | Collection of unpaid taxes. |
| 371.03 | Tax returns and payment. | 371.10 | Applicability. |
| 371.04 | Collection at source. | 371.11 | Separability. |
| 371.05 | Duties of Collector of Taxes. | 371.99 | Penalty. |
| 371.06 | Enforcement. | | |
| 371.07 | Employees' appointment and compensation; supplies and equipment. | | |

CROSS REFERENCES

Power to tax - see Local Tax Enabling Act (Act 511, approved December 31, 1965); 53 P.S. §6901-6924
Bureau of Income Tax Collection - see ADM. 119.03

371.01 DEFINITIONS.

The following words, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

- (a) "Association" means a partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
- (b) "Business" means an enterprise, activity, profession or undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit, whether by a person, partnership, association or any other entity.

- (c) "Corporation" means a corporation or joint stock association organized under the laws of the United States, the Commonwealth of Pennsylvania or any other state, territory, foreign country or dependency.
- (d) "Employer" means a person, partnership, association, corporation, institution, governmental body or unit or agency or any other entity employing one or more persons on a salary, wage, commission or other compensation basis.
- (e) "Net profits" means the net income from the operation of a business, profession or other activity, except corporations, after provision for all costs and expenses incurred in the conduct thereof, either paid or accrued in accordance with the accounting system used, and without deduction of taxes based on income.
- (f) "Nonresident" means a person, partnership, association or other entity domiciled outside the City of Erie..
- (g) "Person" means a natural person.
- (h) "Resident" means a person, partnership, association or other entity domiciled in the City of Erie.
- (i) "Taxpayer" means a person, whether an individual, partnership, association or any other entity required hereunder to file a return of earnings or net profits or to pay a tax thereon.
- (j) The singular includes the plural and the masculine includes the feminine and the neuter. (Ord. 110-1959 §1. Passed 11-24-59.)

371.02 GENERAL PROVISIONS.

(a) Imposition of Tax. An annual tax for general revenue purposes of one percent (1%) is hereby imposed on (1) salaries, wages, commissions and other compensation earned on and after January 1, 1960, by residents of Erie, and on (2) salaries, wages, commissions and other compensation earned on and after January 1, 1960, by nonresidents of Erie for work done or services performed or rendered in Erie, and on (3) the net profits earned on and after January 1, 1960, of businesses, professions or other activities conducted by such residents, businesses, professions or other activities conducted in Erie by nonresidents.

(b) Subjects of Taxation. The taxes levied under subsection (a)(1) and (2) hereof shall relate to and be imposed upon salaries, wages, commissions and other compensation paid by an employer or on his behalf to any person who is employed by or renders services to him. For purposes of this subsection, salaries, wages, commissions and other compensation shall also include deferred compensation and individual retirement accounts (IRA's). The taxes levied under subsection (a)(3) hereof shall relate to and be imposed on net profits of any business, profession or enterprise carried on by any person or owner or proprietor, either individually or in association with some other person.

(c) Time of Imposition. The tax shall first be levied, collected and paid with respect to the salaries, wages, commissions and other compensation earned on and after January 1, 1960, and with respect to the net profits of businesses, professions or other activities, earned on and after January 1, 1960, and continuing for each taxable year thereafter.

(d) The earned income and net profits tax set forth in subsection (a) above is hereby increased in the amount of one and one-half tenths percent (1.5/10%) and imposed on earned income and net profits earned by the residents of the City of Erie for the taxable year beginning January 1, 2003, and continuing for each taxable year thereafter, with an effective date of February 1, 2003. The proceeds of said tax increase shall be applied solely to the Pension Funds of the City of Erie.

(e) The earned income and net profits tax set forth in subsection (a) above is hereby increased in the amount of one and one-half tenths percent (1.5/10%) and imposed on earned income and net profits by the nonresidents of the City of Erie for work done or services performed or rendered in the City of Erie beginning January 1, 2003, and continuing for each taxable year thereafter, with an effective date of February 1, 2003, and continuing for each taxable year thereafter. The proceeds of said tax increase shall be applied solely to the Pension Funds of the City of Erie. (Ord. 10-2003. Passed 1-29-03.)

371.03 TAX RETURNS AND PAYMENT.

Each person whose earnings or profits are subject to the tax imposed by this article shall, on or before April 15 of each year, make and file with the Collector of Taxes a return on a form furnished by or obtainable from the Collector of Taxes, setting forth the aggregate amount of salaries, wages, commissions and other compensation or net profits earned by him during the preceding year and subject to the tax, together with such other pertinent information as the Collector of Taxes may require. However, where the return is made for a fiscal year or any other period different from a calendar year, the return shall be made within 105 days from the end of the fiscal year or other period.

Such return shall also show the amount of the tax imposed by this article on such earnings and profits. The person making the return shall, at the time of filing thereof, pay to the Collector of Taxes the amount of tax shown as due thereon. However, all taxpayers who are self-employed on a full-time or part-time basis, and/or who are not subject to the withholding provisions of the article, shall file on or before April 15 a declaration of anticipated earnings for the current calendar year. The person making the declaration shall, at the time of filing thereof, pay to the Collector of Taxes the amount of tax shown as due thereon.

However, the taxpayer shall have the right to pay the tax or the balance of the tax as shown on the declaration in four quarterly installments, the first installment thereof at the time of filing of the declaration, and the other installments thereof on or before July 15, October 15 and December 15, respectively, in the year. Further, where any portion of the tax so due shall have been deducted at source and shall have been paid to the Collector of Taxes by the person making the deduction, credit for the amount so paid shall be deducted from the amount shown to be due, and only the balance, if any, shall be due and payable at the time of the filing of the return or as hereinabove provided. Further, the Collector of Taxes is authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by him or them from the salary, wages or commissions of an employee and paid by him or them to the Collector of Taxes shall be accepted as the return required of any employee whose sole income subject to the tax under this article is such salary, wages or commissions. (Ord. 110-1959 §3. Passed 11-24-59.)

371.04 COLLECTION AT SOURCE.

Each employer within the City who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct, at the time of the payment thereof, the tax of one percent of salaries, wages, commissions or other compensation due by the employer to the employee for services performed or rendered after January 1, 1960, and shall, on or before the fifteenth day of the month next following the deduction, or on or before the last day of the month following the end of the calendar quarter of the deduction, make a return and pay to the Collector of Taxes the amount of tax so deducted.

The return shall be on a form furnished by or obtainable from the Collector of Taxes and shall set forth the amount of salaries, wages, commissions or other compensation earned during such preceding month or quarter by all employees, together with such other pertinent information as the Collector of Taxes may require. However, the failure or omission by any employer, either residing within or outside the City, to make such return and/or pay such tax, shall not relieve the employee from the payment of such tax and the compliance with such regulations with respect to making returns and payment thereof, as may be fixed in this article or established by the Collector of Taxes.
(Ord. 110-1959 §4. Passed 11-24-59.)

371.05 DUTIES OF COLLECTOR OF TAXES.

It shall be the duty of the Collector of Taxes to collect and receive the tax imposed by this article. It shall also be the duty of the Collector of Taxes, in addition to keeping the records now required by law or ordinance, to keep a record showing the amount received by him from each taxpayer and the date of such receipt. (Ord. 110-1959 §5. Passed 11-24-59.)

371.06 ENFORCEMENT.

(a) Powers of Collector of Taxes. The Collector of Taxes is charged with the enforcement of the provisions of this article, and is empowered, subject to the approval of the Mayor and Council, to adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this article, including provisions for the re-examination and correction of returns and payments alleged or found to be incorrect or as to which an overpayment or underpayment is claimed or found to have occurred.

(b) Power to Examine Records, etc. The Collector of Taxes or any agent or employee authorized in writing by him is authorized to examine the books, papers and records of any employer or supposed employer, or of any taxpayer or supposed taxpayer, in order to verify the accuracy of any return made or, if no return was made, to ascertain the tax imposed by this article. Every such employer or supposed employer or taxpayer or supposed taxpayer is directed and required to give to the Collector of Taxes, or his duly authorized agent or employee, the means, facilities and opportunity for such examinations and investigations as are hereby authorized. The Collector of Taxes is authorized to examine any person under oath concerning any income which was or should have been returned for taxation. To this end he may compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such income.

(c) Information Confidential; Penalty for Violation. Any information gained by the Collector of Taxes or any other official or agent of the City, as a result of any returns, investigations, hearings or verifications required or authorized by this article, shall be confidential, except for official purposes, and except in accordance with proper judicial order, or as otherwise provided by law. Any person or agent divulging such information shall, upon conviction before any justice of the peace, alderman or magistrate, or court of competent jurisdiction, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) and costs for each offense, and, in default of payment of said fine and costs to be imprisoned for a period not exceeding thirty days.

(d) From and after the enactment of this Article, when suit is brought against any delinquent party, to each delinquent earned income tax assessment, levy or obligation owed to the City of Erie, there shall be added such attorney's fees, charges and expenses incurred in the delinquent collection process. Such additional charges shall be collected in addition to all interest and penalties as are allowed by law.

(e) Such fees shall be reasonable and the same are hereby established in a fee rate schedule as attached herein and made a part hereof under subsection (g) below. Said schedule of fees is hereby deemed to be reasonable, fair and necessary in order to allow the City of Erie to collect such sum due. This schedule may be amended by resolution of the Eire City Council.

(f) Any person or entity empowered to collect sums on behalf of the City of Erie is directed to add such fees as are incurred to the extent allowed as set forth in subsection (g). Such sums collected pursuant to this Article shall be in addition to any tax penalty, interest or other costs already part of the delinquent account or assessment.

