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Part 1

Burglar Alarm Monitoring System

§101. Purpose. The purpose of this Part is to provide regulations and standards applicable to alarm devices, alarm businesses, alarm agents and alarm users as defined in this Part. (Ord. 1518, 4/8/1985, §2)

§102. Definitions. For the purpose of this Part, the following definitions shall apply:

ALARM AGENT – any person who is employed by any business, firm, corporation or other commercial entity that is licensed hereunder to conduct the business of owning, operating, maintaining, installing, leasing or selling alarm devices whose duties include any of the following: selling, maintaining, leasing, servicing, repairing, altering, replacing, moving or installing, in or on any building, place or premises, any alarm device as defined in this Part, located within the Borough of Pottstown or connected to the central alarm monitoring facility.

ALARM BUSINESS – any business, firm, corporation or other commercial entity which is in the business of owning, operating, maintaining, installing, leasing or selling an alarm device or devices, or system of alarm devices, which business, firm, corporation or other commercial entity is, as owner, operator, provider of maintenance service, installer, lessor or seller of said device, devices or system of devices, subject to the license requirements of this Part.

ALARM DEVICE – any device which, when activated by a criminal act, or by smoke, fire or other emergency requiring Police or Fire Department response, transmits a signal to the Central Alarm Monitoring Facility at Police and/or Fire Headquarters, or to a private central alarm station, and/or produces an audible or visible signal to which the Police or Fire Departments are expected to respond. Excluded from this definition and from the coverage of this Part are alarm devices which are designed to alert or signal persons within the premises in which the alarm device is installed of an attempted unauthorized intrusion, holdup, fire or other emergency, and is not intended to alert persons outside the premises.

ALARM INSTALLATION – any police, fire or emergency alarm device or aggregation of police or fire alarm devices installed on or within a single building or on or within more than one (1) building or area adjacently located on a common site, at a specific location.

ALARM REVIEW BOARD – the term "Alarm Review Board" as referred to in this Part, shall be defined as a board consisting of the following: the Police Chief, or his designee; the Fire Chief, or his designee; and the Borough electrician, or his designee. The function of the Alarm Review Board shall be to review disputes arising out of violations of this Part, including false alarm penalties, alarm device malfunctions and license or permit suspension or revocation. It shall further be

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the function of said Alarm Review Board to recommend prosecution of any violations of this Part and to make recommendations to the Borough Manager regarding enforcement of this Part.

ALARM USER – the term "alarm user" means any person on whose premises an alarm device is owned, operated, used or maintained.

CENTRAL ALARM MONITORING FACILITY – a facility owned by the Borough of Pottstown and located at police and/or the Goodwill Fire Station which is monitored by Borough or Goodwill employees who receive, record and validate alarm signals transmitted from private alarm devices.

CENTRAL ALARM STATION – any facility operated by a private firm that owns or leases a system of alarm devices, which facility is manned by operators who receive, record or validate alarm signals and relay information about such validated signals to police and/or fire headquarters when appropriate.

DIAL ALARM – a telephone device or telephone attachment that automatically or electronically selects a telephone line connected to police and/or fire headquarters and reproduces a prerecorded message to report a criminal act or other emergency requiring police or fire department response.

DIGITAL COMMUNICATOR ALARM – a telephone device that electronically selects a predetermined telephone number and transmits a digital coded signal to the central alarm monitoring facility at the police and/or fire headquarters.

DIRECT ALARM – any alarm device which transmits a signal over a leased telephone line to the central alarm monitoring facility.

FALSE ALARM – the term "false alarm" means the activation of an alarm system through mechanical failure, malicious intent, malfunction, improper installation, or the negligence of the owner or lessee of an alarm system or of his or her employer or agents. Such terminology does not include, for example, alarms caused by hurricanes, tornadoes, earthquakes or other violate conditions which are clearly beyond the control of the alarm user.

FIRE COMMUNICATION CENTER – the radio communications room for the Borough of Pottstown Fire Department located at the Goodwill Fire Company.

LICENSING AUTHORITY – the licensing authority shall be the Borough Manager.

LOCAL ALARM DEVICE – any alarm device not connected to the central alarm monitoring facility or to a private central alarm station which, when activated, causes an audible and/or visual signaling device to be activated on the exterior of the premises within which the device is installed.

MASTER ALARM BOX – a device which can be used to connect an alarm installation to the municipal alarm system for reporting a fire.

MALFUNCTION – a mechanical deficiency or other fault or failure in an alarm device which results in a false alarm.

MANUAL ALARM DEVICE – any alarm device in which activation of the alarm signal is initiated by the direct action of the alarm user.

MUNICIPAL ALARM SYSTEM – a system of manual pull boxes which are located throughout the Borough of Pottstown for the use by the public to report a fire.

POLICE COMMUNICATIONS CENTER – the radio communications room of the Borough of Pottstown Police Department located in City Hall.

(Ordinance 1518, 4/18/1985, §2)

§103. License Required.

1. Authority to Grant Licenses, Permits and Identification Cards.

A. The Borough Manager is hereby authorized to grant a revocable license to any business, firm, corporation or other commercial entity to perform any or all of the following functions in respect to an alarm device or devices or system of alarm devices:

- (1) Own.
- (2) Operate.
- (3) Maintain.
- (4) Install.
- (5) Lease; sell.

B. The Borough Manager is hereby authorized to grant a revocable permit to any owner of property or the lessee thereof to operate, maintain, install and modify an alarm device.

2. Application for License; Permits. Applications for licenses and permits shall be made as follows:

A. All businesses, firms, corporations or other commercial entities which are in the business of owning, operating, maintaining, installing, leasing or selling an alarm device or system of alarm devices, who desire to conduct business

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which utilizes the Borough alarm system or Borough Public Safety Departments shall apply to the Borough Manager for a business license on a form to be supplied by the Borough. The application shall contain specific information relating to the quality, efficiency and effectiveness of the device or system of devices owned or to be operated, maintained, installed, leased or sold by the business licensee, testing procedures involved, and other information the Borough Manager shall determine to be reasonably necessary to effectuate the purpose of this Part. Such application for license shall also include a description of the alarm device or devices offered for sale or lease to the public, a description of any services related to alarm devices offered to the public, and in the case of alarm companies with prior business in the Borough, a complete list of the names and addresses of all persons in the Borough to whom or for whom alarm devices have been sold and/or who are currently under contract to the alarm business for services. Such business license shall be issued for a one (1) year period, on a calendar year basis or part thereof, and no license shall extend beyond December 31st of each year. Notwithstanding this provision, a licensed alarm business may conduct such business through January 31st of the year following the expiration of the alarm business license.

- B. Any property owner or lessee of property having on such premises an alarm device or system of alarm devices connected to the Borough alarm system or relying upon Borough Public Safety Departments for response, shall apply to the Borough Manager on a form to be supplied by the Borough, for a permit to own or otherwise have such a device. No such device may be installed on the premises of the owner or lessee prior to the issuance of a permit to such owner or lessee, and no presently existing alarm device shall be modified prior to the issuance of a permit to such owner or lessee. Such permit need not be obtained on an annual basis, but shall be obtained each time a device or system is to be installed or modified.
3. License Fees. License fees shall be as follows:
 - A. The license to conduct an alarm business shall be in an amount as established from time to time per calendar year, or part thereof, by resolution of Borough Council. [Ord. 1735]
 - B. The alarm user permit shall be issued without charge.
4. Unlawful to Operate, Maintain, Install, Lease or Sell an Alarm Device Without a License.
 - A. It shall be unlawful for any person, business, firm or corporation to operate, maintain, modify, install, lease or sell an alarm device or devices or system of alarm devices as defined by the terms of this Part without first obtaining a license as hereinabove provided.

- B. Any person engaged in the business of maintaining, repairing, servicing, altering, replacing, removing or installing an alarm device or system of devices shall carry on his person at all times while so engaged, a copy of his company's license.
5. Denial, Suspension or Revocation of License or Permit and Disconnection of Alarm System.
- A. The Borough Manager may require the denial, suspension or revocation of any license or permit, or the disconnection of any alarm system connected to a central alarm monitoring facility at any time the Borough Manager deems necessary or because of more than four (4) false alarms in one (1) calendar year, or the violation of any of the provisions of this Part, or the violation of any standards or regulations promulgated by the Borough Manager pursuant to this Part. Any license or permit issued hereunder shall be surrendered to the Borough Manager following final adverse determination as provided herein.
 - B. No part of a license fee shall be refunded when a license is suspended or revoked, or upon termination of a business.
 - C. Any applicant whose application for a license or permit has been denied, or any business licensee, owner or lessee whose license has been suspended or revoked by the Borough Manager or any owner or lessee whose alarm system has been disconnected for more than four (4) false alarms in one (1) fiscal year may contest such denial, suspension, revocation or disconnection in writing to the Alarm Review Board within ten (10) days after the date of the notice of denial, suspension, revocation or disconnection. The Alarm Review Board will make recommendations to the Borough Manager following its consideration of any contested ruling.

(Ord. 1518, 4/8/1985, §2; as amended by Ord. 1735, 4/12/1993)

§104. General Provisions.

- 1. Borough Assumes No Responsibility for Such System.
 - A. Notwithstanding the payment of any fee and/or the issuance of any permit as herein required, the Police Department, Fire Department and the Borough of Pottstown shall be under no obligation whatsoever concerning the adequacy, the operation or maintenance of the alarm device so installed or of the operation of the central alarm monitoring facility and the Borough of Pottstown and its authorized agents hereby assume no liability whatsoever for any failure of any such alarm device or the central alarm monitoring facility, or for failure to respond to any such alarm, device or system.

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- B. The alarm user or permittee, upon acceptance of such permit, hereby agrees to hold and save harmless the Borough of Pottstown, its agents or employees, from any liability whatsoever in connection with any such alarm device or the operation of the same.
2. Dial Alarm Devices; Using Telephone Switchboard for Prerecorded Voice Messages Prohibited. No person shall use, or cause or permit to be used, any dial alarm device that automatically selects a telephone trunk line of the Police or Fire Department of the Borough of Pottstown and then reproduces any prerecorded voice messages to report any robbery, burglary, fire or other emergency. The use of any dial alarm device which relays a digital coded signal to the central alarm monitoring facility is permitted under this Part.
3. Intentional False Alarm. It shall be a violation of this Part to intentionally cause a false alarm, and any person who does intentionally cause a false alarm shall be subject to the penalty provision of §106 of this Part.
4. False Alarm Charges.
- A. Alarms Connected to Central Alarm Monitoring Facility. Any owner or lessee of property having an alarm device or system of devices on such premises, and any user of services or equipment furnished by a licensee under this Part, and connected to the central alarm monitoring facility, shall pay to the Borough a charge for each and every false alarm to which the Police or Fire Department responds in each calendar year, as follows: Beginning the 91st day next following the date of completion of the initial installation of a system and continuing thereafter, a service fee, in an amount as established from time to time by resolution of Borough Council, shall be charged for each false alarm to which police response was made and another fee, in an amount as established from time to time by resolution of Borough Council, shall be charged for each false alarm to which fire response was made at installations within the limits of the Borough of Pottstown, and a service fee, in an amount as established from time to time by resolution of Borough Council, shall be charged for each false alarm at installations without the limits of the Borough of Pottstown. [Ord. 1735]
- B. Privately Monitored and Local Alarm Devices.
- (1) Any owner or lessee of property having a privately monitored or local alarm device on such premises, and any user of services or equipment furnished by a licensee under this Part shall pay to the Borough a charge for each and every false alarm to which the Pottstown Police or Fire Department responds in each calendar year.
- (2) Beginning the 91st day next following the date of completion of the initial installation of a system and continuing thereafter, a service fee,

in an amount as established from time to time by resolution of Borough Council, shall be charged for each false alarm to which police response is made, and another fee in an amount as established from time to time by resolution of Borough Council shall be charged for each false alarm to which fire response was made at installations within the limits of the Borough of Pottstown, and a service fee in an amount as established from time to time by resolution of Borough Council shall be charged for each false alarm at installations without the limits of the Borough of Pottstown. [Ord. 1735]

- (3) The above charges will be collected by the Borough. Failure to pay a false alarm charge shall subject such alarm owner, lessee or user to removal of his alarm device from the central alarm monitoring facility and/or the penalty provisions of this Part. Any alarm owner, lessee or user charged with a false alarm may, within ten (10) days of receipt of the notice of the charge, contest such in the manner provided in §102 of this Part.

5. Installation and Maintenance Charges.

- A. Direct Alarm. The installation charge for any direct alarm system inside the Borough of Pottstown shall be in an amount as established from time to time by resolution of Borough Council for each monitor station. There shall be an annual maintenance charge in an amount as established from time to time by resolution of Borough Council every such residential property that is a part of the system, and an annual maintenance charge in an amount as established from time to time by resolution of Borough Council for every such commercial or industrial location that is a part of the system. [Ord. 1735]
- B. Digital Communicator. The installation charge for any digital communicator alarm system inside the Borough of Pottstown shall be in an amount as established from time to time by resolution of Borough Council for each monitor station. There shall be an annual maintenance charge in an amount as established from time to time by resolution of Borough Council for every such residential property that is a part of the system, and an annual maintenance charge in an amount as established from time to time by resolution of Borough Council for every such commercial or industrial location that is a part of the system. [Ord. 1735]
- C. The installation charge for any digital communicator system outside the Borough of Pottstown shall be in an amount as established from time to time by resolution of Borough Council for each monitor station. There shall be an annual maintenance charge in an amount as established from time to time by resolution of Borough Council for every such residential property that is a part of the system, and an annual maintenance charge in an amount as established from time to time by resolution of Borough Council

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for every such commercial or industrial location that is a part of the system.
[Ord. 1735]

- D. Goodwill Terminal. Alarms which terminate at the Goodwill Fire Station shall pay charges to the Goodwill Company as determined by the Goodwill Company.
6. Removal of Unlawful Equipment. In addition to any other remedy provided by law, the Borough Manager, whenever he shall have knowledge of the use of any alarm device, cabinet or attachment which is not operated or maintained in accordance with the provisions of this Part, or which is contrary to regulations promulgated pursuant to this Part, may order the disconnection of such device from police and fire headquarters, and it shall be unlawful to disobey such order.
7. Rules, Regulations, Standards and Enforcement. The Borough Manager shall promulgate rules, regulations and standards applicable to alarm devices, alarm businesses, alarm agents and alarm users which are necessary for the purpose of assuring the quality, efficiency and effectiveness of alarm devices and alarm installations owned, operated, maintained, installed, leased or sold by a licensee under this Part. The Borough Manager shall administer and enforce the provisions of this Part. The aforesaid rules, regulations and standards shall be set forth in writing and copies shall be available for applicants.

(Ord. 1518, 4/8/1985, §2; as amended by Ord. 1707, 10/12/1992, and by Ord. 1735, 4/12/1993)

§105. Special Provisions.

1. Central Alarm Station Systems. The Borough Manager is hereby authorized to prescribe the location and the manner of installation of private and regular business telephone lines into police headquarters from a central alarm station for the express purpose of providing direct telephone communication between a central alarm station and police headquarters for use in reporting alarms.
2. Direct Alarm Systems. The Borough Manager is hereby authorized to prescribe the location and manner of installation of all cabinets, accessories, connections and equipment of an approved direct alarm system within police and fire headquarters for the purpose of providing a direct alarm system where the visible and audible signals therefrom may be readily seen and heard by police and fire personnel.
3. Local Alarm Devices. All alarm devices, including local alarm devices, will be equipped with an automatic shut off device which will shut off the alarm after fifteen (15) minutes of activation.

4. Exceptions. None of the provisions of this Part shall apply to an alarm device or devices installed in a motor vehicle or trailer, nor to employees of a public utility company engaged in the business of providing communication, services or facilities.
5. Automatic Protection Devices Repair Service.
 - A. Each alarm equipment supplier who sells or leases an automatic protection device in the Borough which is keyed to a designated trunk line shall make service available directly or through an agent on a twenty-four (24) hour per day basis, seven (7) days a week to repair such device or to correct any malfunction that may occur. Such service shall be made available for any person using an automatic protection device supplied.
 - B. At the time of installation, an alarm equipment supplier shall furnish to any buyer or lessee using a repair service written information as to how service may be obtained at any time, including the telephone number of the alarm equipment supplier or agent responsible for service. The buyer or lessee and the alarm equipment supplier or agent supplying a service shall be responsible for having the device disconnected or repaired as quickly as possible after notice that the automatic protection device is not functioning properly.
6. Automatic Protection Devices: Authority to Inspect. For the purpose of enforcing this Part and as a condition of installing and maintaining an automatic protection device, the owner or lessee thereof shall execute a consent in such form as may be prescribed by the Manager, which will authorize the Building Official, the Chief of Police and the Fire Marshall to enter upon a lessee's or owner's premises within the Borough of Pottstown, at such reasonable times and upon reasonable notice, to inspect the installation and operation of an automatic protection device.
7. Continuance of Service. The Borough shall not be obligated to continue alarm monitoring service to any resident who has, at the effective date of this Part, any outstanding penalty for violations of any Sections of this Part.

