

CHAPTER 13

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Part 1

Amusements

§101. Licensing Certain Amusements. From and after the passage of this Part, it shall be unlawful for any person or persons, firms or corporations, either principal or agent, without first complying with the terms of this Part and if required, paying the designated fee:

1. To show, exhibit or conduct a circus or other form of public amusement, entertainment, exhibition, demonstration or advertisement, in which any part of a public highway is used for any purpose connected therewith, unless upon payment of a license fee as set forth by resolution of Borough Council, hereinafter "Council," except for non-commercial, fraternal, patriotic or charitable affairs for which the Borough Manager shall, upon approval by Council, issue a permit without charge.

2. To parade, show or demonstrate upon any of the public highways of the Borough without first submitting to the Borough Manager a plan thereof as to time involved and space covered for which parade, show or demonstration the Manager shall charge, subject to the same exceptions named in paragraph 1, a license fee as set by resolution of Council, unless same person or persons shall have paid a license fee for a show or circus to be given in connection therewith, in which case no separate fee for parade shall be charged.

3. To use or permit the use of any building or land, or part thereof, within the limits of the Borough for any show, exhibition, demonstration, sale of merchandise in connection therewith, and theatrical performance or their like to which the public is admitted, either free or upon payment of admission, and a license fee as set by resolution of Council shall be charged; no license to be issued to the same person for a longer period than a week, subject however, also to exceptions contained in paragraph 1 and those businesses supervised by the Pennsylvania Liquor Control Board.

4. To conduct dances within the Borough to which the public is admitted, a license fee as set by resolution of Council shall be charged in cases where at least one dance shall be held by the same person or persons once per week, and in cases where public dances are held by the day or night by the same or different persons, a license fee as set by resolution of Council shall be charged except where the funds derived from such dance or dances held shall be for a purely charitable, fraternal or patriotic cause or the dancing activity is subject to the supervision of the Pennsylvania Liquor Control Board.

5. To show, exhibit, or conduct operas and moving pictures, and amusement establishments of a similar nature, without first submitting to the Borough Manager a schedule indicating the days and hours of operation and complying with Borough safety and health ordinances, and paying a license fee as set by resolution of Council to the Treasurer of the Borough on or before the tenth day of January of each and every year.

6. To use or permit the use of any building or land or part thereof, within the limits of the Borough for any poolroom, billiard room, shooting gallery, skating rink, or bowling alley, without first submitting to the

Borough Manager a schedule indicating days and hours of operation and complying with Borough safety, health and tax ordinances, and paying a license fee as set by resolution of Council to the Borough on or before the tenth day of January of each and every year.

(Ord. 586, 9/25/1978, §1; as amended by Ord. 675, 11/17/1986)

§102. Application. All licenses required by this Part shall be obtained from the Borough Manager, and all the fees required to be paid shall be paid to the Borough before any of the aforesaid amusements, entertainments, shows, or other events herein named shall be held. In addition, it is necessary for all applications for a license to be submitted in writing to the Borough Manager prior to the time such license is to take effect. Such application shall include:

1. The name and business address of the person who proposes to conduct the activity;
2. The type of activity proposed;
3. The date or dates on which the proposed activity is to be conducted;
4. The hours during which the proposed activity is to be conducted on each date submitted;
5. The site where the activity is to be conducted;
6. The number of people anticipated at the activity.

A separate application must be filed if there are multiple sites, with one application for each site with such application being acknowledged and containing a statement that the facts set forth therein are true and correct under the penalties of perjury. The Borough Manager shall provide application forms which must be used by the applicant.

(Ord. 586, 9/25/1978, §2; as amended by Ord. 675, 11/17/1986)

§103. Requirements. No license shall be issued under this Part until:

1. The application required by this Part has been approved by Borough Council;
2. A certified copy of all State and County permits are filed with the Borough Manager in any instance in which such State and County permits are required to conduct a proposed activity;
3. The Borough Council or its agents, have inspected the premises where the activity is to be held to ascertain whether such premises are suitable for the purpose and free from unsanitary, dangerous, or hazardous features;
4. Evidence of public liability insurance has been filed with the Borough Manager;
5. Any other investigation or inspection the Borough Council deems necessary to secure the facts needed by it to determine if the application should be approved may be held.