(g)	<u>Costs of Collection to be Charged Against Delinquent Taxpayers:</u>	
(1)	Prepare and mail Notice of Impending Suit	\$50.00
(2)	Prepare District Justice complaint	\$75.00
(3)	Attend District Justice hearing	\$250.00
(4)	Attend Constable execution sale	\$350.00
(5)	Prepare Arbitration complaint	\$150.00
(6)	Attend Arbitration trial	\$350.00
(7)	Negotiate and prepare payment plan agreement	\$75.00
(8)	Enter default judgment	\$150.00
(9)	Issue Writ of Execution	\$250.00
(10)	Attend Sheriff sale, levy or judgment execution	\$250.00
(11)	Non-litigation Legal work	\$80.00/hr.
(12)	Litigation Legal work	\$100.00/hr.
(13)	All other clerical work not itemized above	\$50.00/hr.
	(Ord. 74-2002. Passed 12-31-02.)	

371.07 EMPLOYEES' APPOINTMENT AND COMPENSATION; SUPPLIES AND EQUIPMENT.

It shall be the duty of the Mayor and Council to appoint such officers, clerks, collectors or other assistants and employees as they may deem necessary for the assessment and collection of taxes imposed by this article, to fix the rate of compensation for the same, and to secure whatever supplies and equipment are necessary for the assessment and collection of the taxes. (Ord. 110-1959 §7. Passed 11-24-59.)

371.08 INTEREST ON DELINQUENT TAXES.

All taxes imposed by this article remaining unpaid after they become due shall bear interest, in addition to the amount of the unpaid tax, at the rate of six percent per year, and the persons upon whom the taxes are imposed shall be further liable to a penalty of one-half of one percent of the amount of the unpaid tax for each month or fraction of a month for the first six months of nonpayment. (Ord. 110-1959 §8. Passed 11-24-59.)

371.09 COLLECTION OF UNPAID TAXES.

All taxes imposed by this article, together with all interest and penalties, shall be recoverable by the City Solicitor as other debts of like amount are recoverable. (Ord. 110-1959 §9. Passed 11-24-59.)

371.10 APPLICABILITY.

This article shall not apply to any person or property as to whom or which it is beyond the legal power of Council to impose the tax or duties herein provided for. (Ord. 110-1959 §11. Passed 11-24-59.)

371.11 SEPARABILITY.

If any sentence, clause, section or part of this article is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this article. It is declared the intent of Council that this article would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein. (Ord. 110-1959 §12. Passed 11-24-59.)

371.99 PENALTY.

Any person who fails, neglects, or refuses to make any declaration or return required by this Article, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees, or fails, neglects or refuses to deduct or withhold the tax from his employees, any person who refuses to permit the Collector of Taxes or any agent designated by him to examine his books, records, and papers, and any person who knowingly makes any incomplete, false or fraudulent return, or attempts to do so anything whatsoever to avoid the full disclosure of the amount of his net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by this Article, shall, upon conviction thereof before any justice of the peace, alderman or magistrate, or court of competent jurisdiction in the county or counties in which the political subdivision imposing the tax is located, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) for each offense, and costs, and, in default of payment of said fine and costs to be imprisoned for a period not exceeding thirty days.

Such fine or penalty shall be in addition to any other penalty imposed by any other section of this article.

The failure of any employer or any taxpayer to receive or procure a return form shall not excuse him from making a return. (Ord. 74-2002. Passed 12-31-02.)

ARTICLE 373
 Realty Transfer Tax

EDITOR'S NOTE: Act 160 of 1967 removes from Act 511, the Local Tax Enabling Act, the provisions of Sections 4, 5 and 7 of the act relating to annual re-enactment of taxes and specifies that every tax levied under the provisions of the act would continue in force on a calendar or fiscal year basis without annual re-enactment unless the rate of the tax was subsequently changed.

<p>373.01 Definitions.</p> <p>373.02 Imposition of tax; interest.</p> <p>373.03 Exempt parties.</p> <p>373.04 Excluded transactions.</p> <p>373.05 Documents relating to associations or corporations and members, partners, stockholders or shareholders thereof.</p> <p>373.06 Acquired company.</p> <p>373.07 Credits against tax.</p> <p>373.08 Extension of lease.</p> <p>373.09 Proceeds of judicial sale.</p>	<p>373.10 Duties of Recorder of Deeds.</p> <p>373.11 Statement of value.</p> <p>373.12 Civil penalties.</p> <p>373.13 Determination of tax.</p> <p>373.14 Lien on property.</p> <p>373.15 Enforcement and regulations.</p> <p>373.16 Severability.</p> <p>373.99 Penalty.</p>
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CROSS REFERENCES

Power to tax - see Local Tax Enabling Act (Act 511, approved December 31, 1965); 53 P.S. §6901-6924
 Real estate registry - see ADM. Art. 105
 Collector of Taxes - see ADM. 119.03

373.01 DEFINITIONS.

(a) "Association" means a partnership, limited partnership, or any other form of unincorporated enterprise owned or conducted by two or more persons other than a private trust or decedent's estate.

(b) "Corporation" means a corporation, joint-stock association, business trust, or banking institution which is organized under the laws of this Commonwealth, the United States, or any other state, territory, foreign country or dependency.

(c) "Document" means any deed, instrument or writing which conveys, transfers, devises, vests, confirms or evidences any transfer or devise of title to real estate, but does not include wills, mortgages, deeds of trust or other instruments of like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding thirty years, or instruments which solely grant, vest or confirm a public utility easement. "Document" also includes a declaration of acquisition required to be presented for recording under Section 373.06.

(d) "Family farm corporation" means a corporation of which at least seventy-five percent (75%) of its assets are devoted to the business of agriculture and at least seventy-five percent (75%) of each class of stock of the corporation is continuously owned by members of the same family. The business of agriculture shall not be deemed to include:

- (1) Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
- (2) The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
- (3) Fur farming;
- (4) Stockyard and slaughterhouse operations; or
- (5) Manufacturing or processing operations of any kind.

(e) "Family farm partnership" means a partnership of which at least seventy-five percent (75%) of its assets are devoted to the business of agriculture and at least seventy-five percent (75%) of the interests in the partnership are continuously owned by members of the same family. The business of agriculture shall not be deemed to include:

- (1) Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
- (2) The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
- (3) Fur farming;
- (4) Stockyard and slaughterhouse operations; or
- (5) Manufacturing or processing operations of any kind.

(Ord. 64-1995. Passed 11-1-95.)

(f) "Living trust" means any trust, other than a business trust, intended as a will substitute by the settlor which becomes effective during the lifetime of the settlor, but from which trust distributions cannot be made to any beneficiaries other than the settlor prior to the death of the settlor. (Ord. 22-1998. Passed 5-27-98.)

(g) "Members of the same family" means any individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing. Individuals related by the half-blood or legal adoption shall be treated as if they were related by the whole-blood.
(Ord. 64-1995. Passed 11-1-95.)

(h) "Ordinary trust" means any trust, other than a business trust or a living trust, which takes effect during the lifetime of the settlor and for which the trustees of the trust take title to property primarily for the purpose of protecting, managing or conserving it until distribution to the named beneficiaries of trust. An ordinary trust does not include a trust that has an objective to carry on business and divide gains nor does it either expressly or impliedly have any of the following features: the treatment of beneficiaries as associates, the treatment of the interests in the trust as personal property, the free transferability of beneficial interests in the trust, centralized management by the trustee or the beneficiaries, or continuity of life.
(Ord. 22-1998. Passed 5-27-98.)

(i) "Person" means every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to associations, shall include the responsible members or general partners thereof, and as applied to corporations, the officers thereof.

- (j) "Real Estate" means:
- (1) Any lands, tenements, or hereditaments within the City, including without limitation buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees, and other improvements, immovables or interests which by custom, usage or law pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant;
 - (2) A condominium unit;
 - (3) A tenant-stockholder's interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

(k) "Real Estate Company" means a corporation or association which is primarily engaged in the business of holding, selling or leasing real estate, ninety percent (90%) or more of the ownership interest in which is held by thirty-five or fewer persons and which:

- (1) Derives sixty percent (60%) or more of its annual gross receipts from the ownership or disposition of real estate; or
- (2) Holds real estate, the value of which comprises ninety percent or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.

- (l) "Title to real estate" means:
- (1) Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including without limitation an estate in fee simple, life estate, or perpetual leasehold; or
 - (2) Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold, including without limitation a leasehold interest or possessory interest under a lease or occupancy agreement for a term of thirty years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.
- (m) "Transaction" means the making, executing, delivering, accepting, or presenting for recording of a document.
- (n) "Value" means:
- (1) In the case of any bona fide sale of real estate at arm's length for actual monetary worth, the amount of the actual consideration therefor, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate: provided, that where such documents shall set forth a nominal consideration, the "value" thereof shall be determined from the price set forth in or actual consideration for the contract of sale;
 - (2) In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio factor developed by the Pennsylvania Department of Revenue for Pennsylvania realty transfer tax base calculations;
 - (3) In the case of an easement or other interest in real estate the value of which is not determinable under subsection (1)(1) or (2) hereof, the actual monetary worth of such interest; or
 - (4) The actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not removed thereby or between the grantor, the agent or principle of the grantor or a related corporation, association or partnership and the grantee existing before or effective with the transfer. (Ord. 64-1995 §1. Passed 11-1-95.)

373.02 IMPOSITION OF TAX; INTEREST.

(a) Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, a tax at the rate of one percent (1%) of the value of the real estate represented by such document, which tax shall be payable at the earlier of the time the document is presented for recording or within thirty days of acceptance of such document or within thirty days of becoming an acquired company.

(b) The payment of the tax imposed herein shall be evidenced by affixing of an official stamp or writing by the Recorder of Deeds whereon the date of the payment of the tax, amount of the tax and the signature of the collecting agent shall be set forth.

(c) It is the intent of this article that the entire burden of the tax imposed herein on a person or transfer shall not exceed the limitations prescribed in The Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. §6901 et seq., so that if any other political subdivision shall impose or hereafter shall impose such tax on the same person or transfer then the tax levied by the City under the authority of that Act shall during the time such duplication of the tax exists, except as hereinafter otherwise provided, be one-half of the rate and such one-half rate shall become effective without any action on the part of the City provided, however, that the City and any other political subdivision which impose such tax on the same person or transfer may agree that, instead of limiting their respective rates to one-half of the rate herein provided, they will impose respectively different rates, the total of which shall not exceed the maximum rate permitted under "The Local Tax Enabling Act."