(Ord. 1518, 4/8/1985, §2)

§106. Penalties for Violation of This Chapter. The failure of any person, natural or corporate, to:

- A. Obtain any license or permit as required by §103;
- B. Perform or obey any provision of this Part;
- C. Obey any order pursuant to this Part; constitutes a violation punishable by a fine of up to six hundred (\$600.00) dollars for each such violation and in default of payment of said fine and costs, to a term of imprisonment not to exceed thirty (30) days. Each day that such violation continues after the ex-

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piration of the period allowed for compliance under the provisions of this Part shall constitute a separate offense.

(Ord. 1518, 4/8/1985, §2; as amended by Ord. 1735, 4/12/1993)

Part 2

Cable Television Franchise

A. General Regulations.

§201. Short Title. This Part 2 shall be known and be cited herein as the "Pottstown Cable Television Ordinance." (Ord. 1375, 2/14/1977, §1)

§202. Franchise Required; Duration; Exclusivity.

1. The Borough shall grant a franchise for the use of the public streets within the Borough for the construction, operation and maintenance of a CATV system. No system shall be allowed to occupy or use the streets of the Borough nor shall any system be allowed to operate without a CATV franchise.
2. This franchise shall be granted for a term of fifteen (15) years; thereafter, after full public hearings, and according to the franchise renewal procedure that follows, a franchise may be renewed for terms of five (5) years as in the opinion of Borough Council will serve the public interest.

A. Procedure to Consider Franchise Renewal.

- (1) The franchisee shall indicate its desire for a renewal of the franchise upon written request of the franchisee received by the Borough twelve (12) months before the termination of the original lease. Nine (9) months before the expiration of the franchise, the Borough Council shall review the performance of the franchisee and the content of this Part. The Borough Council may reserve to itself the right to appoint an evaluation committee to aid and assist the Borough in its performance of evaluation and review of the franchisee and the content of this Part.
- (2) After giving public notice, the Borough Council shall proceed to determine whether the operator has satisfactorily performed its obligations under the franchise. To determine satisfactory performance, the Borough Council shall look at the technical developments and performance of the system, programming, other services offered, cost of service and any other particular requirement set in this Part, such as the availability of programming equipment and personnel to aid access channel users; also among other measurements, the Borough Council shall consider the franchisee's reports made to the Borough or the FCC and the PUC, should it be applicable; provisions shall be made for community comment, and industry performance on a national basis shall be considered.

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- (3) A three (3)-month period shall be provided to determine the franchisee's eligibility for renewal.
- (4) The Borough Council shall then prepare, if required, any amendment to this Part that it believes necessary.
- (5) If the Borough Council finds the franchisee's performance satisfactory, a new franchise may be granted pursuant to this Part, as amended.
- (6) In the event the current franchisee is determined by Borough Council to have performed unsatisfactorily, new applicants shall be sought and evaluated by the Borough Council and a franchise award made by Borough Council according to CATV franchising procedures adopted by the Borough Council.

(Ord. 1375, 2/14/1977, §2)

§203. Renegotiation Provision. The field of cable communication is a relatively new and rapidly changing field which shall, no doubt, see many regulatory, technical, financial, marketing and legal changes during the term of the franchise. Therefore, in order to provide for a maximum degree of flexibility in a franchise and to help achieve a continued, advanced and modern system for the Borough, the franchise shall provide for the following renegotiation provisions:

- A. The Borough and the franchisee shall hold scheduled renegotiation sessions within thirty (30) days of the fifth (5th) and tenth (10th) anniversary dates of the franchisee's obtaining certification for the system from the Federal Communications Commission and/or the Pennsylvania Public Utility Commission, should it be applicable. All such renegotiation sessions shall be open to the public and announced in a newspaper of general circulation at least five (5) days before each session.
- B. Special Renegotiation Sessions. Special renegotiation may be held at any time during the term of the franchise, provided that both the Borough and the franchisee shall mutually agree on the time, place and the topics to be negotiated.
- C. Topics to be Negotiated. The following topics shall be discussed at every scheduled renegotiation session: service rate structure; free or discounted services; application of new technologies; system performances; services provided; programming offered; customer complaints; privacy and human rights; amendments to this Part; undergrounding progress; judicial and FCC and PUC rulings. Topics in addition to those listed may be added if agreed upon by both parties. Members of the general public may add topics

either by working through the negotiating parties; or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more qualified electors of the Borough, the proposed topic or topics shall be added to the list of topics to be discussed at the renegotiation session.

(Ord. 1375, 2/14/1977, §3)

B. Term and Termination of Franchise.

§211. Term. No franchise granted in this Part, nor any renewal thereof, shall be for a term of more than fifteen (15) years. The franchise, or any renewals thereof, shall be revocable at any time, as hereinafter provided, at the will of the Borough, expressed through resolution of the Borough Council. A renewal may be granted for a period not to exceed five (5) years upon written request of the franchisee received by the Borough twelve (12) months before the termination of the original lease. The renewal shall be automatic but shall be at the sole option of the Borough after the Borough has reviewed the franchisee's service over the past fifteen (15) years. The Borough shall, prior to granting any renewal thereof, first hold a public hearing on the said request. (Ord. 1375, 2/14/1977, §4)

§212. Forfeiture of Franchise. In addition to all other rights and powers pertaining to the Borough by virtue of the franchise or this Part, the Borough may terminate and cancel the franchise and all rights and privileges of a franchisee thereunder in the event that the franchisee:

- A. Substantially violates any provision of the franchise or this Part, or any rules, order or determination of the Borough of Pottstown Cable Communications Commission made pursuant thereto, where such violation shall remain uncured for a period of thirty (30) days subsequent to receipt by the franchisee of written notice of said violation, except where such violation is not the fault of the franchisee or is due to excusable neglect.
- B. Attempts to dispose of any of the facilities or property of its CATV business to prevent the Borough from purchasing same, as provided for herein.
- C. Attempts to dispose of any of the facilities or property of its CATV business to prevent the Borough from purchasing same, as provided for in this Part. Any termination and cancellation shall be made by resolution of the Borough Council duly adopted after sixty (60) days notice to the franchisee and shall, in no way, affect any of the Borough's rights under this franchise or any provision of law; provided, however, that before the franchise may be terminated and cancelled under this §212, the franchisee shall be provided with an opportunity to be heard before the Borough Council, upon thirty (30) days written notice to the franchisee of the time and place of the hearing; and provided further that the said notice shall affirmatively recite whether the revocation is at will, or for cause, and if for cause, the reasons alleged to constitute such cause shall be recited in the notice; and provided

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still further, however, that affording the franchisee the opportunity to be heard shall not be interpreted as an implication that cause need be shown by the Borough to support a revocation at its will, pursuant to the expressed requirements as to revocability of franchises contained in the Constitution of the Commonwealth of Pennsylvania.

- D. The termination and forfeiture of any franchise issued under this Part shall, in no way, affect the rights of the Borough under the franchise or any provision of the law.
- E. In the event of any holding over after expiration or termination of any franchise granted hereunder, without the prior consent of the Borough, expressed by resolution, the franchisee shall pay to the Borough reasonable compensation and damages, of not more than one hundred (100%) percent of its net operating revenue during the said period. Further, the franchisee is encouraged to negotiate with any successor for any possible recovery he may obtain.
- F. The franchisee shall be required to provide continuous service to all subscribers in return for payment of the established fee. If the franchisee overbills, rebills, modifies or sells the system, or the Borough revokes or fails to renew this franchise, or the Borough elects to purchase the system, the franchisee will be required, as part of the franchise, to continue to operate the system until an orderly change of operation is effectuated. In the event the franchisee fails to operate the system for five (5) consecutive days without prior approval of the Borough Council, the Borough or its agent shall operate the system until such time that a new operator is selected. If the Borough is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the Borough for any costs or damages that are the result of the franchisee's failure to perform.
- G. In the event the Borough revokes the permit issued pursuant to the appropriate provisions of this Part, the Borough shall have the right to purchase the cable communications system at a price not to exceed its then book value (that is, original cost of property less accumulated depreciation). The book value shall be determined by the Borough in accordance with generally accepted appraisals and accounting principles. Under no circumstances shall any valuation be made for "goodwill" or any right or privilege granted by the permit issued pursuant to this Part. Should a dispute arise over the determination of the fair value of the system, the dispute shall be resolved by arbitration as provided in the franchise agreement.

(Ord. 1375, 2/14/1977, §5)

C. Definitions.

§221. Definitions.

BOROUGH – the Borough of Pottstown, Montgomery County, Pennsylvania, and all the territory within its territorial corporate limits.

CABLE COMMUNICATIONS SYSTEMS, CABLE SYSTEM, CATV or SYSTEM – a system of coaxial cables or other electronical conductors and equipment used or to be used to originate or receive television or radio signals directly or indirectly off the air and to transmit them via cable to subscribers for a fixed or variable fee, including the origination, receipt, transmission and distribution of voices, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed-circuit transmission by means of electrical impulses, whether or not directed to originating signals or receiving signals off the air.

COMMISSION or CABLE COMMISSION – the Borough of Pottstown Cable Commission provided for in this Part.

CONVERTER – an electronic device which converts signals to a frequency free from interference and distortion within the television receiver of a subscriber and by an appropriate channel selector permits a subscriber to view all delivered signals at designated dial locations.

FRANCHISE or FRANCHISE AGREEMENT – the separate agreement by which the franchise is granted to a franchisee, as required by this Part.

LOCAL GROSS SUBSCRIBER REVENUES – revenues derived from the supplying of regular subscriber services, that is, the installation fees, disconnect and reconnect fees and fees for regular cable benefits including the transmission of broadcast signals and access and origination channels, if any. It does not include revenues derived from per-program or per-channel charges, leased channel revenues, advertising revenues, or any other income derived from the system. The franchisee shall, at all times, maintain books of account reflecting the source of all gross subscriber revenue.

PAY T.V. – an arrangement under which a charge is made to a television receiver for receiving a particular television program, or groups of programs which are furnished for an additional fee above that for basic subscriber service.

PRODUCER – a user providing input services to the cable system for the receipt by subscribers.

PUBLIC CHANNELS – channels which are dedicated to the public interest, according to the following categories:

- (1) Public access.

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- (2) Education use.
- (3) Local governmental access.

SUBSCRIBER – a person or organization whose premises are physically wired to receive any transmission from the system.

SUBSCRIBER SERVICE DROP – each extension wiring from the franchisee's distribution line to a subscriber's building.

USER – a person or organization utilizing a system channel as a producer, for purposes of production and/or transmission of material, or as a subscriber, for purposes of receipt or material.

(Ord. 1375, 2/14/1977, §6)

D. Applicant Selection Process.

§231. Proposal of Franchisee. In selecting a franchisee pursuant to this Part, the Borough shall require the following information, which shall all be submitted to the Commission by the perspective franchisee in a document entitled "Borough Cable System Proposal." Application for franchise shall be in writing and shall contain the following information:

- A. The name and address of the applicant. If the applicant is a partnership, the name and address of each partner shall also be set forth. If the applicant is a corporation, the applicant shall also state the names and addresses of its officers, directors, main offices, major stockholders and the name and address of parent, affiliated and subsidiary companies. For the purpose of this Part and of any franchise granted hereunder, a "major stockholder" shall be defined as the owner of five (5%) percent or more of the stock of any corporation. The Borough shall be entitled, by requiring reports or by its own investigation, to determine the true ownership or control, indirect or direct of any CATV system applying for franchise. The knowledge by the Borough of the true ownership or control of any CATV system regulated by this Part, or any Part hereafter enacted granting a franchise, is hereby declared to be in the public interest and continuing knowledge of the ownership and control of any franchisee shall, throughout the life of the franchise, continue to be of public interest and of substantial import to the Borough of Pottstown.
- B. A statement and general description of the CATV system proposed to be constructed, installed, maintained or operated by the applicant; the proposed location of such system and its various components; the manner in which the applicant proposes to construct, install, maintain and operate the same; and, particularly, the extent and manner in which existing or future poles or other facilities of other public utilities will be used for such system.

The application shall also specify the type and capacity of equipment to be installed and a grantee shall be required by the Borough Cable Commission to update this section of its proposal in keeping with the advances in the state of the art of CATV system design.

- C. A schematic drawing of the Borough of Pottstown showing an overview of the proposed use of public streets on which applicant proposes to construct, install or maintain CATV equipment or facilities, including a detailed description of the equipment or facilities proposed to be utilized.
- D. A map showing and delineating the proposed service area or areas within which applicant proposes to provide CATV services and for which a franchise will be applied for.
- E. A copy of any contract, if existing, between the applicant and any public utility providing for the use of facilities of such public utility, such as poles, lines or conduits. A copy of any contract, if existing, between the applicant and any private party for the use of facilities of such poles, lines or conduits.
- F. A statement setting forth all agreements and understandings, whether written, oral or implied, existing between the applicant and any person, firm or corporation with respect to the proposed franchise or the proposed CATV operation. If a franchise is granted hereafter to a person, firm or corporation posing as a front or as the representative of another person, firm or corporation, and such information is not disclosed in the original application, such franchise shall be void and of no force and effect whatsoever. Upon the granting of any franchises herein contemplated, the franchisee shall, throughout the life of such franchise, keep the Borough fully informed with respect to the manners outlined in this Part and the failure to disclose such information during the life of such franchise shall be considered a violation of the franchise, and subject such franchise, at the discretion of the Borough Council, to suspension or termination.
- G. A financial statement prepared by a certified public accountant, or person otherwise satisfactory to the Borough Council, showing applicant's financial status and its financial ability to complete the construction and installation of the approved CATV system. Such statement shall include in addition to the foregoing a responsible estimate of the cost of construction and installation of such CATV system and a detailed statement of the financing of such costs, including the amount of borrowed funds, if any, which may be required.
- H. A statement setting forth all experience in cable television or communication business, noting all past and present franchise agreements between applicant and any other person, firm or corporation or municipality. Additionally, names of any unbuilt franchise and the reasons why they remain unbuilt, and all financing commitments to other systems under construction.

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- I. Information as to the programming services and public services which it shall propose to provide:
 - (1) The off-air signals to be carried initially.
 - (2) The number of channels offered and the potential for diversified services to local government, educational institutions, community groups, householders and local commercial interest.
 - (3) Projected development of customer and community services, indicating priorities in development, and estimating time schedules therefor.
 - (4) Designate which services will be provided from day one of operation as well as potential future services.

- J. A statement furnishing information as to the following:
 - (1) A brief description of the employment practices related to the hiring and training of minority people.
 - (2) Cost estimates of development, installation and maintenance of systems, which items shall be deemed to include, but not be limited to, the proposed cost of acquisition of the system where approval of a transfer of the franchise has been requested.
 - (3) Revenue forecasts for the next ten (10) years of service.
 - (4) A schedule of rates for installation charges, monthly service fees and relocation charges, according to the schedules in Subpart (G) of this Part.
 - (5) Such other information as the Borough may request.

- K. Provide bond evidence of its ability to maintain to the term of the franchise or any renewal or extension thereof and during construction of the system a faithful performance bond running to the Borough with sufficient surety approved by the Borough in the penal sum of one hundred thousand (\$100,000.00) dollars, pursuant to the terms and conditions contained in subpart (H) of this Part.

(Ord. 1375, 2/14/1977, §7)

E. Award of Franchise.

§241. Criteria for Selection of Franchisee. Based upon the information contained in a prospective franchisee's proposal, submitted pursuant to the previous provisions of this Part, and such other pertinent information or knowledge as may be attained by the Borough, the following items shall comprise the criteria for award of any franchise, or the transfer thereof:

- A. Rate Schedule. Preference may be given to applicant with the most reasonable installation and rate schedule.
- B. Nonprofit Ownership. Preference may be given to applicants representing nonprofit organizations.
- C. Preference shall be given to those franchisees who have experience in cable television or communication business.
- D. Financial Capacity. The evidence of financial ability required in the applicant's proposal shall be such as to assure ability to complete the system within three (3) years of the date of franchise.
- E. Licensee. No preference may be given to a past or present cable television licensee of the Borough for that reason alone.
- F. The price for purchase by the Borough of the system pursuant to subsection (G) of this Part.

(Ord. 1375, 2/14/1977, §8)

§242. Award of Franchise; Hearings; Notices and Publication.

1. The Borough shall, prior to awarding any franchise, advertise for all applications in recognized trade magazines for the CATV industry, some of which are:
 - A. Broadcasting Magazine 1735 Desales Street N.W. Washington, D.C.
 - B. CATV Weekly 1900 West Yale Street Englewood, Colorado
 - C. Cable News Phoenix, Arizona
2. The Borough shall also only award a franchise to an applicant after a public hearing on the application and proposal, notice of which hearing shall be published as hereinbefore set forth. Any franchise that is granted shall be published in the manner as are notices of passage of Borough ordinances. The Borough of Pottstown shall actively seek applicants for initial franchise to meet the highest standards of service and character.