Borough Council may reject the application or refuse to grant the license if any unsanitary, hazardous or dangerous conditions exist, or if the location is deemed unsuitable because the conduct of the proposed activity therein would create a traffic hazard, or because of the lack of accommodations for the number of persons and/or vehicles likely to be attracted thereto, or if the proposed activity is likely to create unreasonable annoyance to the residents or inhabitants of the locality; in every case, the Borough Council approving the application and issuing a license shall state in the license the type of activity authorized and the time for which the license is to remain in effect.

(Ord. 586, 9/25/1978, §3)

§104. Liability.

1. Every person or organization applying for a license for an activity described under this Part shall enter into an agreement whereby he or they save or saves the Borough of Emmaus harmless from any and all liabilities and causes of action which might arise by virtue of the granting of such license in the Borough of Emmaus; and conditioned further, that no damage will occur to the streets, bridges and other public or private property in the Borough or adjacent thereto as a result of the activity, and that the licensee will not permit any dirt, paper, litter, or other debris from the activity to remain thereon.

2. The amount of the public liability insurance referred to in §103(4) shall be in such minimum amount as the Borough Council approves. Such amounts to be set by resolution of Council.

(Ord. 586, 9/25/1978, §§4, 5)

§105. Issuance. When all the requirements of this Part shall have been met and the application has been approved by the Borough Council, the Borough Manager shall issue a license hereunder to conduct the activity. The license shall in every case state:

1. The name and business address of the person authorized to conduct the activity;
2. The type of activity authorized;
3. The date or dates on which the proposed activity is to be conducted;
4. The hours during which the activity is to be conducted on each date or dates authorized by subsection 3 supra;
5. The site on which the activity is to be conducted. A separate license must be issued for every site and a separate fee paid for each. A license shall not be assignable.

(Ord. 586, 9/25/1978, §6)

§106. Inspections. After any license has been issued under this Part, Borough Council or its agents, shall inspect the site designated therein before any program, show or entertainment is begun, to insure that no dangerous, hazardous or unsanitary conditions exist. The licensee shall

correct any such dangerous, hazardous and unsanitary conditions which may exist before any activity is begun. If he does not, his license shall forthwith be revoked and no part of the license fee shall be refunded. (Ord. 586, 9/25/1978, §7)

§107. Noise. No holder of a license under this Part shall make or permit to be made unnecessary or unreasonable noise by loud speaker, amplifying device or any other means which would disturb the residents in the vicinity of the premises wherein such licensed activity is held. (Ord. 586, 9/25/1978, §8)

§108. Prohibited Acts. No person or organization granted a license under this Part shall permit upon the site named therein;

1. Any disorderly or immoral conduct;
2. Any gambling;
3. Any sale of obscene literature, pictures, films, or other objects;
4. Any indecent, immoral or lewd act or performance;
5. Any possession, sale or use of intoxicants and/or drugs of any kind.

(Ord. 586, 9/25/1978, §9)

§109. Council's Duties; Revocation of Permit.

1. Borough Council shall by resolution:

A. Set the hours of operation permissible for the activities controlled by this Part;

B. Set the amount of insurance necessary for operation of the various activities controlled by this Part;

C. Alter the fees called for by this Part as may from time to time appear reasonable;

D. Authorize a representative to perform the necessary inspections required by this Part.

2. Borough Council shall forthwith revoke any license granted under this Part at any time dangerous, hazardous or unsanitary conditions develop on the site designated in the license, or if the license violates, in any way, any of the provisions of this Part or the conditions of the permit, and no part of the license fee shall be refunded.

(Ord. 586, 9/25/1978, §§10, 11)

§110. Penalties. Any person, firm or corporation who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than three hundred dollars (\$300.00); and/or to imprisonment for a term not to exceed ninety (90) days. (Ord. 586, 9/25/1978, §12; as amended by Ord. 675, 11/17/1986)

Part 2

Auctions, Garage Sales

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

AUCTIONS - a public sale of land or goods at public outcry to the highest bidder on the spot.

CASUAL SALE - a sale by an individual of his personal property with no frequency or regularity.

GARAGE SALE - a public sale of goods conducted in a residentially associated garage.

HOME SALE - a public sale of goods including by appointment, conducted in any portion of a residence.

LAWN SALE - an outdoor public sale of goods on residential property.

PERSON - any person, association, partnership, firm or corporation.

In this Part, the singular shall include the plural, the plural shall include the singular and the masculine shall include the feminine and the neuter.