(d) If for any reason the tax is not paid when due, interest at the rate of ten percent (10%) shall be added and collected.
(Ord. 64-1995 §2. Passed 11-1-95.)

373.03 EXEMPT PARTIES.

The United States, the Commonwealth, or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this article. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.
(Ord. 64-1995 §3. Passed 11-1-95.)

373.04 EXCLUDED TRANSACTIONS.

The tax imposed by Section 373.02 shall not be imposed upon the following:

- (a) A transfer to the Commonwealth, or to any of its instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property line adjustments provided said reconveyance is made within one year from the date of condemnation.
- (b) A document which the City is prohibited from taxing under the Constitution or statutes of the United States.
- (c) A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or tax claim bureau sale.

- (d) A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest.
- (e) A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by co-tenants; however, if any of the parties take shares greater in value than their undivided interest, tax is due on the excess.
- (f) A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister, and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.
- (g) A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent, a devisee or heir.
- (h) A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries that are entitled to receive the property or proceeds from the sale of the property under the trust, whether or not such beneficiaries are contingent or specifically named. A trust clause which identifies the contingent beneficiaries by reference to the heirs of the trust settlor as determined by the laws of the intestate succession shall not disqualify a transfer from the exclusion provided by this clause. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.
 - (1) A transfer for no or nominal actual consideration to a trustee of a living trust from the settlor of the living trust. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the living trust instrument.
- (i) A transfer for no or nominal actual consideration from a trustee of an ordinary trust to a specifically named beneficiary that is entitled to receive the property under the recorded trust instrument or to a contingent beneficiary where the transfer of the same property would be exempt if the transfer was made by the grantor of the property into the trust to that beneficiary. However, any transfer of real estate from a living trust during the settlor's lifetime shall be considered for the purposes of this article as if such transfer were made directly from the settlor to the grantee.
 - (1) A transfer for no or nominal actual consideration from a trustee of a living trust after the death of the settlor of the trust or from a trustee of a trust created pursuant to the will of a decedent to a beneficiary to whom the property is devised or bequeathed.
 - (2) A transfer for no or nominal actual consideration from the trustee of a living trust to the settlor of the living trust if such property was originally conveyed to the trustee by the settlor.

- (j) A transfer for no or nominal actual consideration from trustee to successor trustee.
- (k) A transfer:
 - (1) For no or nominal actual consideration between principal and agent or straw party; or
 - (2) From or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this article. Where the document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.
- (l) A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation, except where the City reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this article.
- (m) A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two years.
- (n) A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority.

- (o) A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if:
 - (1) The grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and
 - (2) The agency or authority has the full ownership interest in the real estate transferred.
- (p) A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person.
- (q) Any transfer between religious organizations or other bodies or persons holding title for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes.
- (r) A transfer to a conservancy which possesses a tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954 [68A Stat. 3, 26 U.S.C. §501(c)(3)] and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open-space opportunities; or a transfer from such a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions; or any transfer from such a conservancy where the real estate is encumbered by a perpetual agricultural conservation easement as defined by the Act of June 30, 1981 (P.L. 128, No. 43), known as the "Agricultural Area Security Law", and such conservancy has owned the real estate for at least two years immediately prior to the transfer.
- (s) A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which family directly owns at least seventy-five percent of each class of the stock thereof.
- (t) A transfer of real estate devoted to the business of agriculture to a family farm partnership by a member of the same family which family directly owns at least seventy-five percent (75%) of the interests in the partnership.
- (u) A transfer between members of the same family of an ownership interest in a real estate company, family farm corporation or family farm partnership which owns real estate.
- (v) A transaction wherein the tax due is one dollar (\$1.00) or less.
- (w) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

In order to exercise any exclusion provided in this section, the true, full and complete value of the transfer shall be shown on the statement of value. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this article.
(Ord. 64-1995 §4. Passed 11-1-95; Ord. 22-1998. Passed 5-27-98.)

373.05 DOCUMENTS RELATING TO ASSOCIATIONS OR CORPORATIONS AND MEMBERS, PARTNERS, STOCKHOLDERS OR SHAREHOLDERS THEREOF.

Except as otherwise provided in Section 373.04, documents which make, confirm or evidence any transfer or devise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this article, corporations and associations are entities separate from their members, partners, stockholders or shareholders.
(Ord. 64-1995 §5. Passed 11-1-95.)

373.06 ACQUIRED COMPANY.

(a) A real estate company is an acquired company upon a change in the ownership interest in the company, however effected, if the change does not affect the continuity of the company; and of itself or together with prior changes has the effect of transferring, directly or indirectly, ninety percent or more of the total ownership interest in the company within a period of three years.

(b) With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, because of issuance or transfer of stock or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm corporation under this article.

(c) A family farm partnership is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family partnership or when, because of transfer of partnership interests or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm partnership under this act.

(d) Within thirty days after becoming an acquired company, the company shall present a declaration of acquisition with the Recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county. A copy of the Pennsylvania Realty Transfer Tax Declaration of Acquisition may be submitted for this purpose. (Ord. 64-1995 §6. Passed 11-1-95.)

373.07 CREDITS AGAINST TAX.

(a) Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer.

(b) Where there is a transfer by a builder of a residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer.

(c) Where there is a transfer of real estate which is devised by the grantor, a credit for the amount of tax paid at the time of the devise shall be given the grantor toward the tax due upon the transfer.

(d) Where there is a conveyance by deed of real estate which was previously sold under a land contract by the grantor, a credit for the amount of tax paid at the time of the sale shall be given the grantor toward the tax due upon the deed.

(e) If the tax due upon the transfer is greater than the credit given under this section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carryover credit shall be allowed. (Ord. 64-1995 §7. Passed 11-1-95.)

373.08 EXTENSION OF LEASE.

In determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lessee is fixed or if a method for calculating the rental charge is established. (Ord. 64-1995 §8. Passed 11-1-95.)

373.09 PROCEEDS OF JUDICIAL SALE.

The tax herein imposed shall be fully paid, and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, except the state realty transfer tax, and the sheriff, or other officer, conducting said sale, shall pay the tax herein imposed out of the first moneys paid to him in connection therewith. If the proceeds of the sale are insufficient to pay the entire tax herein imposed, the purchaser shall be liable for the remaining tax. (Ord. 64-1995 §9. Passed 11-1-95.)

373.10 DUTIES OF RECORDER OF DEEDS.

(a) As provided in 16 P.S. §11011-6, as amended by Act of July 7, 1983 (P.L. 40, No. 21), the Recorder of Deeds shall be the collection agent for the local realty transfer tax, including any amount payable to the City based on a redetermination of the amount of tax due by the Commonwealth of Pennsylvania of the Pennsylvania realty transfer tax, without compensation from the City.

(b) In order to ascertain the amount of taxes due when the property is located in more than one political subdivision, the Recorder shall not accept for recording such a deed unless it is accompanied by a statement of value showing what taxes are due each municipality.

(c) On or before the tenth of each month, the Recorder of Deeds shall pay over to the City all local realty transfer taxes collected, less two percent for use of the county, together with a report containing the information as is required by the Commonwealth of Pennsylvania in reporting collections of the Pennsylvania realty transfer tax. The two percent (2%) commission shall be paid to the county.

(d) Upon a redetermination of the amount of realty transfer tax due by the Commonwealth of Pennsylvania, the Recorder shall rerecord the deed or record the additional realty transfer tax form only when both the state and local amounts and a rerecording or recording fee has been tendered.

(e) If additional realty transfer tax is determined to be due to the Commonwealth, the Recorder of Deeds for Erie County shall collect a like amount for the City, but without interest and penalty; if a refund is determined to be due by the Commonwealth, the Recorder of Deeds for Erie County shall refund a like amount, without interest and charge said refund to the City on the monthly report for the month in which the refund is made.
(Ord. 64-1995 §10. Passed 11-1-95.)

373.11 STATEMENT OF VALUE.

Every document lodged with or presented to the Recorder of Deeds for recording, shall set forth therein and as a part of such documents the true, full and complete value thereof, or shall be accompanied by a statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. The provisions of this subsection shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship. Other documents presented for the affixation of stamps shall be accompanied by a certified copy of the document and statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article.
(Ord. 64-1995 §11. Passed 11-1-95.)

373.12 CIVIL PENALTIES.

(a) Fraud. If any part of any underpayment of tax imposed by this article is due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of the underpayment.

(b) Failure to Record Declaration. In the case of failure to record a declaration required under this article on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax five percent (5%) of the amount of such tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month or fraction thereof during which such failure continues, not exceeding fifty percent (50%) in the aggregate.
(Ord. 64-1995 §12. Passed 11-1-95.)

373.13 DETERMINATION OF TAX.

If any person shall fail to pay any tax imposed by this article for which he is liable, the City is hereby authorized and empowered to make a determination of additional tax and interest due by such person based upon any information within its possession or that shall come into its possession. All of such determinations shall be made within three years after the date of the recording of the document. This three year period of limitation shall have no effect whatsoever on the imposition of liens.
(Ord. 64-1995 §13. Passed 11-1-95.)

373.14 LIEN ON PROPERTY.

The tax imposed by this article shall become a lien upon the lands, tenements, or hereditaments, or any interest therein, lying, being situated, wholly or in part within the boundaries of the City, which lands, tenements, hereditaments, or interest therein, are described in or conveyed by or transferred by the deed which is the subject of the tax imposed, assessed and levied by this article, said lien to begin at the time when the tax under this article is due and payable, and continue until discharge by payment, or in accordance with the law, and the City Solicitor is authorized to file a municipal or tax claim in the Court of Common Pleas of Erie County, in accordance with the provisions of the Municipal Claims and Liens Act of 1923, 53 P.S. §7101 et seq., its supplements and amendments.
(Ord. 64-1995 §14. Passed 11-1-95.)