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(Ord. 1375, 2/14/1977, §9)

F. Franchise Provisions and Restrictions.

§251. Franchise Agreement; Rights Reserved by the Borough. Every franchise granted pursuant to this Part shall be subject to, and shall expressly indicate that it is subject to, the following provisions:

- A. Any franchise granted hereunder shall be subject to the right of the Borough by resolution of Council to revoke the franchise as set forth in subpart (B) of this Part.
- B. Any franchise granted hereunder shall be subject to all applicable provisions of Borough ordinances, any and all amendments thereto, whether made prior to or after the inception of the franchise.
- C. Any franchise granted hereunder shall be subject to the right of the Borough:
 - (1) To repeal the same for misuse, nonuse or the failure to comply with the provisions of this Part, or any other local, State or Federal laws, or FCC rules or regulations, or failure to construct and install their facilities in accordance with the National Electric Safety Code and National Electric Code.
 - (2) To require proper and adequate extension of plant and service maintenance thereof at the highest practical standard of efficiency and specifically to require extension of subscriber service to all residents of the Borough within two (2) years of the inception of the franchise. Fifty (50%) percent of the system shall be operating within twelve (12) months of the receipt of the Certificate of Compliance from FCC, and the remaining fifty (50%) percent of the system within twenty-four (24) months of the receipt of the Certificate of Compliance.
 - (3) To establish reasonable standards of service and quality of products and to prevent unjust discrimination in service or rates.
 - (4) To require continuous and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof.
 - (5) To impose such other regulations as may be determined by the Council to be conducive to the safety, welfare and accommodation of the public.
 - (6) To use, control and regulate the use of its streets, alleys, bridges and public places and spaces above and beneath them. Every franchisee

shall pay such part of the cost of improvement or maintenance of streets, alleys, bridges and public places, as shall arise from its use thereon and shall protect and save the Borough harmless from all damages arising from the said use; and may be required by the Borough to permit joint use of its property and appurtenances located in the streets, alleys and public places of this Borough, by the Borough and other utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefor; provided, that in the absence of agreement, upon application by any franchisee, the Council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefor, which award shall be final.

- (7) To install and maintain, without charges, its own equipment upon the franchisee's poles upon the condition that the said equipment shall not interfere with the operations of the franchisee.
- (8) Through its appropriately designated representatives, to inspect all construction and installation work performed subject to the provisions of the franchise and this Part, and make such inspections as it shall find necessary to insure compliance with the terms of the franchise, this Part and of other pertinent provisions of law.
- (9) At the expiration of the term for which this franchise is granted or upon the termination and cancellation as provided in subpart (B) of this Part, to require the franchisee to remove at its own expense any and all portions of the CATV system from the public ways within the Borough. The removal of the system shall be completed within two (2) months of termination and/or cancellation.

D. No franchise shall be exclusive.

(Ord. 1375, 2/14/1977, §6)

§252. Franchise Agreement: Specific Provisions Required.

1. In addition to those matters required elsewhere in this Part to be included in the franchise agreement, it must contain the following expressed representations by the franchisee that:
 - A. It accepts and agrees to all of the provisions of this Part, and any supplementary specifications, as to the construction or operation of the system, which the Borough may include in the Franchise Agreement.
 - B. It has examined all of the provisions of this Part and waives any claims that any provisions hereof are unreasonable, arbitrary, invalid or void.

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- C. It recognizes the right of the Borough to make reasonable amendments to this Part during the term of the franchise as set forth under the provisions of §203, "Renegotiation," of this Part. It further recognizes and agrees that the Borough shall, in no way, be bound to renew the franchise at the end of any franchise term.
2. Every franchise shall specifically delineate the territorial extent of the Borough in which the franchisee is authorized to operate.
3. Every franchise shall specifically set forth specific standards which the franchisee must maintain in respect of the following:
 - A. Technical standards of operation and maintenance of the system. Such standards of operation and maintenance of the system shall be in such terms of those set forth by the Federal Communications Commission in §76.601-617 of its regulations.
 - B. The extent, if any, to which all the air programs may be altered by the franchisee.
4. The franchise agreement shall contain such further conditions or provisions as may be negotiated between the Borough and the franchisee, except that no such condition or provision shall be such as to conflict with any provision of this Part or other law. In case of such conflict, or ambiguity between any terms or provisions of the franchise agreement and this Part, the words of this Part shall control.

(Ord. 1375, 2/14/1977, §11)

§253. Number of Channels. The franchisee's distribution system shall initially be capable of carrying at least twenty (20) channels of television, breadth, or dual cable construction. The system shall also provide simultaneous reverse direction signal capability for digital, audio and video signal transmission on all elements of the system. The extent to which the reverse capability is available to subscriber use shall be specified in the franchise agreement. The system shall also have the technical capacity for non-voice return communication pursuant to §76.251(a)(3) of the Federal Communication's Commission regulations. (Ord. 1375, 2/14/1977, §12)

§254. State of the Art. Each franchisee shall constantly upgrade its facilities, equipment and service so that its system is as advanced as the current state of technology will allow. Each franchisee shall install additional channel capacity as required to keep channel capacity in excess of the demand therefor by producers. Within a reasonable time, to be determined by the franchisee and the Cable Commission, each cable system shall be upgraded so that it is not less advanced than any other system of comparable size, excepting only systems which are experimental, pilot or demonstration. (Ord. 1375, 2/14/1977, §13)

§255. Use of Channels.

1. Advertising or pay T.V. shall be allowed on non-public channels only.
2. Channels shall be as designated in the Federal Communication Rules, §76.351, which are incorporated herein by reference.
3. Franchisee, having taken all appropriate circumstances into consideration, is ultimately responsible to the Federal Communication Commission's regulations against obscenity on the public access channels, as well as all other Commission regulations; consequently, the franchisee shall have final authority in the area of censorship at least on the public access channels.
4. Charges made by the franchisee to a user, except for public channels, shall be based upon the fair value of the service to the user and no other criteria. A franchisee is prohibited from discriminating on any other grounds among users or in favor of itself, excepting all residential subscribers who have attained the age of sixty-five (65) years and are receiving Social Security benefits shall be entitled to a discount from the standard rates for regular cable television service.
5. The Commission shall designate for use without charge at least one (1) channel in each of the use categories defined in §206 of this Part. Where substantial studio production time or engineering services are required of the franchisee, it may ask the Commission to assess a charge to the user of a public access channel, which charge, if assessed, shall be consistent with the goal of affording the public the lowest cost means of television access.
6. If, twelve (12) months after the first availability of any public channels, the Commission determines that there is no immediate public need therefor, such channels may be leased or sold by the franchisee until such time as the Commission determines that such need does exist; whereupon the Commission shall, upon sixty (60) days written notice to the franchisee, have the power to require rededication of the channels.
7. The franchise may provide a broadcast-quality studio, which contents of the said studio shall be criteria to be considered in selecting a franchisee. In all other respects the franchisee shall have the equipment available as required by the Federal Communications Commission regulations for local origination. The broadcast-quality studio shall be for local origination only. The said studio shall be located in the territorial limits of the Borough, unless a different location is approved by the Borough Council.
8. A program and production consultant employed by the franchisee to promote public use of the public channels and to advise such users is desirable. The consultant's qualifications, and the employment by the franchisee of such other technical personnel as may be necessary to meet standards of utilization of public channels, as established by this Part, the franchise agreement shall be additional criteria to be considered by the Borough in selecting a franchisee.

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9. Advertising for any candidate for political office or for parties sponsoring such candidates, shall be granted only upon the basis that all such other candidates for the same office, or other party sponsoring such candidates (or a party itself so advertises in the first instance) shall be provided with comparable advertising time at a comparable rate. Specific disputes as to what constitutes comparable time or rates may be submitted by the franchisee or any interested party, for resolution by the Commission.

(Ord. 1375, 2/14/1977, §14)

§256. Subscriber Equipment; Switch. The franchisee shall provide every subscriber with all equipment necessary for reception on the subscriber's set of all channels to which he has subscribed. At the request of the subscriber and at the subscriber's expense the franchisee shall install an adequate switching device to allow the subscriber to choose between cable and non-cable reception. (Ord. 1375, 2/14/1977, §15)

§257. Public Service Installations. The franchisee shall, without charge for installation, maintenance, or service, make single installations of its standard community antenna service facilities at each fire and police station, public and private school (K-12) within the Borough. The franchisee shall without charge for installation, maintenance, or service, make a single installation of its standard community antenna services to the Borough Hall and the public library. Such installations shall be made at such reasonable locations as shall be requested by the respective units of government or educational institutions. Any charge for relocation of such installations shall, however, be charged at actual costs. Additional installations at the same location may be made at cost plus ten (10%) percent. No monthly service charges shall be made for distribution of the franchisee signals within such publicly presently owned buildings. (Ord. 1375, 2/14/1977, §16)

§258. Other Business Activities. In the conduct of the business franchised in this Part, neither the franchisee, nor its officers, employees, or agents shall sell, repair or install, or recommend the sale, repair or installation of radio or of television receivers; provided, however, that nothing herein shall be deemed to prohibit the franchisee, at the customer's request and without payment, from examining and adjusting a customer's receiver set to determine whether reception difficulties originate in said set or in franchisee's system. The franchise granted pursuant hereto authorizes only the operation of a system as provided for herein, and does not take the place of any other franchise, license or permit which might be required by law of the franchisee. (Ord. 1375, 2/14/1977, §17)

§259. Interconnections. The franchisee may interconnect its cable system with any other contiguous Borough of Pottstown cable systems, and may interconnect with any other system or service. However, prior to the franchisee making any interconnection, it shall present to the Borough the design and construction standards and specifications which

would establish how the interconnection would be accomplished. The interconnection shall not be made without the Borough's consent; however, such consent shall not be unreasonably withheld. (Ord. 1375, 2/14/1977, §18)

§260. Construction Standards and Requirements.

1. All of the franchisee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced pole-line construction crews and so as not to endanger or interfere with the safety of any persons or property, or to interfere with improvements the Borough may deem proper to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic on Borough properties. Further, all such plant and equipment and all construction shall meet all relevant specifications of the Federal Communications Commission, National Electric Safety Code and National Electric Code.
2. Any opening or obstructions in or disturbances of the streets, public ways, or other Borough properties made by the franchisee in the exercise of its rights under the franchise agreement shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which during periods of dusk and darkness shall be clearly designated by adequate warning lights, all by the franchisee at its expense. In case of any physical disturbance or damage to any streets, public ways, or other Borough properties occurring in the course of erection, installation, construction, reconstruction, replacement, removal, repair, maintenance or operation, the franchisee shall promptly repair such disturbance and damage at its own expense and in a manner approved and required by the Borough ordinances, rules and regulations.
3. The franchisee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place or Borough property, or remove from the street or other public place or Borough property, any property of the franchisee when required by the Borough Council or its designees by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks, or any type of structures or improvements by public agencies; provided, however, that this subsection (3) shall not be interpreted to prohibit reimbursement to the franchisee for relocation expenses where reimbursement is required or authorized by State or Federal law.
4. The franchisee shall, on the request of any private party holding an appropriate permit issued by the Borough, temporarily raise or lower its lines to permit the moving of any building or other structure, and the actual expense of the same shall be paid by the party requesting the same.

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5. Upon failure of the franchisee to commence, pursue, or complete Any work required by law or by the provisions of this franchise to be done in any street or other public place or Borough property, within the time prescribed, and to the satisfaction of the Borough Council or its designees, the Borough Council or its designee may, at its option, cause such work to be done and the franchisee shall pay to the Borough the cost thereof in the itemized amounts reported by the Borough Council or its designee to the franchise within thirty (30) days after receipt of such itemized report.

(Ord. 1375, 2/14/1977, §19)

§261. Building Apartments. Each franchisee shall have the right and obligation to provide cable television service to any member of the public in any publicly or privately owned buildings which are in the franchisee's franchise area without paying a charge to the building owners. Any disputes between franchisee and any building owner shall be heard at and resolved by a public hearing by the Commission. Each franchisee shall report to the Commission any building owner who requests a payment from the franchisee before allowing the franchisee to install cable system service in the building owner's building or who otherwise refuses it free access. A franchisee is expressly prohibited from entering into any agreement with an owner of a multiple dwelling unit, which would either increase or decrease the rates and/or services to a subscriber residing in the dwelling. (Ord. 1375, 2/14/1977, §20)

§262. Repair. Any damage caused to the property of building owners or users or any other person by the franchisee shall be repaired fully by the franchisee within forty-eight (48) hours after completion of installation. (Ord. 1375, 2/14/1977, §21)

§263. Removal of Facilities Upon Request. Under termination of service to any subscriber, the franchisee shall promptly remove all its facilities and equipment from the premises or such subscriber upon his written request. (Ord. 1375, 2/14/1977, §22)

§264. Right of Borough to Purchase CATV System; Other Transactions Affecting Ownership or Control of Facilities.

1. Upon expiration of the term of the franchise, or upon any other termination thereof, as provided for subpart (B) of this Part, or by law, or upon receipt of application for prior approval of acquisition or transfer as set forth in subsection (5) of this §264, the Borough, at its election, shall have the right to purchase and take over the system, provided, however that for such purchase the Borough shall pay to the franchisee a fair and reasonable price such as would allow continued operation of the system, by the Borough, in keeping with the standards established under this Part and the franchise agreement. Such price shall be established in the franchise agreement, either explicitly or by establishment of a method of arriving

at said price, provided further, however, that, notwithstanding any terms of said franchise agreement, the price shall not include any consideration for the value of the right awarded by the Borough to the franchisee under the franchise agreement. The said price for purchase shall be further criteria to be considered by the Borough in selecting a franchisee.

2. Upon the exercise of this option by the Borough and its service of any official notice of such action upon the franchisee, and upon payment of the purchase price, the franchisee shall immediately transfer to the Borough possession and title to all facilities and property, real and personal, of the CATV business, free from any and all liens and encumbrances not agreed to be assumed by the Borough in lieu of some portion of the purchase price set forth in this subpart (G); and the franchisee shall execute such warranty deeds or other instruments of conveyance to the Borough as shall be necessary for this purpose. The franchisee shall make it a condition of each contract entered into by it with reference to its operations under this franchise that the contract shall be subject to the exercise of this option by the Borough and that the Borough shall have the right to succeed to all privileges and obligations thereof upon the exercise of such option.
3. In order that the Borough may exercise its option to take over the facilities and property of the system as authorized herein upon expiration or forfeiture or revocation of the rights and privileges of the franchisee, the franchisee shall not make, execute, or enter into any deed, deed of trust, mortgage, contract, conditional sales contract, or any loan, lease, pledge, sale, gift, pole agreement, or any other agreement concerning any of the facilities or property, real or personal, of the system without prior approval of the Borough Council upon its determination that the transaction proposed by the franchisee will not be inimical to the rights of the Borough under this franchise. Provided, however, that this §264 shall not apply to the disposition of worn out or obsolete facilities or personal property in the normal course of carrying on the CATV business, or to routine contractual relationships entered into in the ordinary course of the cable business.
4. Prior approval of the Borough Council shall be required where ownership or control of more than thirty (30%) of the right of control of franchisee is acquired by a person or group of persons acting in concert, none of whom already own or control (30%) percent or more of such right of control, singularly or collectively.
5. No franchise granted hereunder may be transferred unless such transaction is first approved by the Borough Council, by resolution after public hearing, in accordance with the same procedures as are specified for grants of franchises. Such approval shall not be unreasonably withheld.
6. By its acceptance of the franchise the franchisee specifically concedes and agrees that any acquisitions or transfers as set forth in subsections (4) or (5) of this §264 without prior approval of the Borough Council shall constitute a violation of the franchise and this Part by the franchisee.

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7. During any interim period while there is a transfer of the system being arranged, whether it be to the Borough or to any other assignee or successor of the franchisee, approved by the Borough, the original franchisee shall be required to continue service to the public as a trustee for its successor in interest, subject to an accounting for net earnings or losses during the interim period.

(Ord. 1375, 2/14/1977, §23)

§265. Receivership, Foreclosure, etc.

1. The franchise granted in this Part shall at the option of the Borough Council cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the franchisee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership, or trusteeship, shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
 - A. Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Part and the franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the franchise.
 - B. Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise herein granted.
2. In the case of a foreclosure or other judicial sale of the plant, property, and equipment of the franchisee, or any part thereof, including or excluding this franchise, the Borough Council may serve notice of termination upon the franchisee and the successful bidder at such sale, in which event the franchise herein granted and all rights and privileges of the franchise hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
 - A. The Borough Council shall have approved the transfer of this franchise, as and in the manner as provided in §264 of this Part.
 - B. Such successful bidder shall have covenanted and agreed with the Borough to assume and be bound by all the terms and conditions of this franchise.