(Ord. 493, 5/7/1973, §1)

§202. License Required. Except as hereinafter described, it shall be unlawful for any person to hold an auction, garage sale, lawn sale or home sale without first obtaining a license in compliance with the provisions of this Part. (Ord. 493, 5/7/1973, §2)

§203. Application. Applicants for a license under this Part must file with the Borough Manager an application in writing, on a form to be furnished by said officer, which shall give the following information:

1. Name and address of applicant;
2. Type of auction or sale;
3. Items to be sold;
4. Dates of sale;

5. A statement affirming that the goods to be sold belong to the applicant or his household, and that said goods have not been purchased or obtained solely for this sale, with the exception of charities and service organizations as exempted by this Part.

(Ord. 493, 5/7/1973, §3)

§204. Fees.

1. The license for an auction to settle an estate shall be on a no-fee basis.

2. The license for any sale governed by this Part sponsored by a charitable or service organization shall be on a no-fee basis.

3. Other fees shall be as set by resolution of Council from time to time.

(Ord. 493, 5/7/1973, §4; as amended by Ord. 675, 11/17/1986)

§205. Issuance of License. Upon payment of fees as listed in §204, and upon determination by the Manager that the application meets all the requirements for a license, the Manager shall issue a license. (Ord. 493, 5/7/1973, §5)

§206. Duration of License.

1. A license for an auction shall be good for one day only. In the event that inclement weather causes postponement of the auction, the license will be valid for a new date provided the Manager is notified prior to the new date.

2. A license for a garage, lawn or home sale shall be valid for three days.

(Ord. 493, 5/7/1973, §6)

§207. Display of License. The license must be displayed at all times during auctions or sales. (Ord. 493, 5/7/1973, §7)

§208. Limitations on Licenses.

1. Garage sales, lawn sales, and home sales shall be limited to two licenses per calendar year, per residence. [Ord. 680]

2. Auctions in residential areas shall be limited to one per household per year except that this provision shall not apply when the auction is to settle an estate.

3. Items to be sold at garage sales, lawn sales, and home sales must belong solely to the household where the sale is held. It shall be unlawful to bring in and sell goods belonging to others or to purchase items specifically to sell in a garage sale, lawn sale or home sale, with the exception of such sales conducted on behalf of a charitable or service organization.

(Ord. 493, 5/7/1973, §8; as amended by Ord. 680, 6/1/1987)

§209. Hours. Garage sales, lawn sales, home sales may be held only between 9:00 a.m. and 8:00 p.m. (Ord. 493, 5/7/1973, §9)

§210. Encroachment on Right-of-Way. A license granted under this Part does not permit encroachment on the right-of-way (sidewalk or street). (Ord. 493, 5/7/1973, §10)

§211. Casual Sales. Nothing in this Part shall be construed to prohibit or regulate casual sales. (Ord. 493, 5/7/1973, §11)

§212. Penalties. Any person, firm or corporation who shall violate any provision of this Part 2 shall, upon conviction thereof, be sentenced to pay a fine of not more than three hundred dollars (\$300.00); and/or to imprisonment for a term not to exceed ninety (90) days. (Ord. 493, 5/7/1973, §12; as amended by Ord. 675, 11/17/1986)

Part 3
Cable Television

§301. Short Title. This Part shall be known and may be cited as the "Sammons Communications, Inc., Franchise Ordinance". (Ord. 553, 8/9/1976, §1)

§302. Definitions. For the purpose of this Part the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number, include the plural number. The word "shall" is always mandatory and not merely directory.

ACCESS CHANNELS - those services of cable television systems in major television market communities as defined in Section 76-251 of 37 FR 13848 (1972) of the FCC Rules.

BOROUGH - the Borough of Emmaus in the State of Pennsylvania.

CABLE TELEVISION SYSTEM or SYSTEM - a system of antennas, cables, wires, lines, towers, wave-guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying and distributing, audio, video and other forms of electronic or electrical signals, located in the Borough of Emmaus.

COMPANY - the grantee of rights under this Part awarding a franchise.

COUNCIL - the Borough Council of Emmaus.

FRANCHISE TERRITORY - the entire area within the geographical area of the Borough of Emmaus.

GROSS SUBSCRIBER REVENUES - only those revenues derived from the monthly service charges paid by subscribers located within the Borough for regular cable television reception service, which service includes only the transmission of broadcast signals and the programming presented on the required access and origination channels, if any. As required by the Federal Communications Commission, gross subscriber revenues shall not include any revenues received (a) as reimbursement of expense in the operation of any access channels; (b) as advertising payments; (c) from the leasing of cable channels; (d) from programs for which a per-channel or per-program charge is made and (e) from furnishing other communications and non-broadcast services either directly or as a carrier for another party or any other income derived from the system. Gross subscriber revenues shall also not include revenues received as installation charges and fees for reconnections, inspection, repairs or modifications of any installations.