373.15 ENFORCEMENT AND REGULATIONS.

The City Department of Administration and Finance is charged with enforcement and collection of tax and is empowered to promulgate and enforce reasonable regulations for enforcement and collection of the tax. The regulations which have been promulgated by the Pennsylvania Department of Revenue under 72 P.S. §8101-C et seq. are incorporated into and made a part of this article.
(Ord. 64-1995 §15. Passed 11-1-95.)

373.16 SEVERABILITY.

Should any section, subsection, sentence, clause or phrase of this article be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this article in its entirety or of any part thereof other than that declared to be invalid.
(Ord. 64-1995 §16. Passed 11-1-95.)

373.99 PENALTY.

Any person who violates any provision of this article shall be guilty of a summary offense and upon conviction thereof shall be sentenced to pay a fine not exceeding six hundred dollars (\$600.00) and/or imprisonment not exceeding ninety days for each offense, in addition to any other penalties provided by law and shall be required to pay the amount of tax due together with interest, as provided in this article.
(Ord. 64-1995 §17. Passed 11-1-95.)

ARTICLE 375
Emergency and Municipal Services Tax

EDITOR'S NOTE: Act 160 of 1967 removes from Act 511, the Local Tax Enabling Act, the provisions of Sections 4, 5 and 7 of the act relating to annual re-enactment of taxes and specifies that every tax levied under the provisions of the act would continue in force on a calendar or fiscal year basis without annual re-enactment unless the rate of the tax was subsequently changed.

375.01	Definitions.	375.09	Nonresident employers or self-employed individuals.
375.02	Levy and amount of tax.	375.10	Administration.
375.03	Exemption.	375.11	Suits for collection.
375.04	Duty of employers.	375.12	Validity.
375.05	Returns.	375.13	Separability.
375.06	Dates for determining liability and payment.	375.14	Effective date.
375.07	Self-employed individuals.	375.15	School District sharing.
375.08	Individuals engaged in more than one occupation.	375.99	Penalty.

CROSS REFERENCE

Power to tax - see Act 511 of 12-31-65 (53 P.S. §6901-6924)

375.01 DEFINITIONS.

The following words and phrases, when used in this article, are defined as follows, except where the context or language clearly indicates or requires a different meaning:

- (a) "Individual" means any person, male or female, engaged in any occupation, trade, profession, business or undertaking of any type, kind or character, including services, within the corporate limits of the City.
- (b) "Occupation" means any trade, profession or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the corporate limits of the City for which compensation is charged or received whether by means of salary, wages, commissions or fees for services rendered.
- (c) "Employer" means an individual, partnership, association, 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.

- (d) "Tax" means the Emergency Municipal Services Tax in the amount of no less than ten dollars (\$10.00) nor more than fifty-two dollars (\$52.00) levied by this article.
- (e) "Treasurer" means the Treasurer of the City.
- (f) "Income Tax Collector and Deputy City Treasurer" means the person occupying that position with the City under whose discretion this tax shall be enforced.
- (g) "Fiscal year" means the twelve month period beginning January 1, 2005 and ending December 31, 2005.
- (h) "City of Erie" means the area within the corporate limits of the City.
- (i) "He", "his" or "him" shall mean and indicate the singular and plural numbers well as male, female and neuter gender.
(Ord. 3-2005. Passed 1-19-05.)

375.02 LEVY AND AMOUNT OF TAX.

For (1) police, fire and/or emergency services; (2) road construction and/or maintenance and (3) reduction of property taxes, a tax is hereby levied upon the privilege of engaging in an occupation within the corporate limits of the City during the fiscal year 2005. Each natural person who exercises such privilege for any length of time during the year shall pay a tax in the amount of no less than ten dollars (\$10.00) nor more than fifty-two dollars (\$52.00), in accordance with the provisions of this article. This tax is in addition to all other taxes of any kind or nature heretofore levied by the City.
(Ord. 3-2005. Passed 1-19-05.)

375.03 EXEMPTION.

Any individual whose total earnings from all sources are less than twelve thousand dollars (\$12,000) annually shall be exempt from the payment of the emergency and municipal services tax levied in any amount greater than ten dollars (\$10.00).
(Ord. 3-2005. Passed 1-19-05.)

375.04 DUTY OF EMPLOYERS.

Each employer within the City as well as those employers situated outside the City, but who engage in business within the City, is hereby charged with the duty of collecting from each of his employees engaged by him and performing for him within the City, the tax of no less than ten dollars (\$10.00) nor more than fifty-two dollars (\$52.00) per annum and making a return and payment thereof to the Treasurer. Further, each employer is hereby authorized to deduct his tax from each employee in his employ, whether such employee is paid by salary, wages or commissions and whether or not part of all such services are performed within the City.
(Ord. 3-2005. Passed 1-19-05.)

375.05 RETURNS.

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to him by the Income Tax Collector, Municipal Building, Erie Pennsylvania. It is further provided that if the employer fails to file such return and pay such tax whether or not he makes collection thereof from the salary, wages or commissions paid by him to such employee, the employer shall be responsible for the payment of the tax in full without deducting a commission as though the tax had originally been levied against him.
(Ord. 3-2005. Passed 1-19-05.)

375.06 DATES FOR DETERMINING LIABILITY AND PAYMENT.

(a) Each employer shall use his employment records from the first day of April, 2005 to the thirtieth day of June 2005 for determining the number of employees from whom such tax shall be deducted and paid over to the Treasurer on or before July 31, 2005.

(b) Supplemental reports and payment of tax due thereon shall be made by each employer on October 31, 2005, and January 31, 2006, of new employees as reflected on his employment records from July 1, 2005 to September 30, 2005 and October 1, 2005 to December 31, 2005. Payment of taxes due on these supplemental reports shall be made on October 31, 2005 and January 31, 2006, respectively.

(c) For 2006 and subsequent years, unless this tax is amended or repealed, each employer shall use his employment records from the first day of January to the thirty-first day of March for determining the number of employees from whom such tax shall be deducted and paid over to the Treasurer on or before April 30 of 2006 and subsequent years. Supplemental reports and payments of tax due thereon in 2006 and subsequent years shall be made by each employer on July 31, October 31 and January 31 as aforesaid.

(Ord. 3-2005. Passed 1-19-05.)

375.07 SELF-EMPLOYED INDIVIDUALS.

Each self-employed individual who performs services of any type or kind, engaged in any occupation, trade, profession, business or undertaking of any type, kind or character, including services within the City, shall be required to comply with this article and pay the tax to the Treasurer on July 31, 2005 or as soon thereafter as he engages in an occupation.

(Ord. 3-2005. Passed 1-19-05.)

375.08 INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION.

(a) Each individual who shall have more than one occupation within the City shall be subject to the payment of this tax on his principal occupation and his principal employer shall deduct this tax and deliver to him evidence of deduction on a form to be furnished to the employer by the Income Tax Collector and Deputy City Treasurer, which form shall be evidence of deduction having been made, and when presented to any other employer, shall be authority for such employer to not deduct this tax from the employee's wages, but to include such employee on his return by setting forth his name, address and the name and account number of the employer who deducted this tax.

(b) In the event a person is engaged in more than one occupation, or an occupation which requires his working in more than one political subdivision during the calendar year, the priority of claim to collect such occupational privilege tax shall be in the following order: first, the political subdivision in which a person maintains his principal office or is principally employed; second, the political subdivision in which the person resides and works, if such a tax is levied by that political subdivision; third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home. The place of employment shall be determined as of the day the taxpayer first becomes subject to the tax during the calendar year. It is the intent of this section that no person shall pay no less than ten dollars (\$10.00) nor more than fifty-two dollars (\$52.00) in any calendar year as an occupational privilege tax, irrespective of the number of the political subdivisions within which such person may be employed within any given calendar year. In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment shall constitute prima-facie certification of payment to all other political subdivisions.

(Ord. 3-2005. Passed 1-19-05.)

375.09 NONRESIDENT EMPLOYERS OR SELF-EMPLOYED INDIVIDUALS.

All the employers and self-employed individuals residing or having their place of business outside the City, but who performs services of any type or kind, or engage in any occupation, trade, profession, business or undertaking of any type, kind or character, including services within the City due by virtue thereof to be found by and subject themselves to the provision, penalties and regulations promulgated under this article with the same force and effect as though they were residents of the City. Further, any individual engaged in an occupation within the City and an employee of a nonresident employer may, for the purpose of this article, be considered a self-employed person, and in the event this tax is not paid, the City shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

(Ord. 3-2005. Passed 1-19-05.)

375.10 ADMINISTRATION.

(a) It shall be the duty of the Treasurer to accept and receive payments of this tax and to keep a record thereof showing the amount received by him from each employer or self-employed person together with the date the tax was received.

(b) The Income Tax Collector and Deputy City Treasurer is hereby charged with the administration and enforcement of this article, and is hereby charged and empowered 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 of the payroll records of any employer subject to this article; the examination and correction of any return made in compliance with the article; and the examination of 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 Income Tax Collector and Deputy City Treasurer shall have the right to appeal to the Court of Common Pleas of Erie County as in other cases provided.

(c) The Income Tax Collector and Deputy City Treasurer 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 Income Tax Collector and Deputy City Treasurer the means, facilities and opportunity for such examination.

(Ord. 3-2005. Passed 1-19-05.)

375.11 SUITS FOR COLLECTION.

(a) In the event that any tax under this article remains due or unpaid thirty days after the due dates set forth in Section 375.06, the Income Tax Collector and Deputy City Treasurer 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 six percent (6%) per annum on the amount of such tax shall be calculated beginning with the due date of such tax and a penalty of five percent (5%) shall be added to the flat rate of such tax for nonpayment thereof. Where suit is brought for the recovery of this tax, the individual liable therefore shall, in addition, be responsible and liable for the costs of collection.

(Ord. 3-2005. Passed 1-19-05.)

375.12 VALIDITY.

The provisions of this article are severable and if any of its provisions shall be held invalid or unconstitutional, the decision of the court shall not affect or invalidate any of the remaining provisions. It is hereby declared to the legislative intent that this article would have been adopted if such illegal, invalid or unconstitutional provision has not been included herein. (Ord. 3-2005. Passed 1-19-05.)