(Ord. 1375, 2/14/1977, §24)

§266. Borough's Right of Intervention. The franchisee shall not oppose intervention by the Borough in any suit or proceeding to which the franchisee is a party. (Ord. 1375, 2/14/1977, §25)

§267. Prohibition of Discriminatory or Preferential Practices. The franchisee shall not, in its rates or charges, or in making available the services or facilities of its system, or in its rules or regulations, or in any other respect, make or grant preference or advantages to any subscriber or potential subscriber to the system, or to any user or potential user of the system; and shall not subject any such persons to any prejudice or disadvantage. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscriptions to the system or other legitimate uses thereof; nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification shall be entitled. (Ord. 1375, 2/14/1977, §26)

§268. Open Access. The entire system of the franchisee shall be operated in a manner consistent with the principal of fairness and equal accessibility of its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies, or other entities having a legitimate use for the system; and no one shall be arbitrarily excluded from its use; allocation of use of said facilities shall be made according to the rules or decisions of regulatory agencies affecting the same, and where such rules or decisions are not effective to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution by the Borough of Pottstown Cable Communications Commission. (Ord. 1375, 2/14/1977, §27)

§269. Maintenance. The franchisee shall, at all times, maintain trained personnel as resident agents or employees to guarantee and to provide safe, adequate and prompt service of its facilities. The service shall be such as to maintain a high quality of service. The franchisee shall also maintain a business office within the Borough with a publicly listed telephone where complaints can be received on a twenty-four (24)-hour basis. The Borough further appoints the Borough Manager as the public official who shall have the primary responsibility for the administration of complaint procedures as hereinbefore set forth. (Ord. 1375, 2/14/1977, §28)

§270. Emergency Use of Facilities. The franchisee shall, in the case of any emergency or disaster, make its entire system available without charge to the Borough or to any other governmental or civil defense agency that the Borough shall designate. (Ord. 1375, 2/14/1977, §29)

§271. Filings and Communications with Regulatory Agencies. Copies of all petitions, applications and communications submitted by the franchisee to the Federal Communications Commission, Securities and Exchange Commission, or any other Federal or State regulatory commission or agency having jurisdiction in respect to any matters af-

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fecting CATV operations authorized pursuant to this Part, shall also be submitted simultaneously to the Commission. (Ord. 1375, 2/14/1977, §30)

§272. Permits and Authorizations. The franchisee or applicant for franchise shall diligently apply for all necessary permits and authorizations required in the conduct of its business, and shall diligently pursue the acquisition thereof, including necessary pole attachment contracts, and necessary authorities from the Federal Aviation Agency to construct such receiving antenna towers as may be required, and any necessary authorizations or waivers from the Federal Communications Commission, and when any such permit, authorization, contract or waiver is obtained, a copy thereof shall be promptly filed by the franchisee with the Commission. Franchisee shall file its application for Certificate of Compliance within sixty (60) days of receipt of the franchise and shall further commence construction of the system within sixty (60) days after receipt of the Certificate of Compliance. (Ord. 1375, 2/14/1977, §31)

§273. Reports.

1. Each franchisee shall file with the Commission copies of statements filed pursuant to this Part with the Borough Manager. Each franchisee shall also allow the Commission to audit all of its accounting and financial records upon reasonable notice; make available all of its plans, contracts and engineering, statistical, customer and service records relating to its system and to all other records required to be kept' hereunder; and at all times maintain complete and accurate books of account, records of its business and operations, and all other records required by this Part or the franchise.
2. Each franchisee shall file annually with the Commission an ownership report, including all persons who at any time during the preceding year did control or benefit from an interest in the franchise of one (1%) percent or more and all creditors, secured and unsecured, in excess of one thousand (\$1,000.00) dollars.
3. Each franchisee shall also file annually with the Commission copies of all rules, regulations, terms and conditions which it has adopted for the conduct of its business.

(Ord. 1375, 2/14/1977, §32)

§274. Safety, Nuisance, Requirements. The franchisee shall at all times employ ordinary care and shall install and maintain and use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public. (Ord. 1375, 2/14/1977, §33)

§275. New Developments. The Borough Council may amend this Part or the franchise whenever necessary to enable the franchisee to take advantage of any developments in the field of transmission of communication signals which will afford it an opportunity to more effectively, efficiently, or economically serve its customers all in accordance with §203, "Renegotiation," of this Part; provided, however, that this §275 shall not be construed to require the Borough to make any such amendment, If, in the future, a franchisee adds additional service to its communications system, then in that event said service and the rate to be charge shall first be approved by the Borough of Pottstown Cable Communications Commission. (Ord. 1375, 2/14/1977, §34)

§276. Insurance: Bonds and Indemnifications.

1. Liability and Indemnification of the Borough. The franchisee shall indemnify and hold harmless the Borough of Pottstown at all times during the term of the franchise granted by this Part and specifically agrees that it will pay all damages and penalties which the Borough may be legally required to pay as a result of granting the franchise. Such damages and penalties shall include, but not be limited to, damages arising out of copyright infringements, and other damages arising out of the installations, operation or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise. If the case suit shall be filed against the Borough either independently or jointly with the franchisee to recover for any claim or damages, the franchisee, upon notice to it by the Borough shall defend the Borough against the action and, in the event of a final judgment being obtained against the Borough, either independently or jointly with franchisee solely by reason of the acts of the franchisee, the franchisee will pay said judgment and all costs, and hold the Borough harmless therefrom.

2. Faithful Performance Bond. The franchisee shall, concurrently with its acceptance of this franchise, file with the Borough and at all times thereafter maintain in full force and effect for the term of this franchise or any renewal thereof, at franchisee's sole expense, a corporate surety bond in a responsible company licensed to do business in Pennsylvania in the amount of one hundred thousand (\$100,000.00) dollars, renewable annually, and conditioned upon the faithful performance of franchisee, and upon the further condition that in the event franchisee shall fail to comply with any one (1) or more of the provisions of this franchise, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or less suffered by the Borough as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the franchisee as prescribed hereby, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, said condition to be a continuing obligation for the duration of the franchise and any renewal thereof and thereafter until the franchisee has liquidated all of its obligations with the Borough that may have arisen from the acceptance of this franchisee or renewal by the franchisee or from its exercise of any privilege or right herein granted. The bond shall provide that at least thirty (30) days prior written notice of intention not to renew, cancellation, or material change, be given to the Bor-

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ough by filing the same with the Borough. Notwithstanding the above provisions of this subsection (2), the Borough Council may in its sole discretion waive said bond or reduce the required amount thereof after construction of the initial system.

3. Insurance.

A. Insurance in such forms and in such companies as shall be approved by the Borough, such approval not to be unreasonably withheld, to protect the Borough and the franchisee from and against any and all claims, injury or damage to persons or property, body, real and personal, caused by the construction, erection, operation, or maintenance of any aspect of the system. The amount of such insurance shall be not less than the following:

(1) General Liability Insurance

One (1) person	\$500,000
One (1) accident	\$1,000,000
Property damage	\$250,000

(2) Automobile Insurance

One (1) person	\$500,000
One (1) accident	\$1,000,000
Property damage	\$250,000

B. Workmen's Compensation Insurance shall also be provided as required by the laws of the State of Pennsylvania, as amended.

C. All said insurance coverage shall provide a ten (10)- day notice to the Borough in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective.

D. Copies of all policies required hereunder shall be furnished to and filed with the Borough, prior to the commencement of operations or the expiration of prior policies, as the case may be.

4. Non-Waiver. Neither the provisions of this §276, nor any bonds accepted by the Borough pursuant hereto, nor any damage recovered by the Borough thereunder, shall be construed to excuse unfaithful performance by the franchisee or limit the liability of the franchisee under this part or the franchise for damages, either to the full amount of the bond, or otherwise.

(Ord. 1375, 2/14/1977, §35)

§277. Operational Standards. The technical standards for operation of the system shall, in addition to meeting the requirements specified in this Part, conform to all further requirements specified in the Franchise Agreement, and any other standards or codes therefor as may be adopted by the Borough or the Commission. (Ord. 1375, 2/14/1977, §36)

G. Rates, Charges, Refunds.

§281. Rates and Charges.

1. Limitations on Rates. The charges made for services for the franchisee in this Part shall be fair and reasonable and no higher than necessary to meet all costs of the service (assuming efficient and economical management), and provide a fair return to the franchisee. The franchisee shall receive no consideration whatsoever from its subscribers for or in connection with its service to its subscribers other than in accordance with this §281, without approval of the Borough Council.
2. Adjustments to Rates. The Borough Council shall have the power, authority and right to cause the franchisee's rates and charges to conform to the provision of subsection (1) of this §281, and for this purpose it may deny increases or other reductions in such rates and charge when it determines that in the absence of such action on its part, the franchisee's rates and charges or proposed increased rates and charges will not conform to said subsection (1).

(Ord. 1375, 2/14/1977, §37)

§282. Rate Schedule. An applicant for a franchise shall include in its proposal, its proposed rates and charges according to the following schedule, which shall be approved by the Borough Council and shall not be raised without approval of the Borough Council, after public hearing thereon.

A. Standard Rates and Charges.

- (1) Charges for the following services must be specified:
 - (a) Initial tap-in and connection charges (TV and/or radio, residential or commercial).
 - (b) Subsequent connection.
 - (c) Additional installation at same location, each.
 - (d) Each repositioning at same location ("relocation").
 - (e) Switching device.
- (2) Monthly Rates.

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- (a) First T.V. or T.V./radio outlet, residential or commercial.
 - (b) Additional T.V. or T.V./radio outlets, each.
 - (c) Additional services.
- B. Hotels, Motels, Rest Homes and Hospitals Containing not Less than Ten (10) Rental Units to Which Service is Provided.
- (1) Cost of installing service to building and units contained therein.
 - (2) Monthly rates.
- C. Multiple Dwelling Units (Contained Within One Structure or a Group of Structures Located in One Complex) Where All Service is Billed to One Customer.
- (1) Cost of installing service to building and units contained therein.
 - (2) Monthly rates, per T.V. outlet, according to the schedule:

Number of Dwelling Units Served

Up to 5

6 through 49

50 through 99

100 and over

- D. Disconnection. There shall be no charge for disconnection of any of the aforementioned installations or connections.

(Ord. 1375, 2/14/1977, §38)

§283. Advance Charges. The franchisee shall be permitted to require advance payment for installation fees for one (1) month's advance service fee. Franchisee shall be permitted to required a deposit for converter equipment. The franchisee shall require no other deposit, advance payment or penalty from any subscriber or potential subscriber without prior approval of the Borough Council. (Ord. 1375, 2/14/1977, §40)

§284. Other Governmental Regulation of Rates. If, in the future, the State of Pennsylvania or the United States Government or any regulatory agency thereof regulates the rates of the franchisee for the service provided for in this Part, this subsection (G) shall be of no effect during such regulation to the extent of any conflict therewith. (Ord. 1375, 2/14/1977, §40)

§285. Refunds to Subscribers.

1. If during the term of the franchise the franchisee receives refunds of any payments made for television or radio signals, it shall without delay notify the Commission, and suggest a plan for flow through of the refunds to its subscribers.
2. If any subscriber of less than sixty (60) days terminates service, the franchisee shall refund to such subscriber his initial connection charges in full. If any subscriber terminates service because of the franchisee's failure to render service to such subscriber of a type and quality, and in the manner, provided for herein, or because the franchisee ceases to operate the system authorized in this Part for any reason except expiration of the franchise, the franchisee shall refund to such subscriber a portion of the initial connection charges which corresponds to the fraction obtained by dividing the number of months of service received by the subscriber by twelve (12).

(Ord. 1375, 2/14/1977, §41)

H. Franchise Fees.

§291. Application Fee. The application for grant of franchise, as required in §102 of this Part shall be accompanied by a fee, in an amount as established from time to time by resolution, which shall be applied to the cost of public hearings and legal expense incurred by the Borough for the preparation of the franchise agreement. In the event that its application is rejected by the Borough, a portion of the application fee shall be returned promptly to the applicant. The balance shall be paid over to the Borough to defray administration and legal cost in the processing of the application. (Ord. 1375, 2/14/1977, §42; as amended by Ord. 1735, 4/12/1993)

§292. Annual Fee. During the term of any franchise granted pursuant to this Part, the franchisee shall pay the Borough for the use of its streets, public places, and other facilities, as well as the maintenance, improvements, and supervision thereof, an annual franchise fee in an amount equal to five (5%) percent of the annual local gross subscriber revenues and such other revenues as the FCC may at any time recognize as permissible as a basis for computation of franchise fees. This payment shall be in addition to any other tax or payment owed to the Borough by the franchisee, including, but not limited to, pole inspection fee and street opening permit fees. It is further agreed that should there be any revision of the franchise fee established by the Federal Communication Commission said change shall automatically take effect and shall govern the annual franchise fee as herein set forth without the requirement of any amendment to this Part. (Ord. 1375, 2/14/1977, §43; as amended by Ord. 1735, 4/12/1993)

§293. Method of Computation. Sales tax or other taxes levied directly on a per subscription basis and collected by franchisee shall be deducted from the local gross subscriber revenues before computation of sums due the Borough is made. Payments due the Borough under the terms of §§291 and 292 of this Part shall be computed quarterly as of

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September 30, December 31, March 31 and June 30 for the preceding quarter and shall be paid on or before the thirtieth (30th) calendar day from each said computation date at the office of the Borough Secretary. The Borough shall be furnished a statement with each payment, certified as correct by the franchisee, and an annual statement for the entire year, prepared by a certified public accountant. All statements shall reflect the total amount of local gross subscriber revenues, and the above charges, deductions and computations for the period covered by the statement. Statements accompanying payment of the franchise fee shall set forth a detailed computation of the payment, and the number and type of subscribers. (Ord. 1375, 2/14/1977, §44)

§294. Right of Recomputation. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the Borough may have for further or additional sums payable as a franchise fee under this subpart (H) or for the performance of any other obligation hereunder. (Ord. 1375, 2/14/1977, §45)

§295. Failure to Make Required Payment. Failure to pay any fees required by this subpart (H) shall result in automatic suspension of the franchise granted, and reinstatement thereof may be had only upon resolution by the Borough Council, and payment of the delinquent fee or fees plus any interest or penalties as may be required by the resolution. (Ord. 1375, 2/14/1977, §46)

I. Enforcement.

§2101. Non-Enforcement; No Estoppel. The franchisee shall not be relieved of its obligation to comply promptly with any of the provisions of the franchise by any failure of the Borough to enforce prompt compliance. (Ord. 1375, 2/14/1977, §47)

§2102. Violators. Any persons including officers of any franchisee, causing, participating in, or permitting any violation of any provision of this Part shall be severally or jointly liable therefor and as such subject to the fines and penalties provided in this Part for such violation. (Ord. 1375, 2/14/1988, §48)

§2103. Prosecution. Prosecutions under this Part shall be recommended by the Commission to the Borough Council, and shall be prosecuted in the name of the Borough. (Ord. 1375, 2/14/1977, §49)

J. Miscellaneous.

§2111. Short Title. This Part shall be known as the "Borough of Pottstown Ordinance for Regulation of Cable Communication." (Ord. 1375, 2/14/1977, §54)

§2112. Captions. The captions to sections and parts are inserted solely for information and shall not affect the meaning or interpretation of this Part. (Ord. 1375, 2/14/1977, §55)

§2113. No Recourse Against Borough. The franchisee shall have no recourse whatsoever against the Borough or its officers, boards, commissions, agents or employees for any loss, cost, expense or damage arising out of any provision or requirement of this Part or because of its enforcement. (Ord. 1375, 2/14/1977, §56)

§2114. Preemption. The provisions of this Part shall be construed to conform to all present and future requirements of the Federal Communications Commission, all acts of the Congress of the United States, and all acts and requirements of the State of Pennsylvania. (Ord. 1375, 2/14/1977, §57)

§2115. Adoption of Community Antenna Television Systems Regulations. All modifications of the Federal Communications Commission and other regulatory agencies which have jurisdiction over community antenna television systems within the Commonwealth of Pennsylvania regulations made during the term of the franchise or any renewal thereof shall be adopted by the Borough within one (1) year of its promulgation by the Commission and/or agency and this Part and the Franchise Agreement issued hereunder shall promptly be amended for compliance. (Ord. 1375, 2/14/1977, §58)

Part 3

General Licensing

§301. Certain Activities and Activities to be Licensed.

1. There is hereby levied and imposed upon every person, firm, association, organization, corporation and every other form of enterprise or business owning, operating, conducting, managing, leasing or possessing, dealing in or doing business with any of the hereinafter enumerated amusements, devices, businesses, entertainments, or public performances, an annual license in an amount hereinafter designated, which shall be paid on or before the 15th day of January in each year, provided that when any such license shall be issued for any such purpose commencing or doing business after July 15th of any year, the license fee shall be one-half (1/2) of the amount designated for the full year, excepting those hereinafter made payable on a performance, weekly or monthly basis, as follows:
 - A. On each and every mechanical amusement device, including but not limited to the device commonly called pinball machine a sum as established from time to time by resolution, to be paid on a yearly basis, excepting public record-playing machines, commonly called music or juke boxes on which the license fee shall also be in an amount, as established from time to time by resolution, to be paid on a yearly basis. [Ord. 1735]
 - B. On pawnbrokers an amount, as established from time to time by resolution, to be paid on a yearly basis, and they shall in addition make weekly reports upon blanks to be furnished by the Borough, of all goods pawned at their place of business, during the preceding week. [Ord. 1735]
 - C. On each and every one (1)-ring circus an amount, as established from time to time by resolution, to be paid on a daily basis. On circuses with more than one (1) ring or wild-west shows or exhibitions an amount, as established from time to time by resolution, to be paid on a daily basis for each street parade in connection therewith an amount, as established from time to time by resolution. [Ord. 1735]
 - D. On each and every auction house an amount, as established from time to time by resolution. [Ord. 1735]
 - E. On each and every business of bill-posting within the Borough an amount, as established from time to time by resolution. [Ord. 1735]
 - F. On the business of distributing circulars or other advertising matter from door to door or from hand to hand within the Borough, no license fee shall be required; provided, however, that any person engaged in such distribution shall register his name and address with the Borough Manager, or, in his absence, the Inspections Director, and at the same time with the Police

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Department, prior to making such distribution without being required to pay any fee whatsoever for such registration. Circulars or other advertising matter distributed from door to door shall be enclosed in envelopes or wrappers, and shall be either placed upon the premises or handed to an account of the premises. Any person engaged in the distribution of circulars or other advertising matter shall not place or attempt to place such circulars or advertising matter on the windows or motor vehicles, shall not place or attempt to place such circulars or advertising matter on or about the person of another without the consent of the other, and shall not otherwise force, or attempt to force, any person to accept delivery of such circulars or advertising matter.