PERSON - any person, firm, partnership, association, corporation, company or organization of any kind.

(Ord. 553, 8/9/1976, §2)

§303. Qualifications of Grantee and Grant of Authority. A public hearing concerning the renewal of the franchise herein granted to the Company to conform to the new FCC rules and regulations concerning cable

television operations was held on July 12, 1976, at 7:00 o'clock, p.m. at Emmaus Borough Hall Council Chambers. Public notice of said hearing was given in THE FREE PRESS on June 23 & 30, 1976, which notice invited interested parties to participate in said hearing and comment upon the legal, character, financial, technical and other qualifications of the Company to continue to operate a cable television system in the Borough. Said hearing having been held on the date and place stated hereinabove, and said hearing having been fully open to the public, and the Borough having received at said hearing all comments regarding the qualifications of the Company to receive this franchise renewal, the Borough hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's construction arrangements are adequate and feasible, and that therefore the Borough hereby grants to the Company a non-exclusive franchise, right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, above and over and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the Borough, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the Borough of a cable television system for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of easements for the purposes herein set forth. (Ord. 553, 8/9/1976, §3)

§304. Franchise Term. The franchise granted the Company herein shall terminate fifteen (15) years from date of grant, subject to renewal for periods of reasonable duration on the same terms and conditions as contained herein, or on such different or additional terms and conditions as may be lawfully specified by the Borough Council and as are consistent with the requirements of Rule 67.31 of the FCC. It is hereby mutually agreed that Company shall give to Borough Council written notice of its intention to renew said franchise at least one (1) year prior to the termination of the instant term. The Company's application for franchise renewal shall be granted provided: (1) Company shows that its CATV service during the preceding franchise period has reflected a good-faith effort to serve the needs and interests of its service area; (2) Company has not demonstrated a callous disregard of the law and all pertinent regulations; and (3) Borough Council, after public hearing, determines that it is in the best interest of the Borough to continue with Company's franchise. In the event that Company determines not to renew their lease, the said Company shall be responsible for removing said system from the franchise territory, or in the alternative, the said Company shall sell such system to the Borough at a value mutually acceptable to the parties. If agreement as to value cannot be agreed upon, either party may petition the Court of Common Pleas of Lehigh County to have a Board of View appointed to assign such value. (Ord. 553, 8/9/1976, §4)

§305. Payments to the Borough. The Company shall, during each year of operation under this franchise pay to the Borough, five percent (5%) of the annual gross subscriber revenues received by the Company for regular franchise territory. At the time of this annual payment, the Company shall furnish the Borough with an operating report showing the Company's annual gross subscriber revenues during the preceding year and such other information as the Borough shall reasonably require with respect to properties and expenses related to the Company's services within the franchise territory for such period.

The Borough reserves the right to collect such other fees as are deemed collectible by the FCC.

(Ord. 553, 8/9/1976, §5; as amended by Ord. 703, 11/21/1988)

§306. Records and Reports. The Company shall keep full, true, accurate and current books of account, which books and records shall be made available for inspection and copying by such Borough Official as Borough Council shall designate. (Ord. 553, 8/9/1976, §6)

§307. Rates. Attached hereto and made a part of this franchise as Exhibit A is a description of the Company's installation practices and a complete schedule of rates. In addition to the monthly service specified in Exhibit A, the Company may add to that rate taxes or fees imposed upon the Company's gross subscriber revenue by Borough, State or Federal governmental or legislative bodies and fees or charges imposed upon the Company for the use and distribution of copyrighted program material.

No increases in rates charged subscribed in excess of those listed herein shall be made except as authorized by the Borough after public notice of such increase is given and interested parties have been afforded an opportunity to comment thereon, provided, however, the Company shall have the right to increase its rates up to five percent (5%) per annum on a cumulative basis without Borough approval. In no event, however, shall Company raise its rate more than fifteen percent (15%) at any one time without prior consent from the Borough.

(Ord. 553, 8/9/1976, §7; as amended by Ord. 615, 5/5/1980, §1) (NOTE: Ord. 615 also amended portions of Exhibit A, which has not been codified, but is adopted by reference herein.)

§308. Local Office: Complaint Procedures.