375.13 SEPARABILITY.

(a) Nothing contained in this article shall be construed to empower the City to levy and collect the tax hereby imposed on any occupation not within the taxing power of the City 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 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 such tax, or the validity of the tax so imposed on other persons or individuals as herein provided.

(c) If any court of competent jurisdiction shall hold that the tax hereby imposed under the provisions of this article cannot be collected in the full amount of no less than ten dollars (\$10.00) nor more than fifty-two dollars (\$52.00) for the year 2005, the decision of this Court shall not affect or invalidate the remaining provisions of this article and it is hereby declared to the legislative intent that this article would have been adopted on a pro-rata basis for 2005 from the effective date thereof. (Ord. 3-2005. Passed 1-19-05.)

375.14 EFFECTIVE DATE.

This article shall become effective for the year 2005 twenty days after final passage by Council, and approval by the Mayor and shall continue thereafter in full force and effect, without annual re-enactment unless amended or repealed. (Ord. 3-2005. Passed 1-19-05.)

375.15 SCHOOL DISTRICT SHARING.

The School District share of the Emergency and Municipal Services Tax shall in no event exceed five dollars (\$5.00) of any tax imposed by the City under this article as outlined in HB 197, §3. (Ord. 3-2005. Passed 1-19-05.)

375.99 PENALTY.

Whoever makes any false or untrue statement on any return required by this article, or who refuses inspection on his books, records or accounts in his custody and control setting forth the number of employees subject to this tax who are in his employment, or whoever fails or refuses to file any return required by this article, or who shall fail to pay the tax due, shall, upon summary conviction before any District Justice in the County of Erie, be sentenced to pay a fine not to exceed the sum of three hundred dollars (\$300.00) for any one offense, recoverable with costs, or imprisonment not exceeding ninety days, if the amount of such fine and costs shall not be paid. It is further provided that the action to enforce the fine and penalty herein provided may be instituted against any person in charge of the business or any employer who failed or refuses to file a return required by this article. (Ord. 3-2005. Passed 1-19-05.)

ARTICLE 376
Taxpayers Bill of Rights

376.01	Rules and regulations.	376.05	Additional rules and regulations.
376.02	Disclosure statement.	376.06	Severability.
376.03	Petition for appeal and refund.	376.07	Repealer.
376.04	Appeal of Tax Collector determinations.		

376.01 RULES AND REGULATIONS.

The City of Erie hereby adopts those Rules and Regulations as set forth in Act 50 of 1998. The Regulations covering the Administration and Collection of Tax has set forth a process for handling appeals from decisions on assessment and refunds. The Rules and Regulations shall be administered by the City Treasurer and a copy of the Rules and Regulations shall be available in that Office, upon request for public inspection.
(Ord. 7-1999. Passed 2-3-99.)

376.02 DISCLOSURE STATEMENT.

The City of Erie through the City Treasurer, acting as Tax Collector, shall provide a Disclosure Statement which sets forth Taxpayers Rights in connection with any audit, examination, appeal or refund claim of tax for the City of Erie, and any enforcement or collection action taken by the Tax Collector on behalf of the City of Erie.
(Ord. 7-1999. Passed 2-3-99.)

376.03 PETITION FOR APPEAL AND REFUND.

Any taxpayer has the right to challenge an assessment or denial of a refund claim in accordance with the Rules and Regulations for the Taxpayers Bill of Rights. The City Treasurer shall make available forms for Petitions for Appeal and Refund.
(Ord. 7-1999. Passed 2-3-99.)

376.04 APPEAL OF TAX COLLECTOR DETERMINATIONS.

The Administrative Appeal proceeding relating to Petitions for Appeal and Refund submitted by taxpayers in connection with the assessment, determination or refund of an eligible tax shall be undertaken by the Director of Administration and Finance, acting as Hearing Officer.
(Ord. 7-1999. Passed 2-3-99.)

376.05 ADDITIONAL RULES AND REGULATIONS.

Rules and Regulations for Compliance with the Local Taxpayers Bills of Rights together with the Administrative Appeal Procedure which are to be administered by both the City Treasurer and the Director of Finance and Administration are hereby approved and adopted. (Ord. 7-1999. Passed 2-3-99.)

376.06 SEVERABILITY.

In the event any provision, section, sentence, clause or part of this article shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this article, it being the intent of City Council that the remainder of the article shall remain in full force and effect. (Ord. 7-1999. Passed 2-3-99.)

376.07 REPEALER.

All ordinances and resolutions or parts thereof, insofar as the same are inconsistent herewith, are repealed hereby. (Ord. 7-1999. Passed 2-3-99.)

ARTICLE 377
Parking Tax

<p>377.01 Definitions. 377.02 Annual license. 377.03 Imposition of tax. 377.04 Records. 377.05 Return and payments. 377.06 Bureau of Revenue's powers and duties.</p>	<p>377.07 Posting of rates. 377.08 Collection of unpaid taxes. 377.09 Confidentiality. 377.99 Penalty.</p>
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CROSS REFERENCES

Power to tax generally - see 3rd Class Code 52601 (53 P.S. 37601)
 Power to tax - see Local Tax Enabling Act, Act of Dec. 31, 1965, P.L. 1257
 as amended (53 P.S. 6901 et seq.)
 Surface parking not business property - see 5-503.1(b)

377.01 DEFINITIONS.

As used in this article, unless the context indicates clearly a different meaning, the following words and phrases shall have the meanings set forth below:

- (a) "Patron" means any person who drives a vehicle to, into or upon a nonresidential parking lot as hereinafter defined, for the purpose of having such vehicle stored for any length of time. "Patron" shall also include any person who has a vehicle in his or her custody taken by another for the purpose of having it stored at a non-residential parking place.
- (b) "Non-residential parking lot" means any place within the City, whether wholly or partially enclosed or open, including a garage or enclosed building, at which motor vehicles are parked or stored for any period of time in return for a consideration, not including: (Ord. 2-2004. Passed 1-14-04.)
 - (1) Any parking area or garage to the extent that it is provided or leased to occupants of a residence on the same or other premises for use only in connection with, and as necessary to, the occupancy of such residence for no additional consideration.
(Ord. 17-2004. Passed 2-25-04.)

- (2) Any parking area or garage operated exclusively by an owner or lessee of a hotel, an apartment hotel, tourist court or trailer park, to the extent that parking is provided to guests or tenants of such hotel, tourist court or trailer park for no additional consideration; and
(Ord. 2-2004. Passed 1-14-04.)
- (3) Any on-site or off-street parking on property designated for accessory use provided by the owner for the use of such owner, tenants of such owner, and the employees and business visitors of such owner or tenants for no additional consideration. (Ord. 28-2004. Passed 5-19-04.)
- (c) "Operator" means any person conducting the operation of a nonresidential parking lot or receiving the consideration for the parking or storage of motor vehicle at such parking lot, including without limiting the generality of the above any governmental body, governmental subdivision, municipal corporation, public authority, non-profit corporation, or any person operating as an agent of one of the above.
- (d) "Transaction" means the parking or storing of a motor vehicle at a non-residential parking lot for a consideration.
- (e) "Consideration" means the payment of compensation, of whatever nature, to the operator by or on behalf of the patron, upon an express or implied contract or under a lease or otherwise, whether or not separately stated, and whether paid in cash or credited to an account, for each transaction involving the parking or storing of a motor vehicle by the patron. The consideration shall not include the tax imposed and collected under this chapter.
(Ord. 2-2004. Passed 1-14-04.)

377.02 ANNUAL LICENSE.

No operator shall conduct business as a non-residential parking lot without obtaining an annual license at a fee of one hundred dollars (\$100.00) and in addition one dollar (\$1.00) per space from the Bureau of Revenue for the purpose of defraying the costs of administering this chapter. Such license shall be obtained by an operator for each lot operated by such operator within thirty (30) days after the effective date of this section and shall be renewed annually on or before January 1 of each year. Any person who intends to become an operator, or any operator who intends to increase the number of spaces available for non-residential parking, shall obtain a license or amended license before beginning such operation or expansion. At each parking lot the operator shall display the license in a conspicuous location at all times. Such license shall not be transferable between one operator and another or between one parking lot and another. Any operator who ceases to conduct the operation of a parking lot shall notify the Bureau of Revenue and return the license applicable thereto.
(Ord. 2-2004. Passed 1-14-04.)

377.03 IMPOSITION OF TAX.

A tax for general revenue purposes is hereby imposed upon each parking transaction by a patron of a non-residential parking place at the rate of fifteen percent (15%) of the consideration for each such transaction. No operator shall conduct such transactions without complying with all of the provisions of this chapter and without collecting the tax imposed herein and paying it to the City. (Ord. 2-2004. Passed 1-14-04.)

377.04 RECORDS.

(a) Each operator shall maintain, separately with respect to each parking lot, complete and accurate records of all transactions and the total amount of tax collected on the basis of such consideration.

(b) Each operator shall issue to the person paying the consideration such written evidence of the transactions as the Bureau of Revenue or designee may prescribe by regulations. Where consideration in a transaction is not separately stated, the operator shall maintain evidence and records necessary to segregate the consideration applicable to the transaction, for the benefit of the patron and the Bureau of Revenue or designee, so that the proper amount of tax can be collected. Each operator shall afford the Bureau of Revenue and designated employees and agents access to all such records and evidence at all reasonable times and shall provide verification of the same as the Bureau of Revenue may require.
(Ord. 2-2004. Passed 1-14-04.)

377.05 RETURN AND PAYMENTS.

(a) Each operator, on forms prescribed by the Bureau of Revenue or a designee, shall file quarterly, by the 30th day of the months of April, July, October and January of each year, returns for the preceding three (3) months showing the consideration received with respect to each parking lot during the preceding three (3) months, together with the amount of tax collected thereupon. At the time of filing the return, the operator shall pay all tax due and collected for the period to which the return applies. Each operator shall collect the tax imposed by this article and shall be liable to the City as agent thereof for the payment of the same.