- G. On each and every sample merchant, salesman, or agent soliciting orders for future delivery of any goods and/or services from other than merchants, dealers, or manufacturing corporations an amount, as established from time to time by resolution, to be paid on a yearly basis; provided, that any person who is working for or representing a religious, educational, charitable, or political purpose shall not be required to pay such license fee, but shall register his name and address with the Borough Manager or in his absence, the Inspection Director, and at the same time with the Police Department, prior to soliciting any orders without being required to pay any fee whatsoever for such registration. The Borough Manager, or, in his absence, the Inspections Director, is hereby authorized to determine which individuals are excepted from the license fee requirement as herein provided. Any sample merchant, salesman, or agent who is not excepted herein, before receiving a license, shall first register his name and address, together with the names, addresses and necessary business references of his firm, corporation or organization, with the Borough Manager, or, in his absence, the Inspections Director, and with the Police Department, and shall submit to such fingerprinting and identification as the Police Department and/or the Borough Manager, or in his absence, the Inspections Director, may require, and such license shall not be issued until the Borough authorities shall have had ample reasonable opportunity to determine the bona fides of the merchant, salesman or agent and the product and/or service which he proposes to sell. [Ord. 1735]
- H. On each and every huckster, vendor or peddler of any provisions or merchandise by vehicle along the streets of the Borough an amount, as established from time to time by resolution, to be paid on a yearly basis, which shall cover one (1) vehicle and shall not be construed to permit huckstering or peddling by anyone other than the licensee and one (1) accompanying employee. The licensee shall carry his license at all times and show same on demand by the Borough authorities and shall mark his vehicle with the words "License No.," followed by the number appearing on his license. [Ord. 1735]

- I. On each and every peddler, hawker, agent or salesman having no permanent residence or place or business in the Borough of Pottstown, engaged in the selling of furs, rugs, notions, novelties, merchandise or services of any kind or nature an amount, as established from time to time by resolution, to be paid on a yearly basis; provided, that any person who is working for or representing a religious, educational, charitable or political purpose shall not be required to pay such license fee, but shall register his name and address with the Borough Manager, or in his absence, the Inspections Director, and at the same time with the Police Department, prior to such selling without being required to pay any fee whatsoever for such registration. The Borough Manager, or in his absence, the Inspections Director, is hereby authorized to determine which parties are exempt as hereinbefore provided. Before receiving a license, any peddler, hawker, agent or salesman not exempt from the license fee requirement herein, shall first register his name and address, together with the names and addresses and necessary business references of his firm, corporation, or organization, and of the person, firm, corporation or organization producing, supplying, manufacturing or selling the products, merchandise or services in which he deals, with the Borough Manager, or, in his absence, the Inspections Director, and with the Police Department, and shall submit to such fingerprinting and identification as the Police Department and/or the Borough Manager or in his absence, the Inspections Director, may require, and such license shall not be issued until the Borough authorities shall have had ample and reasonable opportunity to determine the bona fides of the peddler, hawker, agent or salesman and the products or services which he proposes to sell; provided, that any ex-serviceman who produces proof of compliance with the Act or Acts of Assembly regulating the licensing of honorably discharged veterans as peddlers shall be exempt from payment of any license fee under this §301, but shall be required to register in the manner provided above for peddlers, hawkers, agents or salesmen who are not otherwise exempt. [Ord. 1735]
- J. All persons, firms, organizations, associations or corporations are hereby prohibited from selling any goods, wares or merchandise from any stationary wagon or other device on any of the public highways in the Borough; provided, of course, that the provisions of this §301 shall not apply to selling from any wagon or other device located on private property.
- K. On each and every transient retail merchant temporarily engaged in selling or exhibiting for sale any goods, wares or merchandise whatsoever from a given, temporary or semi-permanent location within the Borough in an amount, as established from time to time by resolution, to be paid on a monthly basis, for each month or fraction thereof. The term "transient retail merchant," as used in this §301, shall mean any person, firm, organization, association or corporation who or which shall not, for a period of one (1) year immediately preceding the commencement of such business, have been either a bona fide resident and taxpayer in the Borough or a corporation with principal place of business therein, or the owner of real estate therein of an assessed valuation of at least one thousand (\$1,000.00) dollars, or who or

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which does not intend to permanently conduct and continue such business for a continuous period of at least six (6) months. [Ord. 1735]

- L. On each and every tower doing business in the Borough of Pottstown for purposes as set forth in Chapter 15, Part 7, §701 et seq., a license fee and additional fee per towing truck or towing vehicle shall be established from time to time by resolution of Borough Council. Towers shall be separated into two separate classes of towers. All towing applicants shall be required to complete and submit a license application, complying with all criteria as established by resolution of Borough Council.
1. The first class (Class I) shall include only those towers who are the highest responsible and qualified bidders for one (1) of two (2), two-year Class I Towing Licenses. Class I Towers will be "On-Call" towers.
 - a. The two (2) successful bidders shall be towers whose primary business location is within the legal boundaries of the Borough of Pottstown, Montgomery County, Pennsylvania.
 - b. In the event that only one of the bidder's, whose primary business location is within the legal boundaries of the Borough of Pottstown, Montgomery County, Pennsylvania, or if there are no bidders whose primary business location is within the legal boundaries of the Borough of Pottstown, Montgomery County, Pennsylvania, then the other, or both (whichever applies) bidder's primary business location(s) must be located within two (2) driving miles of any legal boundary of the Borough of Pottstown, and within the legal boundaries of Montgomery County, Pennsylvania.
 2. The second class (Class II) shall include any tower who is not a Class I tower. Class II Towers will not be "On-Call" Towers."

[Ord. 1792; Ord. 1976]

- M. On each and every coin-operated vending machine, including but not limited to, candy/gumball dispensing machines, cigarette machines, soda machines, packaged food machines, packaged ice machines, gender based hygiene dispensing machines, postage dispensing machines for profit, air dispensing machines, self-weighing scale devices, blood pressure devices and recycling acceptance and disposal machines, a sum as established from time to time by resolution of Borough Council to be paid on a yearly basis. Coin and vending machines specifically excluded from said license fee are telephone service, parking meters, space registration boxes, automatic teller machines, credit card liquid dispensing machines, washing machines, clothes dryers, automatic gate controls for parking lots, automobile washing machines, newspaper machines and mechanical amusement devices previously licensed under this Section. [Ord. 1766]

2. This subsection (2) shall not be construed to apply to sales by sample as regulated in subsection (G) hereof, or to hucksters, vendors or peddlers by vehicles as regulated in subsection (H), or to peddlers, hawkers, agents or salesmen as regulated as regulated in subsection (I), or to farmers selling their own produce, or to any manufacturer or producer selling or distributing bread and bakery products, meat and meat products or milk and milk products, or to sale of goods, wares or merchandise donated by the owners thereof, the proceeds of which are to be applied to charitable or philanthropic purposes, or to commercial travelers or sales agents selling to dealers or retailers in the usual course of business, or to persons conducting judicial or other sales under legal proceedings, but shall include sales by auction.
3. The applicability of this subsection (3) to any transient retail merchant shall be originally and preliminarily determined by the Borough Manager who shall require all persons, firms, associations, organizations and corporations appearing to fall within this classification to register and file with him a statement under oath, which shall be administered by the Mayor without charge, specifically setting forth:
 - A. The name or names, permanent home, voting and taxpaying domicile and business address of all owners or proprietors of the proposed business and of any local agent or agents in charge thereof, and the period of residence at the stated home and voting and taxpaying domicile and business address.
 - B. The full address at which such business is to be conducted in this Borough.
 - C. The name of the business, date of proposed commencement and length of time during which the same is proposed to be conducted.
 - D. The exact location and approximate value of any real estate owned by said proprietor or owner.
 - E. Whether the proposed business location is owned or leased and, if leased, the term of the lease and an exact copy thereof.
 - F. The name of one (1) bank with which the proprietor or owner has dealt for one (1) year or more preceding the application.
 - G. Whether the proprietor or owner is an individual, partnership or corporation and, if a corporation, the state of incorporation and principal place of business.
 - H. Any person, firm, corporation, organization or association failing or refusing to file a sworn statement as required within forty-eight (48) hours after notice from the Borough Manager to do so, or filing a false, fraudulent or untrue report, shall be guilty of a violation of this Part 3 and subject to the penalties hereinafter provided.

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- I. On each and every fortune teller, palmist, phrenologist, astrologer or hand-writing analyst in the sense of fortune telling or prognosticating by interpreting handwriting a certain amount, as established from time to time by resolution, to be paid on a daily basis. [Ord. 1735]

(Ord. 1/3/1947, §1; as amended by Ord. 1019, 5/19/1964, §1; by Res. 11/14/1966; by Res. 12/12/1966; by Res. 7/10/1967; by Ord. 1377, 3/14/1977, §§1-3; by Ord. 1379, 3/14/1977, §§6-13; by Ord. 1475, 4/12/1982, §1; by Ord. 1495, 10/17/1983; by Ord. 1499, 12/28/1983, §2; by Ord. 1586, 3/14/1988, §1; by Ord. 1643, 5/14/1990, §3; by Ord. 1710, 10/12/1992, §1; by Ord. 1732, 4/12/1993, §1; by Ord. 1735, 4/12/1993; by Ord. 1754, 12/13/1993, §1; by Ord. 1766, 3/14/1994, §1; by Ord 1792, 2/13/1995; and by Ord. 1976, 3/8/2004, §1)

§302. Liability for Trespass and Damage. No such license or permit shall authorize or excuse any breach of law, or any trespass upon the rights of others, or render the Borough liable for any damage that may be committed or caused under color thereof. (Ord. 1/3/1947, §3)

§303. Exhibitions for Charitable and Educational Purposes. No license shall be required for any fair, entertainment, exhibition or amusement given by or for the exclusive benefit of churches, schools, local fire companies, lodges, societies, or charities; provided, that this exemption from the payment of license fees shall not be construed to include any indoor or outdoor traveling carnival or amusement company, no matter under what auspices it gives exhibitions. (Ord. 1/3/1947, §4)

§304. Revocation. The Borough Manager, or, in his absence, the Inspections Director, may at any time revoke any license, if there shall have been committed any breach of the terms or conditions under which the same was issued, upon giving to the person to whom the same was issued notice of such revocation, and shall make a record thereof in his office, and from the time of such notice, any act done under color of such license shall subject the person, firm, corporation, organization or association doing or suffering it to be done to the same penalty as if he had done such act without such license unless, however, such revocation is disapproved as hereinafter provided by this Part. (Ord. 1/3/1947, §5; as amended by Ord. 1377, 3/14/1977, §4)

§305. Appeal. If any person, firm, association or corporation shall feel aggrieved by actions or decisions of any Borough officer in administering this Part, or by the neglect or refusal of the Borough Manager to issue such license or permit as aforesaid, or by the terms or conditions herein imposed, or by any revocation of such license or permit, he, they or it may appeal to the Council, upon giving notice to said officer within one (1) week after such decision, refusal or notice or revocation, and such decisions, terms, conditions, refusal or revocation shall be binding upon the appellant until the Council shall disapprove the same or order such modifications as it may deem proper, not inconsistent with the Borough ordinances. (Ord. 1/3/1947, §6)

§306. Penalty. Any person, firm, association, organization or corporation engaged in any business or occupation or doing anything for which a license is required by any of the foregoing Sections of this Part, or by the terms of any ordinance shall be guilty of a violation of this Part, and, upon conviction thereof shall, for each and every offense, be sentenced to pay a fine of not less than fifty (\$50.00) dollars nor more than six hundred (\$600.00) dollars and costs of prosecution and, in default of payment of such fine and costs, to imprisonment for not more than thirty (30) days. Each day during which occurs the violation of any of the provisions of this Part shall constitute a separate offense. (Ord. 1/3/1947, §7; as amended by Ord. 1019, 5/19/1964, §2; by Ord. 1377, 3/14/1977, §5; by Ord. 1710, 10/12/1992, §2; and by Ord. 1735, 4/12/1993)

§307. Authority to Close Unlicensed Business or Confiscate Unlicensed Devices. The Mayor or Chief of Police, or upon order, the Borough Manager, shall have full power and authority to close any business or public performance or to confiscate any mechanical device or machine in any case where the operation thereof is attempted without first obtaining a license. (Ord. 1/3/1947, §8)

§308. Short Title. This Part shall be designated and known as "The License Ordinance of 1946." (Ord. 1/3/1947, §10)

Part 4

Utility Poles

§401. License Required to Maintain Wooden Poles, Carrying Electrically-Charged Wires, on Streets.

1. Whenever permission has already been granted and whenever permission hereafter shall be granted by Council to any corporation, firm or individual to construct a line of telegraph, telephone, electric railway line, or electric light plant or both or all of which, which requires the erection of wooden poles, carrying electrically-charged wires, in or upon any of the streets or highways within the corporate limits of the Borough of Pottstown, it shall be the duty of such corporation, firm or individual to submit to the Borough Secretary a written statement of the number, size and location of the poles, carrying electrically-charged wires, now erected, and also whenever new poles, carrying electrically-charged wires, are intended to be erected, a written application specifying the number and size of the poles, carrying electrically-charged wires, intended to be erected, and designating the places where the same are intended to be erected, and designating the places where the same are intended to be inserted; and if no objection be made thereto, it shall be the duty of the Borough Secretary to report said statements and applications to Council for approval, when the Secretary shall make a minute thereof, and the Borough Secretary shall issue the license to said applicant for the number of poles, carrying electrically-charged wires, erected or to be erected after receiving notice from the Borough Treasurer that the license required by this Part has been first paid to the Borough Treasurer by the applicant.
2. In case objections are made to the whole or any part of such application, it shall be the duty of the Borough Secretary to hear the same before reporting to Council, and in such case the license shall be granted as aforesaid, either in accordance with the application or with such conditions and modifications to secure the purposes of this Part as the case may require.
3. No pole carrying electrically-charged wires shall be newly erected unless a license therefor shall have been previously obtained as above, and for every license so granted there shall be paid to the Borough Treasurer for the use of the Borough a sum, in an amount as established from time to time by resolution of Borough Council, for each pole carrying electrically-charged wires. [Ord. 1735]

(Ord. 7/1/1902, §1; as amended by Ord. 3/1/1904, §2; and by Ord. 1735, 4/12/1993)

§402. License Fee; Inspection; Removal of Defective and Dangerous Poles. No pole carrying electrically-charged wires shall be newly erected unless a license therefor shall have been previously obtained as provided for in §401 of this Part, and for every license granted prior to January 1, 1959, and remaining unpaid to the Borough Treasurer, there shall be paid to the Borough Treasurer, for the use of the Borough, a sum, in an

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amount as established from time to time by resolution, per each pole carrying electrically-charged wires; and for every license so granted after January 1, 1959, there shall be paid to the Borough Treasurer for the use of the Borough a sum, in an amount as established from time to time by resolution, per each pole carrying electrically-charged wires. The Borough Engineering Department shall, from time to time, inspect all wooden telegraph, telephone, electric light and electric railway poles erected within the corporate limits of the Borough, and shall immediately report any unsafe or dangerous poles to the individual or corporation owning or using or in control of such poles, with notice to forthwith replace the same with that which is sound and safe. In the event of neglect or refusal of such individual or corporation so notified satisfactorily to remedy the cause of the complaint, the Engineering Department shall report the same in writing to the Mayor, who shall have the power to remove from and off the public streets and alleys such defective and dangerous poles, if, after forty-eight (48) hours notice from the Mayor to the proper individual or corporation through its superintendent, manager, clerk, or other employee, such corporation shall still neglect or refuse to remedy the complaint, and the cost of such removal shall be charged to and recovered from the individual or corporation owning, maintaining, using or controlling such poles, by suit before any District Justice. (Ord. 7/1/1902, §2; as amended by Ord. 2/10/1909, §1; by Ord. 1/14/1959, §1; by Ord. 1003, 5/19/1964, §1; and by Ord. 1735, 4/12/1993)

§403. Duties of Individuals and Companies Owning and Maintaining Poles.