1. During the term of this franchise, and any renewal thereof, the Company shall maintain within the Borough a local business office or agent for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The provisions of this section shall be complied with if Company maintains a local business headquarters office within seven (7) airline miles of the principal coordinates of the Borough, which office may be reached by a local, toll-free telephone call, and provides the Borough Manager's office with the name, address and phone number of a person who will act as the Company's agent to receive complaints regarding quality of service, equipment malfunctions and similar matters. The local office shall be open to

receive inquiries or complaints from subscribers during normal business hours, and in no event less than 9:00 to 5:00 Monday through Friday. Any complaints from subscribers shall be investigated and acted upon as soon as possible, but at least within three (3) business days of their receipt. The Company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by such Borough Official as Borough Council shall designate.

2. The Company shall by appropriate means, such as a card or brochure, as subscribers are connected or reconnected to the system furnish information concerning the procedures for making inquiries and/or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed. The Borough appoints its Manager as responsible for implementation of the complaint procedures and continuing administration of the franchise.

(Ord. 553, 8/9/1976, §8)

§309. Liability and Indemnification. The Company shall pay, and by its acceptance of this franchise the Company expressly agrees that it will pay, all damages and penalties which the Borough may legally be required to pay as a result of the Company's negligence in the installation, operation, or maintenance of the cable television system authorized herein. The Borough shall notify the Company's representative within fifteen (15) days after the presentation of any claim or demand to the Borough, either by suit or otherwise, made against the Borough on account of any negligence or contract as aforesaid on the part of the Company. The Company further agrees as follows:

1. Company shall carry Workmen's Compensation insurance, with statutory limits, and Employers' Liability insurance with limits of not less than one hundred thousand dollars (\$100,000.00), which shall cover all operations to be performed by Company as a result of this Part.

2. Company shall carry Comprehensive General Liability and Comprehensive Automobile Liability Insurance with bodily injury limits of not less than three hundred thousand dollars (\$300,000.00) per occurrence, and property damage limits of not less than three hundred thousand dollars (\$300,000.00).

3. Company's Workmen's Compensation, Comprehensive General Liability and Comprehensive Automobile Liability insurance shall be written by an insurance company with a capital and/or surplus of not less than three million dollars (\$3,000,000.00), and Company agrees to furnish Borough with certified copies or certificates of insurance of said policies, which shall provide that insurance shall not be cancelled unless ten (10) days prior written notice shall first be given to Borough.

(Ord. 553, 8/9/1976, §9)

§310. System Construction, Maintenance and Procedures.

1. Upon grant of this franchise to construct and maintain a community television system in the Borough, the Company may enter into contracts with Water, Sewer or Highway Departments of the Borough, any public utility companies or any other owner or lessee of any poles located within or without the franchise territory to whatever extent such contract or contracts may be expedient and of advantage to the Company for use of poles and posts necessary for proper installation of the system, obtain right-of-way permits from appropriate Borough State, County and Federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the Company's receiving antennas, obtain permission from the Federal Aviation Authority to erect and maintain antennas suitable to the needs of the system and its subscribers and obtain whatever other permits a Borough, County, State or Federal Agency may require. In the construction, installation and maintenance of its system, the Company will use steel, cable and electronic devices, all of specialized and advanced design and type; in the operation of its system, the Company will employ personnel with training, skill and experience in electronics and communications. Neither material nor personnel of this sort may be available to the Company for its system in the event of a war or other similar national emergency, in which event Company shall confer with Borough as to substitute materials to be used.

2. The Company's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the Borough may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

3. The Company's system presently serves that portion of the Borough as demonstrated on map annexed hereto and made a part hereof as Exhibit B. In the event that the Borough shall annex further territory as authorized by law, the Company shall extend energized trunk cable to the remaining portions of the Borough so annexed within one (1) year thereafter, unless additional time is granted by the Borough Council upon request of the Company for good cause shown. Extension of service shall not be required into an area which does not meet the requirements set forth in §311 of this Part.

4. All transmission and distribution structures, lines and equipment erected by the Company within the Borough shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

5. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the Borough, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced.

6. In event that at any time during the period of this franchise the Borough shall lawfully elect to alter or change the grade of any street,

alley or other public way, the Company upon reasonable notice by the Borough shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

7. The Company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such manner as not to interfere with the usual travel on said streets, alleys and public ways.

8. The Company shall, on the request of any person holding a building moving permit, issued by the Borough, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

9. The Company shall have the authority to trim trees upon and over-hanging streets, alleys, sidewalks and public places of the Borough so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, all trimming to be done under the supervision and direction of the Borough and at the expense of the Company.