(b) The Bureau of Revenue is charged with the duty of receiving fees, taxes, interests, fines, and penalties imposed by this article.
(Ord. 2-2004. Passed 1-14-04.)

377.06 BUREAU OF REVENUE'S POWERS AND DUTIES.

(a) The Bureau of Revenue and duly appointed designee(s), under the direction of the Mayor, are hereby empowered with the approval of the Mayor to prescribe, adopt and promulgate rules and regulations relating to the administration and enforcement of this article, including, but not limited to, requirements for evidence and records and forms for applications, licenses and returns.

(b) The Bureau of Revenue or designee(s) shall have the power, in the event that any operator has, in the judgment of the Business Administrator or designee, failed to pay over the amount of tax due, to collect the tax directly from the patron and charge the cost of collection to the operator. In such event, the Bureau of Revenue or designee(s) shall maintain records showing the amount received and the dates such amounts were received.

(c) The Bureau of Revenue and agents thereof are hereby authorized to examine the books, papers and records of any operator or probable operator subject or supposed to be subject to this chapter in order to verify the accuracy of the return made or, if no report was made, to estimate the tax due. Each such operator, or probable operator, is hereby directed and required to give to the Bureau of Revenue or agent thereof the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

(d) Any person aggrieved by any decision of the Bureau of Revenue or designee(s) shall have the right to appeal to Court of Common Pleas, as provided by law. (Ord. 2-2004. Passed 1-14-04.)

377.07 POSTING OF RATES.

Every operator shall post and maintain in a conspicuous place, at each entrance, a sign printed in letters of such uniform size and character as to be readily readable by prospective customers, showing the operator's name and lot address, operator's parking license number, and a schedule of rates according to one of the prescribed methods listed below:

- (a) Method A. Total hourly, daily, or monthly charges consisting of the parking fee and parking tax shown. Indication of the collection of the tax must be posted on the sign with the words. "Tax included."

EXAMPLE:

1 Hr..... \$.75 Tax included

- (b) Method B. The complete schedule of parking fee, parking tax and total charge to customer.

EXAMPLE:

	<u>Fee</u>	<u>Tax</u>	=	<u>Total</u>
1 hr.	\$.75+	\$.11	=	\$.86
2 hr.	\$1.00+	\$.15	=	\$1.15

(Ord. 2-2004. Passed 1-14-04.)

377.08 COLLECTION OF UNPAID TAXES.

The Bureau of Revenue or duly appointed designees shall have the power in the name of the City to institute proceedings to collect, by suit or otherwise, all taxes, interest, costs, fines, and penalties due under this article and unpaid. If the operator neglects, refuses or fails to file any return or make any payment as herein required, an additional fifty percent (50%) of the amount of the tax shall be added by the Bureau of Revenue or designee and collected from the operator as a penalty. All taxes due and unpaid shall bear interest at the rate of one percent (1%) per month or fraction thereof from the date they are due and payable until such time as they are paid. (Ord. 2-2004. Passed 1-14-04.)

377.09 CONFIDENTIALITY.

Any information gained by the Bureau of Revenue or any other official, agent or employee of the City as a result of any reports, returns, investigations, hearings, or verifications required or authorized by this article shall be confidential, except for official purposes, in accordance with proper judicial order, or as otherwise provided by law. (Ord. 2-2004. Passed 1-14-04.)

377.99 PENALTY.

Any person violating any provision of this article shall be guilty of a summary offense, and upon conviction shall be fined not more than three hundred dollars (\$300.00) or imprisoned not more than ninety days or both. (Ord. 2-2004. Passed 1-14-04.)

TITLE SEVEN - Tax Exemptions

- Art. 381. Local Economic Revitalization Tax Assistance Act (LERTA) Tax Exemption.
 Art. 382. Residential Investment Opportunity (RIO) Tax Exemption.
 Art. 383. Property Tax.

ARTICLE 381

Local Economic Revitalization Tax Assistance Act (LERTA) Tax Exemption

- | | | | |
|--------|---------------------|--------|------------------------------------|
| 381.01 | Definitions. | 381.05 | Procedure for obtaining exemption. |
| 381.02 | Exemption. | 381.06 | Exclusion. |
| 381.03 | Maximum exemption. | | |
| 381.04 | Exemption schedule. | | |

CROSS REFERENCES

- Improvement of Deteriorating Property or Areas Tax Exemption Act - see 72 P.S. §4711-101 et seq.
 Local Economic Revitalization Tax Assistance Law - see 72 P. S. §4722 et seq.

381.01 DEFINITIONS.

As used in this article, certain terms are defined as follows:

- (a) "Deteriorated property (commercial)" means any industrial, commercial or other business property owned by an individual, association or corporation, and located in an investment opportunity area, as hereinafter provided, or any such property located within the City which has been the subject of an order by a government agency requiring the unit to be vacated, condemned or demolished by reason of noncompliance with laws, ordinances or regulations.
- (b) "Deteriorated property (residential)" means a dwelling unit located in an investment opportunity area as hereinafter provided, or a dwelling unit located within the City which has been or upon request is certified by a health, housing or building inspection agency as unfit for human habitation for rent withholding, or other health or welfare purposes, or has been the subject of an order by such an agency requiring the unit to be vacated, condemned or demolished by reason of noncompliance with the laws, of ordinances or regulations.
- (c) "Dwelling unit" means a house, double house or duplex, townhouse or row house, apartment or any building intended for occupancy as living quarters by an individual, a family, families or other groups of persons, which living quarters contain a kitchen or other cooking equipment for the exclusive use of the occupant or occupants.

- (d) "Improvement" means repair, construction or reconstruction, including alterations and additions, having the effect of rehabilitating a deteriorated property, either commercial or residential, so that it becomes habitable or attains higher standards and increases its assessment. Ordinary upkeep and maintenance shall not be deemed an improvement.
- (e) "Residential construction" means the building or erection of dwelling units, as defined in subsection (c) hereof, upon vacant land or land specifically prepared to receive such structures. (Ord. 60-1978 §1. Passed 11-5-78.)
- (f) "Investment opportunity areas" means the areas within the City to be determined by Council, following a public hearing to be eligible for tax exemption under Act 76 of 1977 "Local Economic Revitalization Tax Assistance Act" and Act 42 of 1977 "Improvement of Deteriorating Real Property, or Areas Tax Exemption Act". The Investment Opportunity Areas are as follows:
- (1) Beginning at a point on the center line of Cranberry Street intersecting with the center line of West 26th Street;
Thence east along the center line of West 26th Street and East 26th Street to a point intersecting with the center line of Elm Street;
Thence north along the center line of Elm Street to a point intersecting with the center line of Buffalo Road;
Thence east along the center line of Buffalo Road to a point intersecting with the west line of Bird Drive;
Thence north along the west line of Bird Drive to a point intersecting with the north City Line;
Thence west along the north City Line to a point intersecting with the east line of Franklin Avenue;
Thence north along the east line of Franklin Avenue to a point intersecting with the center line of East 12th Street;
Thence west along the center line of East 12th Street to a point intersecting with the center line of Gilson Avenue, if extended;
Thence north along the center line of Gilson Avenue, if extended and Gilson Avenue to a point intersecting with the center line of East Lake Road;
Thence west along the center line of East Lake Road to a point intersecting with the center line of Hess Avenue;
Thence north along the center line of Hess Avenue to a point intersecting with the north City Line;
Thence west along the north City Line to a point intersecting with the center line of Cranberry Street, if extended;
Thence south along the center line of Cranberry Street, if extended, to a point intersecting with the center line of West 12th Street;
Thence west along the center line of West 12th Street to a point intersecting with the center line of Greengarden Road;
Thence south along the center line of Greengarden Road to a point intersecting with the center line of Norfolk and Western Railroad;

Thence east along the center line of the Norfolk and Western Railroad to a point intersecting with the center line of Baur Avenue, if extended; Thence south along the center line of Baur Avenue, if extended, to a point intersecting with the center line of West 20th Street;

Thence east along the center line of West 20th Street to a point intersecting with the center line of Cranberry Street;

Thence south along the center line of Cranberry Street to a point intersecting with the center line of West 26th Street and being the point of beginning. (Ord. 36-1982 §1. Passed 5-12-82.)

- (2) Beginning on the east line of Hess Avenue intersecting with the Bayfront; Thence east on the Bayfront to the west line of Cranch Avenue; Thence south on Cranch Avenue to the south line of East Lake Road; Thence east on East Lake Road to the west line of Franklin Avenue; Thence south on Franklin Avenue to the north line of East 12th Street; Thence west on East 12th Street to the east line of Gilson Avenue; Thence north on Gilson Avenue to the north line of East Lake Road; Thence west on East Lake Road to the east line of Hess Avenue; Thence north on Hess Avenue to the point of beginning.
- (3) Beginning on the west line of McClelland Avenue intersecting with the south line of Buffalo Road; Thence south on McClelland Avenue to the north line of East 38th Street; Thence west on East 38th Street to the east line of Zimmerman Road; Thence northwest on Zimmerman Road to the north line of East 28th Street; Thence west on East 28th Street to the west line of French Street; Thence south on the west line of French Street to the north line of East 29th Street; Thence west on East 29th Street and West 29th Street to the east line of Pittsburgh Avenue; Thence north on Pittsburgh Avenue to the south line of West 12th Street; Thence east on West 12th Street to the west side of Greengarden Road; Thence south on Greengarden Road to the south line of the Norfolk and Western Railway; Thence east on the Norfolk and Western Railway to the west line of Baur Avenue; Thence south on Baur Avenue to the south line of West 20th Street; Thence east on West 20th Street to the west line of Cranberry Street; Thence south on Cranberry Street to the south line of West 26th Street; Thence east on West 26th Street and East 26th Street to the east line of Elm Street; Thence north on Elm Street to the south line of Buffalo Road; Thence east on Buffalo Road to the point of beginning.

- (4) Beginning at a point on the east line of the Norfolk and Western Railway intersecting with West 12th Street and Greengarden Road;
Thence northeast along the east line of the N & W Railroad tracks to the west line of Cranberry Street;
Thence south on Cranberry Street to the north line of West 12th Street;
Thence west on West 12th Street to the point of beginning.
(Ord 59-1982 §1. Passed 8-25-82.)