1. As a police regulation, every individual and every corporation now or hereafter maintaining, using or controlling, upon the highways of the Borough of Pottstown, any wooden pole carrying electrically-charged wires, and such corporation's officers, managers, superintendents and employees, locally in charge of the business of such corporation, are hereby required:
 - A. To plainly stencil or mark every pole with the name or initials of the individual or corporation owning, maintaining or using such pole, and thereafter, upon erecting any other poles, to likewise immediately designate them, and to keep such name or initials always legible from the sidewalk.
 - B. To submit to the hereinbefore mentioned official inspection of every pole.
 - C. To remove unlicensed, defective or dangerous poles from the public highways immediately upon written notice as herein provided.
 - D. To pay or cause to be paid to the Borough of Pottstown the cost thereof, if the neglect of such individual or corporation compels the Borough to remove any such poles.
 - E. It shall be the duty of every such owner or owners, annually on the first day of January, to make application to the Borough Secretary as aforesaid for a license to maintain the poles previously erected for the ensuing year, specifying the poles to be maintained by their designation, as provided for in this Part.

2. The Borough Secretary, under the conditions mentioned in §501 of this Part, shall grant a license to such applicant, which shall authorize the maintenance of the poles designated in the application only for the period of one (1) year from such first day of January.

(Ord. 7/1/1902, §3; as amended by Ord. 3/1/1904, §3; and by Ord. 1003, 5/19/1964, §2)

§404. License Tag. The Borough shall provide a numbered metal license tag for each licensed pole, and such tag shall be affixed to the pole by the owner thereof. (Ord. 7/1/1902, §4; as amended by Ord. 3/1/1904, §4; and by Ord. 1003, 5/19/1964, §3)

§405. Annual License Fee. On and after the first day of January, A.D. 1950, no telegraph, telephone, electric light or electric railway pole carrying electrically-charged wires shall be maintained within the corporate limits of the Borough, unless an annual license for the maintenance thereof shall have been previously granted for the same in accordance with the provisions of this Part, or unless an annual license for the maintenance thereof shall be granted for the same in accordance with the provisions of this Part, and unless the fee, in an amount as established from time to time by resolution, per pole, as in §401 of this Part as provided for, be paid for and in lieu of the license fee, in an amount as established from time to time by resolution, on all poles where the same not remains unpaid and a fee, in an amount as established from time to time by resolution, per pole for all annual licenses granted in accordance with the provisions of this Part after the first day of January 1981. (Ord. 7/1/1902, §5; as amended by Ord. 3/1/1904, §5; by Ord. 2/10/1909, §2; by Ord. 1/14/1959, §2; by Ord. 1450, 12/30/1980, §2; and by Ord. 1735, 4/12/1993)

§406. Effect Upon Franchises. Upon complying with the provisions and requirements of this Part, the privilege heretofore granted to such corporations, firms or individuals by resolution or ordinance shall not in any way be affected. The Mayor and Borough Council, however, reserve the right to revoke by ordinance any of the privileges mentioned and granted by this or any other ordinance or resolution. (Ord. 7/1/1902, §6)

§407. Penalty for Violation. The penalty for every violation of any of the provisions and requirements of this Part shall be a fine of six hundred (\$600.00) dollars for each pole concerning which there is such violation, to be recovered for the use of the Borough of Pottstown as fines and penalties are now by law recoverable; and the same penalty, to be likewise recovered, is provided for the unauthorized placing of a Borough license tag upon any such pole, or removing therefrom such license tag after being duly affixed. (Ord. 7/1/1902, §7; as amended by Ord. 1735, 4/12/1993)

Part 5

Borough Contractor Licensing

§501. Short Title. This Part shall be known and may be cited as the "Pottstown Borough Contractor Licensing Ordinance." (Ord. 1733, 4/12/1993, §1)

§502. Definitions. The following words and phrases, as used in this Part, shall have the meanings ascribed to them in this Section unless the context clearly indicates a different meaning. The masculine includes the feminine, the singular includes the plural and the plural includes the singular.

BOROUGH – the Borough of Pottstown.

CONTRACT – an agreement, whether oral or written, and whether contained in one (1) or more documents, between a contractor and an owner or another contractor for the performance of work, including all labor, services and materials to be furnished and performed thereunder.

CONTRACTOR – any person, other than a bona fide employee of the owner, who undertakes or offers to perform construction, alterations, repairs, site improvements, sign installation, and any other residential or nonresidential construction, or demolition or blasting work in the Borough, whether as a general contractor, subcontractor, specialty contractor or home improvement contractor with respect to the owner.

DIRECTOR – the director of the Office of Code Enforcement of the Borough of Pottstown.

LICENSE YEAR – the twelve (12) month period beginning the first day of January of each year.

OWNER – any property owner, tenant or other person who orders, contracts for or purchases the services of a contractor, or any person entitled to the work of a contractor pursuant to a contract, gift or otherwise.

PERSON – any individual, partnership, limited partnership, association, corporation, trust or other legally recognizable entity.

(Ord. 1733, 4/12/1993, §2)

§503. Enforcement. The Director, or his authorized representatives, shall administer and enforce the provisions of this Part. (Ord. 1733, 4/12/1993, §3)

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§504. Compliance Required. No person shall act as a contractor in the Borough except in compliance with the provisions of this Part. Any person, including an owner, who willfully aids a contractor or participates with a contractor in violating any provisions of this Part is in violation of this Part. The provisions of this Part may not be waived by agreement.

(Ord. 1733, 4/12/1993, §4)

§505. Craft Licenses. A license issued pursuant to this Part shall not be construed to authorize the licensee to perform any particular type of work or type of business which is reserved to qualified licensees under other provisions of State or local law. (Ord. 1733, 4/12/1993, §5)

§506. License Required: Applications and Renewals.

1. For the license year beginning January 1, 1993, and each license year thereafter, it shall be unlawful for any person, firm or corporation to engage in the business of constructing, altering, repairing, roofing, remodeling, siding, demolishing or moving the whole or any part of a building or structure; or to install, resurface or improve driveways or sidewalks; or to engage in the construction or installation of swimming pools, satellite receiving antennas, tennis courts, fences, garages, car-ports or storage sheds; or to engage in installation or replacement of heating/ventilating/air conditioning or sprinkler systems, tanks and gasoline pumps; or to engage in site improvement, including grading, paving, curbing or storm water drainage installation; or to engage in the business or erecting or altering signs, without first obtaining a license therefor, as required by this Part. [Ord. 1750]
2. Such license shall be secured by the filing of an application, prepared and furnished by the Director, and the payment of a license fee as hereinafter set forth in this Part.
3. Each application shall be signed by the applicant, if a natural person, and in the case of an association, firm, partnership or corporation, by a member, officer or agent of said association, firm, partnership or corporation. For each association, firm, partnership or corporation, any license will be issued in the name of the association, firm, partnership or corporation, and the individual officer or agent of the association, firm, partnership or corporation who applies for the license shall be the custodian of the license. If the individual custodian of the license ceases to be an associate, member or agent of the association, firm, partnership or corporation, the association, firm, partnership or corporation shall promptly inform the Borough of the name, title, position and address of the new custodian of the license.

4. Each successful application shall be issued a license which shall be in the form of a wallet-sized card and in the form of a vehicle bumper sticker. Each licensed contractor shall carry the license card on their person and, upon demand, shall display the license card to the Director or his representatives. Each licensed contractor shall, at all times, display the bumper sticker license on the rear bumper of the vehicle used in activities as a contractor.
5. All contractor's licenses shall expire at midnight on December 31st of each license year unless the license is revoked or suspended prior thereto under the terms of this Part. A person with an unexpired license, which has not been revoked or suspended during the current license year, who makes application for a license for the following license year need not complete an application form, but must submit the required license fee and, if the person qualifies for licensing and renewal under the terms of this Part, the license shall be renewed for the following license year and a new license card and bumper sticker will be issued for the current licensing year.
6. Any person carrying on the business of contracting in the Borough of Pottstown must secure a license under the terms of this Part for each license year during which he carries on such business.

(Ord. 1833, 4/12/1993, §6; as amended by Ord. 1750, 10/11/1993, §1)

§507. Exceptions and Exemptions.

1. The provisions of this Part shall not apply to the official transactions of any authorized representative of the Government of the United States, any State or Commonwealth of the United States, any political subdivision of any State or Commonwealth, or any agency or instrumentality of the foregoing governments.
2. No contractor's license shall be required of any person when acting in a particular capacity or particular type of transaction, as follows:
 - A. A person who performs labor or services for a contractor for wages or salary.
 - B. An individual who is required by other State or local law to attain standards of competency or experience, and who must obtain licensing under such other State or local law, as a prerequisite to engage in a craft or profession, and who is acting exclusively within the scope of such craft or profession for which he is currently licensed pursuant to such other law.

(Ord. 1733, 4/12/1993, §7)

§508. Insurance Required. No contractor's license shall be issued unless the applicant files a certificate of insurance with the Director at the time of license application. The certificate of insurance shall contain a provision that coverages afforded under the pol-

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icy will not be cancelled until at least fifteen (15) days prior written notice of such cancellation has been given to the Borough of Pottstown. The certificate of insurance must evidence policies of insurance, maintained at the expense of the applicant, for public liability, property damage, products liability and completed operations, each of which must have a single occurrence limit of at least three hundred thousand (\$300,000.00) dollars for all contractors. Blasting and demolition insurance shall also be required for blasting and demolition contractors; blasting and demolition insurance coverage must be in the amount of one million five hundred thousand (\$1,500,000.00) dollars, and must name the Borough of Pottstown as an additional insured for the time period involved for the blasting or demolition permit. All types and limits of insurance for which certificates are presented at the time of application, and based upon which a license is issued, shall be maintained throughout the license year, or the license will be suspended or revoked as hereinafter set forth in this Part. The Director must approve the responsibility of new insurance carrier prior to a change in a carrier during a license year. (Ord. 1733, 4/12/1993, §8)

§509. License Fees. At the time of application for a new license or for the renewal of a current license, the applicant shall pay to the director a license application fee, all payable to the Borough of Pottstown, which fee shall be set by resolution of the Pottstown Borough Council. No fee or portion thereof shall be returned to a successful applicant. Except as provided in §506(3), as to custodians of licenses for organizations, no license shall be transferable. (Ord. 1733, 4/12/1993, §9)

§510. Issuance or Refusal to Issue License; Form of License Application.

1. When an application has been filed with the Director in proper form, the Director shall, within a period of thirty (30) days from the date following the date the application is received, issue or refuse to issue the appropriate contractor's license to the applicant. If issuance of a license is denied, the Director shall mail to the unsuccessful applicant a written statement setting forth the reason or reasons for the denial, within the aforesaid thirty (30) day period.
2. The application for a license shall be a printed form, provided to the applicant by the Director, and the application shall require a written answer to all questions contained thereon. Failure to answer all questions on the application form shall mean that the applicant is not entitled to consideration of his application until he has answered all questions. The application form shall be signed by the applicant under oath. The questions and information requested on the application form shall include, but shall not be limited to, the following:
 - A. The names of owners, partners, directors and officers of the applicant, and the business address and trade names of the applicant.
 - B. A statement as to whether or not any municipalities have refused to issue or have revoked any similar contractor's licenses to the applicant within two

(2) years previous to the date of the application. In the event there has been such a denial or revocation, the applicant must explain, in writing, the reasons for such denial or revocation.

- C. A listing of at least five (5) previous contractor's jobs completed by the applicant within one (1) year prior to the application, along with a statement of the location of the jobs, and the names, addresses and telephone numbers of the party or parties who contracted with the applicant for such jobs.
- D. A listing of all convictions within two (2) years prior to the date of the application for any crimes or offenses under any Federal or State criminal statute or common law criminal offense, or for violation of any Township ordinance, so long as such convictions were for crimes or offenses related to the applicant's work or contracts as a contractor. The term "conviction" shall include guilty a pleas and pleas of nolo contendere. If any such conviction exists, the applicant shall give, in writing, the caption, court and term number of the proceeding leading to the conviction. The applicant shall also explain, in writing, the nature of the conviction.
- E. A listing of all unsatisfied civil judgments in any jurisdiction against the applicant, if such civil judgments were entered in a lawsuit in which it was alleged that the applicant failed to complete a contract as defined in this Part or improperly performed a contract as defined in this Part. The applicant shall give, in writing, the caption, court and term number of the civil action upon which any such judgments were entered, and shall explain, in writing, the nature of all such civil judgments.

(Ord. 1733, 4/12/1993, §10)

§511. Changes in Ownership, Management, Address or Trade Name. Every contractor licensee shall, within ten (10) days after a change in ownership, directors, officers, management, address or trade name, notify the Director of such change. (Ord. 1733, 4/12/1993, §11)

§512. Standards for Refusal of Issuance or Renewal of License. No license shall be issued or renewed under the following circumstances:

- A. If the applicant falsely answered any question or questions contained on the application form.
- B. If the applicant has been refused a similar contractor's license or has had a similar contractor's license revoked or suspended by another municipality within two (2) years prior to the date of application for issuance or renewal, and if the refusal, revocation or suspension by the other municipality was due to failure to comply with that municipality's building codes.

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- C. If the applicant has been convicted within two (2) years prior to the date of the application for any crimes or offenses under any Federal or State criminal statute or common law criminal offense, or for violation of any Township ordinance, so long as such convictions were for crimes or offenses related to the applicant's work as a contractor. The term "conviction" shall include guilty pleas and pleas of nolo contendere.
- D. If an unsatisfied civil judgment against the applicant exists in any court in any jurisdiction, and if the record of such court shows that such judgment was entered because of the applicant's failure to complete a contract as defined in this Part, or if such judgment was entered because of the applicant's failure to properly perform a contract as defined in this Part.

(Ord. 1733, 4/12/1993, §12)

§513. Revocation of License. The Director shall revoke any license issued under the provisions of this Part under the following circumstances:

- A. If the licensee falsely answered any question or questions contained on an application for licensing or renewal of licensing previously submitted to the Director.
- B. Failure of the licensee to maintain, during the license year, the policies of insurance required under the provisions of this Part.
- C. If the licensee violates any of the terms or provisions of this Part of the Borough of Pottstown Code of Ordinance, as amended, or any terms or provisions of this Part.
- D. If the licensee violates any condition or requirement of a building permit, sewer construction permit or highway permit issued by the Borough of Pottstown.
- E. If the licensee willfully deviates from or disregards any plans or specifications for any contracting job in any material respect without first obtaining the consent of the owner in writing to any such change and without first notifying the Director of any such change.
- F. If the licensee does any business through any person who is subject to the licensing requirements of this Part and who is not licensed as required by this Part.
- G. If the licensee conducts a contractor's business in the Borough under any name other than that under which he is licensed.

- H. If the licensee fails to comply with an order, demand or requirement lawfully made by the Director under the authority of this Part or other Borough ordinance.

(Ord. 1733, 4/12/1993, §13)

§514. Prohibited Acts. In addition to all other acts prohibited by the terms of this Part, those acts warranting revocation of a license under this Part shall also be prohibited, (Ord. 1733, 4/12/1993, §14)

§515. Fines and Penalties. In addition to refusal or revocation of a license as provided under this Part, any person, as defined in this Part, or any officer, agent, servant or employee thereof, who shall fail, neglect or refuse to comply with any of the terms or provisions of this Part shall, upon conviction thereof before a district justice, be sentenced to pay a fine or penalty not to exceed one thousand dollars (\$1,000.00) dollars and costs of prosecution for each offense, to be collected as like fines or penalties and costs are now by law collectible. The fine or penalty imposed by this Section shall be in addition to any other penalty imposed by this Part. (Ord. 1733, 4/12/1993, §15)

Part 6

Pawnbrokers

§601. License Required. No person shall use, exercise or carry on the trade or business of pawnbroker within the Borough without first obtaining a license as set forth in §301(B) of this Part. (Ord. 1866, 6/8/1998, §1)

§602. Definitions. The following words and phrases, as used in this Part, shall have the meanings described to them in this Section unless the context clearly indicates a different meaning. The masculine includes the feminine, the singular includes the plural, and the plural includes the singular.

PAWNBROKER – any person who:

- (1) Engages in the business of lending money on the deposit or pledge of personal property, securities or written evidence of indebtedness.
- (2) Purchases personal property with an express or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.
- (3) Lends money upon goods, wares or merchandise pledged, stored or deposited as collateral security.

PLEDGE – articles deposited with a pawnbroker as security for a loan in the course of his business.

PLEDGOR – the person who obtains a loan from a pawnbroker and delivers a pledge into the possession of a pawnbroker, unless the person discloses that he is or was acting for another in which case a "pledger" means the disclosed principal.

(Ord. 1866, 6/8/1998, §1)

§603. Records to be Kept.

1. Each pawnbroker shall keep a daily journal legibly written in the English language which shall be recorded:
 - A. A full and complete description of all articles purchases or pledged.
 - B. The time of purchase or pledge.
 - C. A description of each item pledged or purchased, including manufacture, model, color, size, serial number, etc.

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- D. The amount of money lent or paid thereof.
- E. The name, address and telephone number of seller (requiring positive identification, i.e., photo driver's license).

2. The daily journal shall be retained for a period of five (5) years.

(Ord. 1866, 6/8/1998, §1)

§604. Monthly Reports to Police. All pawnbrokers, on the last business day of each month, shall submit to the office of the Chief of Police a written record of all transactions where the original value of the item was greater than one hundred dollars (\$100.00). Such written records shall include the information contained in the daily journal and shall be presented in a legible form. (Ord. 1866, 6/8/1998, §1)

§605. Memorandum of Information to Pledgor. Every pawnbroker shall at a time of making or receiving any article in pawn, deliver to the pledgor a memorandum signed by the pawnbroker and the pledgor containing:

- A. The date.
- B. The amount of the loan.
- C. The rate of interest and storage charges.
- D. The time within which the article is to be redeemed.
- E. A description of the article pledged.