381.02 EXEMPTION.

There is hereby exempted from all property taxation the assessed valuation of:

- (a) Improvements to deteriorated properties (commercial) and/or deteriorated properties (residential); and
- (b) New residential, commercial or industrial construction built in any investment opportunity area.

The exemption authorized by subsections (a) and (b) hereof shall be in the amounts and in accordance with the provisions and limitations provided in Sections 381.03 to 381.06.
(Ord. 60-1978 §2. Passed 11-15-78.)

381.03 MAXIMUM EXEMPTION.

- (a) The exemption from real property taxes shall be limited to:
 - (1) The portion of the additional assessment attributable to the actual cost of improvements to deteriorated property (commercial);
 - (2) The additional assessment attributable to the actual cost of improvements but not in excess of the maximum cost per dwelling unit specified herein in the case of improvements to deteriorated property (residential); and
 - (3) The assessment valuation attributable to the cost of construction of the new dwelling unit but not in excess of the maximum cost per dwelling unit specified herein in the case of new residential construction within a designated investment opportunity area.

(b) The maximum cost per dwelling unit eligible for exemption shall be fifteen thousand nine hundred thirty-six dollars (\$15,936) per dwelling unit on the assessment attributable to the actual cost of improvements constructed during 1978 and fifty thousand dollars (\$50,000) per dwelling unit on the assessment attributable to the actual cost of new construction constructed after the effective date of this section. Maximum cost for improvements constructed during each year thereafter shall be the maximum cost for the preceding year multiplied by the ratio of the United States Bureau of the Census new one-family houses price index for the current year to such index for the preceding year. The date of the construction shall be the date of issuance of the building permit, improvement record or other required notification of construction. No tax exemption shall be granted under the provisions of this article for any improvements to any dwelling unit in excess of the maximum cost specified above. This limitation shall not apply to nonresidential, industrial, commercial or other business properties which are eligible for exemption under this article.
(Ord. 60-1978 §3. Passed 11-15-78.)

(c) In all cases the exemption from taxes shall be limited to that portion of the additional assessment attributable to the improvement or new construction, as the case may be, and for which a separate assessment has been made by the County Bureau of Assessment and for which an exemption has been separately requested. No tax exemption shall be granted if the property owner does not secure the necessary and proper permits prior to improving the property. No tax exemption shall be granted if the property as completed does not comply with the minimum standards of the Housing and Building Codes of the City of Erie.
(Ord. 99-1979 §1. Passed 11-14-79.)

(d) In any case after the effective date of this section where deteriorated property (commercial) or deteriorated property (residential) is damaged, destroyed or demolished, by any cause or for any reason, and the assessed valuation of the property affected has been reduced as a result of such damage, destruction or demolition, the exemption from real property taxation authorized by this article shall be limited to that portion of new assessment attributable to the actual cost of improvements or construction that is in excess of the original assessment that existed prior to damage, destruction or demolition of the property.
(Ord. 60-1978 §3. Passed 11-15-78.)

381.04 EXEMPTION SCHEDULE.

- (a) The schedules for real estate taxes to be exempted shall be as follows:
- (1) New Commercial/Industrial Construction. For the first ten (10) years during which improvements become assessable, for new commercial/industrial construction in zoning districts C-1, C-2, C-3, M-1, M-2, WM, WC, WC2, IP and RLB, as defined by the City Zoning Ordinance No. 64-2000, one hundred percent (100%) of the eligible assessment shall be exempted.
 - (2) Deteriorated Commercial Property. For the first ten (10) years during which improvements become assessable, for deteriorated commercial/industrial property in zoning districts C-1, C-2, C-3, M-1, M-2, WM, WC, WC2, IP and RLB, as defined by the City Zoning Ordinance No. 64-2000, one hundred percent (100%) of the eligible assessment shall be exempted.
 - (3) New Residential Construction. For the first three (3) years during which improvements become assessable, one hundred percent (100%) of the eligible assessment shall be exempted.
 - (4) Deteriorated Residential Property. For the first five (5) years during which improvements become assessable, the following shall apply:

Year	Exemption (Percent)
First	100
Second	80
Third	60
Fourth	40
Fifth	20

(Ord. 45-2002. Passed 8-7-02.)

(b) The exemption from taxes granted under this article shall be upon the property and shall not terminate upon the sale or exchange of the property.

(c) If an eligible property is granted tax exemption pursuant to this article the improvement shall not, during the exemption period, be considered as a factor in assessing other properties. (Ord. 60-1978 §4. Passed 11-15-78.)

381.05 PROCEDURE FOR OBTAINING EXEMPTION.

(a) Any person desiring tax exemption pursuant to this article should apply to the City at the time a building permit is secured for construction of the improvement or new residential construction, as the case may be. The application must be in writing upon forms specified by the City setting forth the following information:

- (1) The date the building permit was issued for such improvement;
- (2) The location of the property to be improved;
- (3) The nature of the property to be improved;

- (4) The type of improvements (commercial or residential);
- (5) The summary of the plan of the improvements;
- (6) The cost of the improvements;
- (7) Whether the property has been condemned by any governmental body for noncompliance to laws or ordinances;
- (8) Whether the property has been inspected and verified by the Bureau of Plumbing and Building Inspections; and such additional information as the City may require.
- (9) There shall be on the form application for a building permit the following notice:

"Notice to Taxpayer"

By Ordinance No. 60-1978, you may be entitled to exemption from tax on your contemplated improvement by reassessment.

An application for exemption may be secured from the Building Inspector or other properly designated official and must be filed at the time the building permit is secured.

(Ord. 60-1978 §5. Passed 11-15-78.)

(b) A copy of the exemption request shall be forwarded to the County Bureau of Assessment by the Building Inspector's Office. The Bureau shall determine whether the exemption shall be granted and shall, upon completion of the improvements comply with all applicable Building and Housing Codes (except for new residential construction) and assess separately the dwelling unit and the land upon which the new residential construction stands and shall otherwise perform its duties as above provided for construction or improvements to residential and commercial properties. Treasurer shall keep a separate list of all such exempted properties, and upon receipt of the assessments for each property from the Bureau, the Treasurer shall see to it that each such exempted property is credited with its proper exemption as against the County Assessment figure. (Ord. 99-1979 §2. Passed 11-14-79.)

(c) The cost of improvements to commercial properties or cost of improvements or construction per dwelling unit of residential properties, as the case may be, to be exempted and the schedule of taxes exempted existing at the time of the initial request for tax exemption shall be applicable to that exemption request, and subsequent amendment to this article, if any, shall not apply to requests initiated prior to their adoption.

(d) Appeals from the reassessment and the amount eligible for the exemption may be taken by the City or by the taxpayer as provided by law. (Ord. 60-1978 §5. Passed 11-15-78.)

381.06 EXCLUSION

This article and the exemptions granted herein shall not apply to properties which are, according to the Zoning Office of the City, nonconforming uses. (Ord. 60-1978 §6. Passed 11-15-78.)

ARTICLE 382
Residential Investment Opportunity (RIO) Tax Exemption

382.01	Definitions.	382.04	Procedure for obtaining RIO exemption.
382.02	RIO properties, neighborhoods or areas exemption.	382.05	Severability.
382.03	RIO exemption schedule and maximum amount.	382.06	Revocation of RIO privileges.
		382.07	Amendment.

CROSS REFERENCES

Improvement of deteriorating property or areas tax exemption act - see 72 P.S.
§4711-101-4711-305

382.01 DEFINITIONS.

As used in this article, certain terms are defined as follows:

- (a) "Deteriorating area" means that portion of the City which the City determines to be physically blighted on the basis of one or more of the following standards:
- (1) The residential buildings, by reason of age, obsolescence, inadequate or outmoded design or physical deterioration have become economic and/or social liabilities.
 - (2) The residential buildings are substandard or unsanitary for healthful and safe living purposes.
 - (3) The residential buildings are overcrowded, poorly spaced, or are so lacking in light, space and air as to be conducive to unwholesome living.
 - (4) The residential buildings are faultily arranged, cover the land to an excessive extent or show a deleterious use of land, or exhibit any combination of the above which is detrimental to health, safety or welfare.
 - (5) A significant percentage of buildings used for residential purposes is more than 20 years of age.
 - (6) A substantial amount of unimproved, overgrown and unsightly vacant land exists which has remained so for a period of five years or more indicating a growing or total lack of utilization of land for residential purposes.
 - (7) A disproportionate number of tax exempt or delinquent properties exists in the area.

- (b) "Deteriorated neighborhood" means those areas of the City which the City determines to be physically blighted by using the criteria published in the act of May 24, 1945 (P.L. 991, No. 385), known as the "Urban Redevelopment Law," for the determination of "blighted areas," and the act of November 29, 1967 (P.L. 636, No. 292), known as the "Neighborhood Assistance Act," for the determination of "impoverished areas."
- (c) "Deteriorated property" means a dwelling unit located in a deteriorated neighborhood, as provided above, or in a dwelling unit which has been or upon request is certified by a health, housing or building inspection agency as unfit for human habitation for rent withholding, or other health or welfare purposes, or has been the subject of an order by such an agency requiring the unit to be vacated, condemned or demolished by reason of noncompliance with laws, ordinances or regulations.
- (d) "Dwelling unit" means, unless otherwise defined in this Article, a house, double house or duplex, townhouse or row house, apartment, or any building or group of rooms intended for occupancy as separate living quarters by an individual, a family, families or other groups, which living quarters contain a kitchen or cooking equipment for the exclusive use of the occupants.
- (e) "Improvement" means repair, construction or reconstruction, including alterations and additions, having the effect of rehabilitating a structure so that it becomes habitable or attains higher standards of housing safety, health or amenity, or is brought into compliance with laws, ordinances or regulations governing housing standards; ordinary upkeep and maintenance shall not be deemed an improvement.
- (f) "Residential construction" means the building or erection of dwelling units, as defined in subsection (c) hereof, upon vacant land or land specifically prepared to receive such structures.
- (g) "Residential investment opportunity (RIO) pronounced "Ree-Oh")" means opportunities, within areas of the City designated by City Council, for residential construction or improvements eligible for tax exemption as outlined in this Article. (Ord. 63-2002. Passed 11-13-02.)