(Ord. 1866, 6/8/1998, §1)

§606. Prohibited Transaction. A pawnbroker shall not accept a pledge from a person under eighteen (18) years of age unless accompanied by a parent or a legal guardian. (Ord. 1866, 6/8/1998, §1)

§607. Revocation of License.

1. A pawnbroker's license may be revoked for failing to comply with any provisions of this Part, or if the pawnbroker is convicted of robbery, burglary, larceny, receiving stolen goods or any other crimes involving the unlawful obtaining of personal property.

2. Any pawnbroker who intentionally receives, retains or disposes of property of another knowing or believing it has been stolen, unless the property is received, retained or disposed of with the intent of restore it to the owner subject to the penalties of the Pennsylvania Crimes Code, Title 18, §3925, relating to "receiving stolen property."

(Ord. 1866, 6/8/1998, §1)

Part 7

Adult Entertainment Businesses

§701. Purpose and Findings.

1. Purpose.

- A. Pursuant to the authority granted in the Borough Code to prohibit nuisances, to promote the health, cleanliness, comfort and safety of the citizens of the Borough of Pottstown and to regulate the time of opening and closing and the conduct of places of public entertainment, amusement and recreation, the Borough of Pottstown enacts this Part to minimize and control the adverse effects of adult entertainment businesses and thereby protect the health, safety and welfare of its citizens; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of blight.
- B. The Borough Council has determined that locational criteria alone does not adequately protect the health, safety and general welfare of the people of the Borough, and that licensing is a legitimate and reasonable means of accountability to insure that operators of adult entertainment businesses comply with reasonable regulations and to insure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.
- C. The Borough Council does not intend this Part to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of adult entertainment businesses.

2. Findings. The Borough Council finds:

- A. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that may go uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
- B. Certain employees of sexually oriented businesses defined in this Part as adult theaters and cabarets engage in higher incident of certain types of sexually oriented behavior at these businesses than employees of other establishments.
- C. Sexual acts, including masturbation, oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semiprivate booths or cubicles for viewing films, videos or live sex shows, as defined un-

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der this Part as adult book stores, adult novelty shops, adult video stores, adult motion picture theaters or adult arcades.

- D. Offering and providing such space encourages such activities which create unhealthy conditions.
- E. Persons frequent certain adult theaters, adult arcades and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- F. At least (50) fifty communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (AIDS), genital herpes, hepatitis B, non B amebiasis, salmonella infections and shigella infections.
- G. As of May 1, 1995, there have been 13,559 reported cases of AIDS in the State of Pennsylvania.
- H. Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Montgomery County, Pennsylvania.
- I. The Surgeon General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components and from an infected mother to her newborn.
- J. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- K. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
- L. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.
- M. The findings noted in subsections (A) through (L) raise substantial governmental concerns. Adult entertainment businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

- N. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the adult entertainment businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the adult entertainment business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the Borough. It is appropriate to require reasonable assurances that the licensee is the actual operator of the adult entertainment business, fully in possession and control of the premises and activities occurring therein.
- O. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.
- P. Requiring licensees of adult entertainment businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
- Q. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the adult entertainment business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.
- R. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this Part is designed to prevent or who are likely to be witnesses to such activity.
- S. The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant is likely to engage in that conduct in contravention of this Part.
- T. The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.
- U. The general welfare, health and safety of the citizens of the Borough will be promoted by the enactment of this Part.

(Ord. 1894, 8/9/1999, §1)

§702. Definitions. As used in this Part, the following words and phrases shall have the meanings indicated unless the context clearly indicates a different meaning:

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A. The defined terms in Ord. 1880, 2/3/1999 [Chapter 27, §201], are hereby adopted by reference and include the definitions of adult arcade, adult bookstore, adult cabaret/dance hall/private club/bar/tavern/nightclub/restaurant or other similar establishment; adult motion picture theater, adult motel; peep shows; sexual encounter center; nudity or a state of nudity; seminude or in a seminude condition; specified anatomical areas; specified sexual activities.

B. Other Terms.

KNOWINGLY – having general knowledge of or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- (a) The character and content of any material or performance described herein which is reasonably susceptible of examination by a licenses or person.
- (b) The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the licenses of person made a reasonable bona fide attempt to ascertain the true age of such minor.

LICENSEE – a person in whose name a license to operate an adult entertainment business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in an adult entertainment business.

SPECIFIED CRIMINAL ACTIVITY – any of the following offenses:

- (a) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling or distribution of a controlled substance; or any similar offenses to those described above under the criminal or/penal code of other states or countries.
- (b) For which:
 - 1) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense.
 - 2) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.

- 3) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.
- (c) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

TRANSFER OF OWNERSHIP OR CONTROL OF AN ADULT ENTERTAINMENT BUSINESS – means and includes any of the following:

- (1) The sale, lease or sublease of the business.
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means.
- (3) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 1894, 8/9/1999, §2)

§703. License Required.

1. It is unlawful:
 - A. For any person to operate an adult entertainment business without a valid adult entertainment business license issued by the Borough pursuant to this Part.
 - B. For any person who operates an adult entertainment business to employ a person to work for the adult entertainment business who is not licensed as an adult entertainment business employee by the Borough pursuant to this Part.
 - C. For any person to obtain employment with an adult entertainment business without having secured an adult entertainment business employee license pursuant to this Part.
2. An application for a license must be made on a form provided by the Borough.
3. All applicants must be qualified according to the provisions of this Part. The application may request and the applicant shall provide such information (including fingerprints) as to enable the Borough to determine whether the applicant meets the qualifications established in this Part.

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4. If a person who wishes to operate an adult entertainment business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate an adult entertainment business is other than an individual, each individual who has a twenty (20) percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following Section and each applicant shall be considered a licensee if a license is granted.
5. The completed application for an adult entertainment business license shall contain the following information and shall be accompanied by the following documents:
 - A. If the applicant is:
 - (1) An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least eighteen (18) years of age.
 - (2) A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any.
 - (3) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation and qualified and authorized to conduct business in Pennsylvania, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
 - B. If the applicant intends to operate the adult entertainment business under a name other than that of the applicant, he or she must (i) state the adult entertainment business's fictitious name and (ii) submit the required registration documents.
 - C. Whether the applicant or a person residing with the applicant has been convicted of a specified criminal activity as defined in this Part and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.
 - D. Whether the applicant or a person residing with the applicant has had a previous license under this Part or other similar adult entertainment business ordinance from another municipality or county denied, suspended or revoked, including the name and location of the adult entertainment business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation and whether the applicant or a person residing with the applicant has been a partner in a partnership or an

officer, director or principal stockholder of a corporation that is licensed under this Part whose license has previously been denied, suspended or revoked, including the name and location of the adult entertainment business for which the permit was denied, suspended or revoked, as well as the date of denial, suspension or revocation.

- E. Whether the applicant or person residing with the applicant holds any other licenses under this Part or other similar adult entertainment business ordinance from another municipality or county and, if so, the names and locations of such other licensed businesses.
- F. The specific classification of adult entertainment use license for which the applicant is filing.
- G. The location of the proposed adult entertainment business, including a legal description of the property, street address and telephone number(s), if any.
- H. The applicant's mailing address and residential address.
- I. A recent photograph of the applicant(s).
- J. The applicant's driver's permit number, Social Security number and/or his/her State or Federally issued tax identification number.
- K. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
- L. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines, the property to be certified and:
 - (1) Any of the following located within five hundred (500) feet of the property to be certified:
 - (a) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.
 - (b) A public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities; school includes the school grounds, but does not include the facilities

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used primarily for another purpose and only incidentally as a school.

- (c) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the Commonwealth of Pennsylvania.
 - (d) A boundary of a residential district as defined in the Pottstown Zoning Ordinance [Chapter 27].
 - (e) Any residential use.
 - (f) A public park or recreational area which has been designated for park or recreational activities including, but not limited to, park, playground, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths or other similar public land within the Borough which is under the control, operation or management of the Borough park and recreation authorities.
- (2) Or within one thousand (1,000) feet of any other adult entertainment use.
- M. If an applicant wishes to operate an adult entertainment business which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space films, video cassettes, other video reproductions or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall also comply with the application requirements set forth in §712.
6. Before any applicant may be issued an adult entertainment business employee license, the applicant shall submit on a form to be provided by the Borough the following information:
- A. The applicant's name or any other name (including "stage" names) or aliases used by the individual.
 - B. Age, date, and place of birth.
 - C. Height, weight, hair and eye color.
 - D. Present residence address and telephone number.
 - E. Present business address and telephone number.
 - F. Date, issuing state and number of driver's license or other identification card information.
 - G. Social Security number.

- H. Proof that the individual is at least eighteen (18) years of age.
7. Attached to the application form for an adult entertainment business employee license as provided above shall be the following:
- A. A color photograph of the applicant clearly showing the applicant's face and the applicant's fingerprints on a form provided by any police department. Any fees for the photographs and fingerprints shall be paid by the applicant.
 - B. A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, municipality, state or country, any business or has ever had a license, permit or authorization to do business denied, revoked or suspended or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the name, the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation or suspension. A copy of any order or denial, revocation or suspension shall be attached to the application.
 - C. A statement whether the applicant has been convicted of a specified criminal activity, as defined in this Part and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

(Ord. 1894, 8/9/1999, §3)

§704. Issuance of License.

- 1. Upon the filing of said application, in a fully completed form, for an adult entertainment business employee license, the Borough shall issue a temporary license to said applicant. The application shall then be referred to the appropriate Borough official and/or consultant for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the Borough shall issue a license unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:
 - A. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
 - B. The applicant is under the age of eighteen (18) years.
 - C. The applicant has been convicted of a "specified criminal activity" as defined in this Part.

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- D. The adult entertainment business employee license is to be used for employment in a business prohibited by local or State law, statute, rule or regulation or prohibited by a particular provision of this Part.
 - E. The applicant has had an adult entertainment business employee license revoked by the Borough within two (2) years of the date of the current application. If the adult entertainment business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in §709.
- 2. A license granted to this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the Borough that the applicant has not been convicted of any specified criminal activity, as defined in this Part, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in §705.
 - 3. Within thirty (30) days after receipt of a Borough complete adult entertainment business application, the Borough shall approve or deny the issuance of a license to an applicant. The Borough shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:
 - A. An applicant is under eighteen (18) years of age.
 - B. An applicant or person with whom applicant is residing is overdue in payment to the Borough of taxes, fees, fines or penalties assessed against or imposed upon him/her in relation to any business.
 - C. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
 - D. An applicant or a person with whom the applicant is residing has been denied a license by the Borough to operate an adult entertainment business within the preceding twelve (12) months or whose license to operate an adult entertainment business has been revoked within the preceding twelve (12) months.
 - E. An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this Part.
 - F. The premises to be used for the adult entertainment business has not been approved by the Fire Marshall and the Building Official as being in compliance with applicable laws and ordinances.
 - G. The license fee required by this Part has not been paid.

- H. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this Part.
4. The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the adult entertainment business and the specific classification of adult entertainment use for which the license is issued. All licenses shall be posted in a conspicuous place at or near the entrance to the adult entertainment business so that they may be easily read at any time.
 5. The Fire Marshall and the Code Enforcement Officer shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the Borough.
 6. An adult entertainment business license shall issue for the specific classification of adult entertainment use as permitted by ordinance and applied for.

(Ord. 1894, 8/9/1999, §4)

§705. Fees.

1. Every application for an adult entertainment business license (whether for a new license or for renewal of an existing license) shall be accompanied by a nonrefundable application and investigation fee, which amount shall be set from time to time by Borough Council, by resolution.
2. In addition to the application and investigation fee required above, every adult entertainment business that is granted a license (new or renewal) shall pay to the Borough an annual nonrefundable license fee within thirty (30) days of license issuance or renewal, which amount shall be set from time to time by Borough Council, by resolution.
3. Every application for an adult entertainment business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual nonrefundable application, investigation and license fee, which amount shall be set from time to time by Borough Council, by resolution.
4. All license applications and fees shall be submitted to the Borough Manager.

(Ord. 1894, 8/9/1999, §5)

§706. Inspection.

1. An applicant or licensee shall permit representatives of the Borough, including the Fire Marshall, Zoning Officer or other official and/or consultant to inspect the

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premises of an adult entertainment business for the purpose of insuring compliance with the law at any time it is occupied or open for business.

2. A person who operates an adult entertainment business or his agent or employee commits a violation of this Part if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

(Ord. 1894, 8/9/1999, §6)

§707. Expiration of License.

1. Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in §703. Application for renewal shall be made at least thirty (30) days before the expiration date and, when made less than thirty (30) days before the expiration date, the date of expiration of the license will not be extended.
2. When the Borough denies renewal of a license, the applicant shall not be issued a license for one year (1) from the date of denial. If, subsequent to denial, the Borough finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

(Ord. 1894, 8/9/1999, §7)

§708. Suspension. The Borough shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

- A. Violated or is not in compliance with any provision of this Part.
- B. Refused to allow an inspection of the adult entertainment business premises as authorized by this Part or knowingly permitted gambling by any person on the adult entertainment business premises.

(Ord. 1894, 8/9/1999, §8)

§709. Revocation.

1. The Borough shall revoke a license if a cause of suspension in §708 occurs and the license has been suspended within the preceding twelve (12) months.
2. The Borough shall revoke a license if it determines that:

- A. A licensee gave false or misleading information in the material submitted during the application process.
 - B. A licensee has knowingly allowed possession, use or sale of controlled substances on the premises.
 - C. A licensee has knowingly allowed prostitution on the premises.
 - D. A licensee knowingly operated the adult entertainment business during a period of time when the licensee's license was suspended.
 - E. A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the licenses premises.
 - F. A licensee is delinquent in payment to the Township, County or State for any taxes or fees past due.
3. When the Borough revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued an adult entertainment business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Borough finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.
 4. After denial of an application, or denial of a renewal of an application or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

(Ord. 1894, 8/9/1999, §9)

§710. Transfer of License. A licensee shall not transfer his/her license to another, nor shall a licensee operate an adult entertainment business under the authority of a license at any place other than the address designated in the application. (Ord. 1894, 8/9/1999, §10)

§711. Location of Adult Entertainment Business.

1. A person commits a violation of this Part if that person operates or causes to be operated an adult entertainment business in any zoning district other than HM Heavy Manufacturing District, as defined and described in the Borough Zoning Ordinance [Chapter 27].
2. A person commits a violation of this Part if the person operates or causes to be operated an adult entertainment business within five hundred (500) feet of:

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- A. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.
- B. A public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities; school includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.
- C. Any other adult entertainment use or within five hundred (500) feet of a boundary of a residential district as defined in the Borough Zoning Code [Chapter 27].
- D. Any other residential use.
- E. A public or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths or other similar public land within the Borough which is under the control, operation or management of the Borough park and recreation authorities.
- F. A person commits a violation of this Part if that person causes or permits the operation, establishment, substantial enlargement or transfer of ownership or control of an adult entertainment business within one thousand (1,000) feet of another adult entertainment use.
- G. A person commits a violation of this Part if that person causes or permits the operation, establishment or maintenance of more than one (1) adult entertainment business in the same building, structure or portion thereof, or the increase of floor area of any adult entertainment business in any building, structure or portion thereof containing another adult entertainment business.
- H. For the purpose of subsection (2) of this Section, measurement shall be made in a straight line, without regard to the building or structure used as the part of the premises where an adult entertainment business is conducted, to the nearest property line of the premises of a use listed in subsection (2). Presence of a municipal, County or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

(Ord. 1894, 8/9/1999, §11)

§712. Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms.

1. A person who operates or causes to be operated an adult entertainment business which exhibits on the premises, in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas shall comply with the following requirements:
 - A. Upon application for an adult entertainment license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of interior of the premises to an accuracy of plus or minus six (6) inches. The Borough may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premise has not been altered since it was prepared.
 - B. The application shall be sworn to be true and correct by the applicant.
 - C. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Borough.
 - D. It is the duty of the licensee of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
 - E. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
 - F. It shall be the duty of the licensees to ensure that the view area specified in subsection (2)(E) remains unobstructed by any doors, curtains, partitions,

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walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1)(A) of this Section.

- G. No viewing room may be occupied by more than one (1) person at any time.
 - H. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candle as measured at the floor level.
 - I. It shall be the duty of the licensee to ensure that the illumination described above as maintained at all times that any patron is present in the premises.
 - J. No licensee shall allow openings of any kind to exist between viewing rooms or booths.
 - K. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
 - L. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
 - M. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
 - N. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.
2. A person having a duty under subsection (1)(A) through (1)(N), above, commits a violation of this Part if he knowingly fails to fulfill that duty.

(Ord. 1894, 8/9/1999, §12)

§713. Additional Regulations for Escort Agencies.

- 1. An escort agency shall not employ any person under the age of eighteen (18) years.
- 2. A person commits a violation of this Part if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years.

(Ord. 1894, 8/9/1999, §13)

§714. Additional Regulations for Nude Model Studios.

1. A nude model studio shall not employ any person under the age of eighteen (18) years.
2. A person under the age of eighteen (18) years commits a violation of this Part if the person appears seminude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.
3. A person commits a violation of this Part if the person appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
4. A nude model studio shall not place or permit a bed, sofa or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(Ord. 1894, 8/9/1999, §14)

§715. Additional Regulations Concerning Public Nudity.

1. It shall be a violation of this Part for a person who knowingly and intentionally, in an adult entertainment business, appears in a state of nudity or depicts specified sexual activities.
2. It shall be violation of this Part for a person who knowingly or intentionally, in an adult entertainment business, appears in a seminude condition unless the person is an employee who, while seminude, shall be a least ten (10) feet from any patron or customer and on a stage at least two (2) feet from the floor.
3. It shall be a violation of this Part for an employee, while seminude, in an adult entertainment business, to solicit any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity to any employee while said employee is seminude in an adult entertainment business.

(Ord. 1894, 8/9/1999, §15)

§716. Prohibition Against Children in an Adult Entertainment Business. A person commits a violation of this Part if the person knowingly allows a person under the age of eighteen (18) years on the premises of an adult entertainment business. (Ord. 1894, 8/9/1999, §16)

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§717. Hours of Operation. No adult entertainment business may remain open at any time between the hours of 1:00 a.m. and 6:00 a.m. on weekdays and Saturdays, and 1:00 a.m. and 12:00 p.m. on Sundays. (Ord. 1894, 8/9/1999, §17)

§718. Exemptions.

1. It is a defense to prosecution under §715 that a person appearing in a state of nudity did so in a modeling class operated:
 - A. By a proprietary school, licensed by the Commonwealth of Pennsylvania, a college, junior college or university supported entirely or partly by taxation.
 - B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.
 - C. In a structure:
 - (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing.
 - (2) Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.
 - (3) Where no more than one (1) nude model is on the premises at any one (1) time.

(Ord. 1894, 8/9/1999, §18)

§719. Violations and Penalties. Any person, firm or corporation violating any provisions of this Part or the rules and regulations approved and hereinafter adopted shall, upon summary conviction before any district justice, pay a fine not exceeding six hundred dollars (\$600.00) and costs of prosecution and, in default of one (1) payment of the fine and costs, the violator may be sentenced to the County jail for a term of not more than thirty (30) days. Whenever such person shall have been officially notified by the Borough or by the service of a summons in a prosecution or in any other official manner that he is committing a violation of this Part or the rules and regulations approved and hereinafter adopted, each day that he shall continue such violation after such notification shall constitute a separate offense punishable by a like fine or penalty. Such fines or penalties shall be collected as like fines or penalties are now by law collected. (Ord. 1894, 8/9/1999, §19)

Part 8

[Reserved¹]

¹ Editor's Note: Former Part 8, Property, Transfer of, was superseded by Ord. No. 2009. See Part 14 of Chapter 5, Code Enforcement, for current provisions.

Part 9

Private Communication License

§901. License Requirement.

No person shall construct, operate or continued to operate private communications system which occupies the streets, public right-of-ways and public places within the Borough of Pottstown without having been issued a license by the Public Works Department.

(Ord. 1996, 3/14/2005, §1)

§902. Purpose.

The purpose of this Part is:

- A. To regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of a private communications system in, upon, along, across, above, over, under or in any manner connected with the streets, public ways or public places within the corporate limits of the Borough, as now or in the future may exist.
- B. To provide the Borough with compensation for occupation and use of the Borough's rights-of-way for a private communications system.
- C. To provide the Borough with compensation for acquisition and maintenance of Borough's rights-of-way when used for commercial purposes.
- D. To provide the Borough with compensation for the cost of regulation imposed by this Part on a private communication system.

(Ord. 1996, 3/14/2005, §2)

§903. Definitions.

For the purposes of this Part and any license in accordance herewith, the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise specifically provided in this Part, unless the context clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of Borough Council.

CABLE COMMUNICATIONS SYSTEM – a nonbroadcast facility consisting of a set of transmission paths with associated signal generation, reception and control equipment, under common ownership and control, which distributes or is de-

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signed to distribute to subscribers the signals of one or more television broadcast stations and is franchised by the Borough.

CUSTOMER – a person who for a charge or payment of a fee receives, sends or uses any signal or service provided, collected or distributed by a private communications system license by the Borough,

FCC – the Federal Communications Commission or its legally appointed successor.

LICENSE – the privilege granted by the Borough by which the Borough authorizes a person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a private communications system that occupies the streets, public ways or public places within the Borough. Any license issued in accordance herewith shall be a nonexclusive license.

LICENSEE – the person or its legal successor or interest who is issued a license or licenses in accordance with the provisions of this Part for the erection, construction, reconstruction, operation, maintenance, dismantling, testing, repair and use of a private communications system in the Borough.

LOCAL ACCESS TRANSPORT AREA (LATA) – that geographic area and communications system in which the Borough of Pottstown is located and in which Bell of Pennsylvania is authorized by the Public Utilities Commission of Pennsylvania to provide local exchange access telecommunication services.

PRIVATE COMMUNICATIONS SYSTEM – any communications equipment or facilities, not part of the LATA or part of a cable communications system franchised by the Borough, that in any manner is connected with the streets, public ways or public places within the corporate limits of the Borough, as now or in the future may exist.

STREET – any area established for vehicular or public access use or the entire width between the boundary lines of every way publicly maintained when any part thereof is open for public purposes. "Street" includes, but is not limited to, highway, avenue, road, alley, right-of-way, lane, boulevard, concourse, bridge, tunnel, parks, parkways, waterways, docks, overheads, wharves and piers.

TOTAL LOCAL GROSS REVENUES – all cash, credits or property of any kind or nature reported as revenue items on licensee's audited income statements arising from or attributable to the sale or exchange of private communications services by the licensee within the Borough; or in any way derived from the operation of its private communications system, including, but not limited to, any interconnection between its system in the Borough and any system whatsoever. This sum shall be the basis for computing the fee imposed pursuant to this Part. Such sum shall not include any bad debts, deposits, promotional or vendor discounts or credits nor sales, service, occupation or other excise tax to the extent that such taxes are

charged separately from normal service charges and are remitted by the licensee directly to the taxing authority.

(Ord. 1996, 3/14/2005, §3)

§904. Service of Notice.

All notices required to be given to the Borough under any provision of this Part shall be deemed served when delivered by hand in writing to the Pottstown Borough Manager, at 100 E. High Street, Pottstown, Montgomery County, Pennsylvania, during normal business hours.

(Ord. 1996, 3/14/2005, §4)

§905. No Liability or Warranty.

This Part shall not be construed to create or hold the Borough responsible or liable for any damage to persons or property by reason of any inspection or reinspection authorized herein or failure to inspect or reinspect, nor shall the issuance of any license nor the approval or disapproval of any installation authorized herein constitute any representation, guarantee or warranty of any kind by, nor create any liability upon, the Borough or any official, agent or employee thereof.

(Ord. 1996, 3/14/2005, §5)

§906. Length of License.

1. Any annual license issued by the Borough in accordance herewith shall be a non-exclusive license for the use of the streets, public ways or public places within the Borough as specified in the license for the erection, construction, reconstruction, operation, maintenance, dismantling, testing and use of a private communications system.
2. Any license issued by the Borough is renewable annually upon establishment by the licensee to the satisfaction of the Borough that the licensee is in compliance with this Part all applicable federal, state and local ordinances and regulations and the space occupied is not needed for a public purpose.

(Ord. 1996, 3/14/2005, §6)

§907. License Locations.

1. Any license issued for a private communications system in accordance herewith shall apply only to the location or locations stated on the license or licenses.

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2. Nothing in this Part shall be construed as a representation, promise or guarantee by the Borough that any permit or other authorization required under any Borough law for the construction or installation of a private communications system shall be issued.

(Ord. 1996, 3/14/2005, §7)

§908. Technical Standards.

All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance and dismantling of a private communications system provided for herein shall be in accordance with all applicable FCC and other federal, state and local laws and regulations.

(Ord. 1996, 3/14/2005, §8)

§909. Powers and Duties of Public Works Department.

The Public Works Supervisor of the Borough of Pottstown shall have the following powers and duties:

- A. Receive and review applications for licenses for any private communications system.
- B. Review and audit all reports and filings submitted by the licensee to the Borough pursuant to this Part.
- C. Submit regulations regarding the construction, reconstruction, operation, maintenance, dismantling, testing or use of any private communications system established by license in accordance herewith to the Borough Council for review and promulgation.

(Ord. 1996, 3/14/2005, §9)

§910. Bonds.

1. All persons submitting a request for a license to construct a private communications system in accordance herewith shall file with their request bonds solely for the protection of the Borough with a surety company or trust company or companies as surety or sureties in an amount determined by the Director of Public Works to protect the Borough from any and all damages or costs suffered or incurred by the Borough as a result thereof, including, but not limited to, attorney's fees and costs of any action or proceeding, and including the full amount of compensation, indemnification, cost of removal or abandonment of any property or

other costs which may be in default, up to the full principal amount of such bond; and the condition shall be a continuing obligation during the entire term of any license issued in accordance herewith and thereafter until the licensee shall have satisfied in full any and all obligations to the Borough which arise out of or pertain to the license for a private communications system.

2. None of the provisions of this section nor any bond accepted by the Borough pursuant hereto, nor any damages recovered by the Borough thereunder, shall be construed to excuse the faithful performance by or limit the liability of the licensee under this Part or any license issued in accordance herewith or for damages either to the full amount of such bond or otherwise.

(Ord. 1996, 3/14/2005, §10)

§911. Compensation and License Fee.

It shall be a term and condition of any license issued in accordance herewith that as part of the consideration supporting the issuance of such license and the Borough's permission thereby to occupy and use the streets of the Borough, that the licensee shall pay each year to the Borough the following compensation and license fees. Future modifications to the License fee shall be made from time to time by a resolution of Borough Council.

- A. Any private communications system which serves no customers other than itself shall pay compensation and license fees in the amount of \$1 per linear foot for each diameter inch or less of underground conduit or wire or each .250 diameter inch or less of aerial wire per annum. In no event shall the fee be less than \$250 per annum.
- B. Any private communication system that serves customers within the Borough shall pay annually 5% of the annual total local gross revenues derived from such customers.

(Ord. 1996, 3/14/2005, §11)

§912. Payment and Audit of Compensation and License Fees.

1. The annual compensation and license fee provided for in §911(A) shall be payable annually on or before February 1 of each calendar year.
2. The annual compensation and license fee provided for in §911(B) shall be assessed quarterly for the preceding quarter, as of March 31, June 30, September and December 31 of each year.
 - A. Each quarterly payment shall be payable and reportable no less than 30 days after the relevant assessment date.

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- B. Each payment shall be accompanied by a report from the licensee in a form approved by the Borough showing the basis for the computation and such other relevant data as may be required by the Borough.
 - C. Each of such reports shall contain a notarized verification by the chief financial officer of the licensee and such reports shall be verified annually, within 90 days of the close of business of the last day of the calendar year, by a certified public accountant selected by the Borough at the expense of the licensee.
 - D. Failure to comply strictly with this section shall be deemed to be a violation of this Part and shall subject the licensee to all penalties and remedies, both legal and equitable which are available to the Borough.
3. The acceptance of any payment required hereunder by the Borough shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the Borough may have for additional sums due and payable.
- A. All fee payments shall be subject to audit by the Borough and assessment or refund if the payment is found to be in error.
 - B. In the event such audit results in an assessment by and an additional payment to the Borough, such additional payment shall be subject to interest at the rate of 6% per year and to a penalty of 6% per year, which shall be due and payable immediately.
4. Nothing in this Part shall be construed to limit the liability of the licensee for all applicable federal, state and local taxes.

(Ord. 1996, 3/14/2005, §12)

§913. Indemnity and Insurance.

1. The Borough shall not at any time be liable for any injury or damage occurring to any person or property from any cause whatsoever, including damages from the Borough's negligent omissions, if any, arising from the use, operation or condition of the licensee's private communications system.
2. The licensee shall indemnify, save and hold harmless and defend the Borough 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, reasonable legal fees and court costs; judgments; injuries; liabilities or damages, in law or equity, of any and every kind and nature whatsoever, including damages caused by or arising out of any act of negligent omission of the Borough, its offi-

cers, servants, agents, employees or contractors, or otherwise, arising out of or in any way connected with the installation, operation, maintenance or condition of the licensee's private communications system.

3. The Borough Council, in consultation with the Borough Solicitor, shall set the type and coverage of insurance required. In setting the amount, the Borough shall take into consideration the size and location of the private communications system, the financial resources of the licensee, risk involved to the Borough and to the general public, as well as other salient factors.

(Ord. 1996, 3/14/2005, §13)

§914. Police Powers.

Nothing in this Part or in any license issued in accordance herewith shall be construed as an abrogation by the Borough of its police powers.

(Ord. 1996, 3/14/2005, §14)

§915. Use of Streets and Pole Attachments.

1. Before commencing construction of its private communications system in, above, over, under, across, through or in any way connected the streets, public ways or public places of the Borough, the licensee shall first obtain the written approval of the Director of Public Works.
2. Upon obtaining such written approval, the licensee shall give the Director of Public Works written notice within a reasonable time of proposed construction, but in no event shall such notice be given less than ten (10) days before such commencement.
3. Any person who submits a request for a license in accordance herewith shall include therein proposed agreements for the use of existing utility poles and conduits, if applicable, with the owner(s) of such facilities to be used or affected by the construction of the proposed private communications system, which agreements shall become effective on the date of execution of the license issued in accordance herewith in the event that such person is issued a license.
4. It shall be unlawful for the licensee or any other person 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 Subsections 1 and 2 hereof. Violation of this section shall subject the licensee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the Borough.

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5. The licensee shall restore any street or sidewalk it has disturbed in accordance with the relevant provision of the Borough's Street and Sidewalk Ordinance² and shall, at its own cost and expense, restore and replace any other property disturbed, damaged or in any other way injured by or on account of its activities to as good as the condition such property was in immediately prior to the disturbance, damage or injury or pay the fair market value of such property to its owner.
6. The licensee 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 Borough because of street or other public excavation, construction, repair, regrading, or grading; traffic conditions; installation of sewers, drains, water pipes, Borough owned power or signal lines, tracks; vacation or relocation of streets or any other type of structure or improvement of a public agency, or any other type of improvement necessary for the public health, safety and welfare.
7. Nothing in this Part or any license issued in accordance herewith shall be construed as authorizing the licensee to erect and maintain new poles in areas serviced by existing poles. The licensee shall obtain written approval from the Director of Public works before erecting any new poles or underground conduits where none exist.
8. The licensee shall maintain all wires, conduits, cables, and other real and personal property and facilities in good condition, order and repair.
9. The licensee shall keep accurate, complete and current maps and records of its system and facilities which occupy the streets, public ways and public places within the Borough and shall furnish as soon as they are available two (2) complete copies of such maps and records to the Director of Public Works and Code Enforcement Office.
10. The licensee shall comply with all rules and regulations of the Borough governing the construction and installation of private communications systems. In addition:
 - A. All aerial cables and wires shall be installed parallel with existing telephone and electric utility wires.
 - B. Multiple aerial configurations shall be in parallel arrangement and bundled, in accordance with engineering and safety considerations.
 - C. All underground installations shall be in the appropriate size and type conduit or other enclosures approved by the Director of Public Works.
 - D. All installations shall be underground in those areas of the Borough where both telephone and electric utilities' facilities are underground at the time of the installation of the licensee's private communications system.

² Editor's Note: See Ch. 21, Streets and Sidewalks.

- (1) In areas where both telephone and electric utilities' facilities are above ground at the time of the installation of the licensee's private communications system, the licensee may install its system above ground on existing utility poles only, upon the condition that at such time as those facilities are placed underground by the telephone and electric utility companies, the licensee shall likewise place its facilities underground at its sole cost and expense.
- E. The licensee upon reasonable notice by the Borough shall temporarily or permanently remove, adjust, raise or lower its facilities within the right-of-way when the Borough determines that such action is needed for public use of the right-of-way, including but not limited to the passage of nonstandard vehicles.
- F. The licensee shall obtain the written permission of the owner including the Borough of any tree or other vegetation before it trims or prunes the same.

(Ord. 1996, 3/14/2005, §15)

§916. Transfers and Assignments.

1. The licensee shall not transfer or assign its interest in any license issued in accordance herewith without the prior written authorization of the Director of Public Works.
2. Nothing in any approval by the Director of Public Works authorizing any transfer or assignment of any license issued in accordance herewith shall be construed to waive or release any rights of the Borough in and to the streets, public ways and public places of the Borough or as a release of any part of the Borough's police powers.

(Ord. 1996, 3/14/2005, §16)

§917. Penalties for Violation.

In addition to any other legal and equitable remedies permitted by law, any person or persons, firm or corporation who shall fail to comply with any provision of this Part, upon conviction thereof, shall be sentenced to pay a fine of not more than \$600 per day, plus costs of prosecution. However, each and every day in which any person or persons, firm or corporation shall be in violation of any provision of this Part shall constitute a separate offense.

(Ord. 1996, 3/14/2005, §17)