382.02 RIO PROPERTIES, NEIGHBORHOODS OR AREAS EXEMPTION.

There is hereby exempted from all property taxation the assessed valuation of residential construction or improvements within the following areas of the City, authorized by City Council, in the amounts and in accordance with the schedules and limitations provided in Sections 382.03 to 382.06 below:

- (a) Improvements to any deteriorated properties, neighborhood or area, located wholly or partially within the following zoning designations:
 - (1) R-1 Low Density Residential Districts
 - (2) R-2 Medium Density Residential Districts
 - (3) R-3 High Density Residential Districts
 - (4) W-R Waterfront Residential District
 - (5) RLB Residential Limited Business
- (b) Residential construction built in any deteriorated neighborhood or area, located wholly or partially within the zoning designations above.
- (c) A RIO area can be established as being deteriorating and decayed even though the area so designated is not a slum consisting exclusively of tangible physical blight. Any such deteriorating area may include buildings or improvements not in themselves blighted or dilapidated.
(Ord. 63-2002. Passed 11-13-02.)

382.03 RIO EXEMPTION SCHEDULE AND MAXIMUM AMOUNT.

(a) New Residential Construction.

- (1) The City will grant a tax exemption on the assessment attributable to the actual cost of construction of a new dwelling unit within a RIO neighborhood or area, as defined above.
- (2) The amount of taxes exempt for new residential construction shall be one hundred percent (100%) of the eligible assessment for the first ten (10) years during which improvements become assessable; after the tenth year the exemption shall terminate.

(b) Residential Improvements.

- (1) The City will grant the maximum tax exemption permitted by law on all assessments attributable to the actual costs of improvements, not in excess of the maximum cost for improvements per dwelling unit, for RIO eligible property. The maximum eligible cost per dwelling unit will be recomputed annually by the City Department of Finance for that particular year, published in January, in accordance with existing laws and Ordinances. The maximum eligible cost for improvements per dwelling is presently determined from a base rate of \$10,000 in 1971 refigured annually by calculating the maximum cost for improvements for the preceding year multiplied by the ratio of the United States Bureau of the Census New One-Family Houses Price Index for the current year to such index for the preceding year. The maximum eligible cost for improvements for 2002, using the above formula, is approximately \$52,000.
- (2) The amount of taxes exempted for residential improvements shall be one hundred percent (100%) of the eligible assessment, determined by the maximum allowable cost of improvement per dwelling, for the first ten (10) years during which improvements become assessable; after the tenth year the exemption shall terminate. No tax exemption shall be granted under the provisions of this article for any improvements to any dwelling unit in excess of the maximum cost specified above.
- (3) If a residential property is granted tax exemption pursuant to this article, any improvements shall not during the exemption period be considered as a factor in assessing other properties.

(c) The date of the construction shall be the date of issuance of the building permit, improvement record or other required notification of construction. The exemption shall commence in the tax year immediately following the year in which the building permit, improvement record or other notification is issued.

(d) A separate request for exemption will be made for each RIO construction or improvement, and each exemption requested will be evaluated by the County Bureau of Assessment. No tax exemption shall be granted if the property owner does not secure the necessary and proper permits prior to improving or building upon the property. No tax exemption shall be granted if the property as completed does not comply with the minimum standards of the Housing and Building Codes of the City of Erie.

(e) In any case after the effective date of this section where deteriorated property is damaged, destroyed or demolished, by any cause or for any reason, and the assessed valuation of the property affected has been reduced as a result of such damage, destruction or demolition, the exemption from real property taxation authorized by this article shall be limited to that portion of new assessment attributable to the actual cost of improvements or construction that is in excess of the original assessment that existed prior to damage, destruction or demolition of the property.

(f) The exemption from taxes authorized by this article shall be upon the property exempted and shall not terminate upon the sale or exchange of the property, unless otherwise provided in this article.

(g) To facilitate the monitoring of the RIO program, and to ensure all RIO tax exemptions end after the ten (10) year exemption period, the City Department of Finance, in conjunction with the City Treasurer, will establish a system for auditing, tracking and managing all RIO exemptions within the City.

(h) Sunset Provision. This Article shall expire five (5) years from the date of its passage unless otherwise extended by act of City Council. Not later than ninety (90) days prior to the expiration date of this Article, City Council will consider the expiration or continuation of this Article, with any required modifications. The terms and exemption periods of this Article will remain applicable to all residential properties granted tax exemptions prior to the termination of this Article.

(Ord. 63-2002. Passed 11-13-02.)

382.04 PROCEDURE FOR OBTAINING RIO EXEMPTION.

(a) Any person desiring RIO tax exemption pursuant to this article should apply to the City at the time a building permit is secured for improvement of deteriorated property or residential construction, as the case may be. The application must be in writing upon forms specified by the City setting forth the following information:

- (1) The date the building permit was issued for such improvement or construction;
- (2) The location of the property to be improved or built;
- (3) The nature of the property to be improved or built;
- (4) The type of improvements;
- (5) The summary of the plan of the improvements;
- (6) The cost of the improvements;
- (7) Whether the property has been condemned by any governmental body for noncompliance to laws or ordinances;
- (8) Whether the property has been inspected and verified by the Bureau of Plumbing and Building Inspections; and such additional information as the City may require.
- (9) There shall be on the form application for a building permit the following notice:

"Notice to Taxpayer"

By Ordinance No. 60-1978, you may be entitled to exemption from tax on your contemplated improvement or construction by reassessment. An application for exemption may be secured from the Building Inspector or other properly designated official and must be filed at the time the building permit is secured.

(b) A copy of the exemption request shall be forwarded to the County Bureau of Assessment by the Building Inspector's Office. The Bureau shall determine whether the exemption shall be granted and shall, upon completion of the improvements, comply with all applicable Building and Housing Codes. The Bureau will also assess separately the dwelling unit and the land upon which residential construction will stand and shall otherwise perform its duties as above provided for construction or improvements to residential properties. Treasurer shall keep a separate list of all such exempted properties, and upon receipt of the assessments for each property from the Bureau, the Treasurer shall see to it that each such exempted property is credited with its proper exemption as against the County Assessment figure.

(c) The cost of RIO improvements or construction, per dwelling unit of residential properties to be exempted, and the schedule of taxes exempted existing at the time of the initial request for tax exemption, shall be applicable to that exemption request, and subsequent amendment to this article, if any, shall not apply to requests initiated prior to their adoption.

(d) Appeals from the reassessment and the amount eligible for the exemption may be taken by the City or by the taxpayer as provided by law.
(Ord. 63-2002. Passed 11-13-02.)

382.05 SEVERABILITY.

The provisions of this Article are severable and if any of its sections, clauses or sentences shall be held illegal, invalid or unconstitutional, such provisions shall not affect or impair any of the remaining sections, clauses or sentences. It is hereby declared to be the intent of Council that this article would have been adopted if such illegal, invalid or unconstitutional section, clause or sentence had not been included herein.
(Ord. 63-2002. Passed 11-13-02.)

382.06 REVOCATION OF RIO PRIVILEGES.

The RIO exemption from real estate taxes provided in this Article shall be forfeited by the applicant and/or any subsequent owner of the real estate for failure to pay nonexempt real estate by December 31 of the year the taxes become due. Upon receipt of notice for nonpayment of nonexempt real estate taxes, the City Department of Finance shall direct the City Treasurer to discontinue the RIO exemption.
(Ord. 63-2002. Passed 11-13-02.)

382.07 AMENDMENT.

The City Solicitor's Office is hereby authorized to amend Official Ordinance No. 60-1978, and amendments thereto, codified under Part Three (Business Regulation and Taxation Code) of the Codified Ordinances of the City of Erie Pennsylvania, Title Seven (Tax Exemptions), by creating and inserting Article 382 (Residential Investment Opportunity (RIO) Tax Exemption Ordinance, defining certain eligible residential properties and improvements for a ten (10) year tax exemption period; while simultaneously amending Article 381, renamed the Local Economic Revitalization Tax Assistance Act (LERTA) Ordinance, removing all reference to residential tax exemption, and offering an extended exemption period, from five (5) years to ten (10) years for designated commercial and industrial zoning classifications. The City reserves the right to amend this Article, including exemption amounts, to effectuate the purpose of neighborhood revitalization and transforming deteriorated residential property within the City.
(Ord. 63-2002. Passed 11-13-02.)

ARTICLE 383
Property Tax

EDITOR'S NOTE: Under the provisions of Section 2531 of the Third Class City Code, as amended (53 P.S. §37531), a property tax is enacted annually. Consult the office of the City Clerk, for the ordinances levying and fixing the tax rate for the current year.

383.01 Prepayment discount; late payment penalty.

CROSS REFERENCES

Power of Council to levy property taxes - see 3rd Class §2531
(53 P.S. §37531)
Tax liens; liability for false return - see 3rd Class §2537
(53 P.S. §37537)

383.01 PREPAYMENT DISCOUNT; LATE PAYMENT PENALTY.

Pursuant to the authority contained in the Act of July 9, 1976, (Public Law 530) and its amendment, all taxpayers of the City subject to the payment of City taxes assessed upon their real estate located within the City shall be entitled to a discount of two percent (2%) from the amount of such tax upon making payment of the whole amount thereof on or before March 31, 1989. The face amount of the City tax shall be payable throughout the months of April and May. Furthermore, all taxpayers of the City subject to the payment of City taxes assessed upon their real estate located within the City shall be charged a penalty of three percent (3%) for payments made between June 1 and December 31 of the year in which the taxes are due and owing and for payments made on or after January 1 of the succeeding year a penalty of ten percent (10%). (Ord. 88-1989 § 1. Passed 10-18-89; Ord. 19-2003. Passed 4-16-03.)