10. The Company shall provide, upon request and without charge, service to any municipal buildings owned and operated by the Borough and to any public or parochial elementary or secondary school. This shall mean only an energized cable to such building. The cost of any internal wiring shall be borne by the institution.

(Ord. 553, 8/9/1976, §10)

§311. Line Extensions. It shall be the obligation of Company to serve all residents of the franchises territory except to the extent that density of homes, adverse terrain or other factors render providing service impracticable, technically infeasible or economically noncompensatory. For purposes of determining compliance with the provisions of this section, and to provide for a reasonable and non-discriminatory policy governing extensions of cable service within the franchise territory, which policy was subject to public review in the public proceeding leading to the award of this franchise, Company shall extend service to new subscribers at the formal installation charge and monthly rate for customers of that classification, under the following terms and conditions:

1. Where the new subscriber, or nearest subscriber of a group of new subscribers is located within five hundred feet (500') of existing truck cable; and

2. Where the number of homes to be passed by such new extension cable plant bears the same proportional ratio to the total amount of new cable plant as the average number of homes passed per mile of existing cable plant.

3. In the event the requirements of subsections 1 and 2 are not met, the installation cost per subscriber shall be determined as set forth in Exhibit C attached hereto.

(Ord. 553, 8/9/1976, §11)

§312. Compliance with Standards. All facilities and equipment of Company shall be constructed and maintained in accordance with the requirements and specifications of the National Electrical Safety Code and such applicable ordinances and regulations set forth by the Borough and/or any other local, state or Federal agencies. (Ord. 553, 8/9/1976, §12)

§313. Company Rules and Regulations. The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of Federal or state laws. (Ord. 553, 8/9/1976, §13)

§314. Procedures. No renewal of this franchise nor increases in rates and charges shall be effective except pursuant to a public hearing affording due process. The Company shall be a party to any such hearing and any other hearings in which its rights, privileges or interests would be affected and shall be fully entitled to such due process rights as may be available under applicable laws, ordinances, rules or regulations. (Ord. 553, 8/9/1976, §14)

§315. Approval of Transfer. The Company shall not sell or transfer its system to another, nor transfer any rights under this franchise to another without written approval given after public hearing by the Borough, provided, that such approval shall not be unreasonably withheld if the vendee, assignee or lessee has filed with the appropriate official of the Borough an instrument duly executed, reciting the intention of such sale, assignment or lease, accepting the terms of this franchise and agreeing to perform all conditions thereof. (Ord. 553, 8/9/1976, §15)

§316. Compliance with FCC Rules and Regulations. The Company shall, at all times, comply with the rules and regulations governing CATV operations promulgated by the FCC, specifically those set out in Section 76.31 of the FCC Rules and Regulations. This shall include adherence by the Company to FCC rules regarding technical and engineering specifications involved in the construction of the CATV System and signal carriage therein. (Ord. 553, 8/9/1976, §16)

§317. Modification of FCC Rules. Consistent with the requirement of Rule 76.31 (a)(6) of the FCC, any modification of Rule 76.31 resulting from amendment thereto by the FCC shall to the extent applicable be considered as a part of this franchise as of the effective date of the amendment made by the FCC and shall be incorporated in this franchise by specific amendments thereto by the lawful action of the Borough Council within one (1)

year from the effective date of the FCC's amendment or at the time of renewal of this franchise, whichever occurs first. (Ord. 553, 8/9/1976, §17)

§318. Publication Costs. The Company shall assume the costs of the publication of this Part and franchise renewal as such publication is required by law. A bill for publication costs shall be presented to the Company by the appropriate Borough officials upon the Company's filing of its acceptance of this franchise and the said publication costs shall be paid at that time by the Company. (Ord. 553, 8/9/1976, §18)

§319. Legal Fees and Consulting Fees. The Company shall assume the payment of legal and consulting fees occasioned by the preparation of this Part and franchise agreement. A bill for such costs shall be presented to the Company by the appropriate Borough official upon the Company's filing of its acceptance of this franchise and the said costs shall be paid at that time by the Company. (Ord. 553, 8/9/1976, §19)

§320. Activities Prohibited.

1. The Company shall not allow its cable or other operations to interfere with television reception of persons not served by the Company, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the Borough.

2. The Company shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

(Ord. 553, 8/9/1976, §20)

§321. Theft of Services and Tampering.

1. No person, whether or not a subscriber to the cable system shall willfully, maliciously or otherwise damage or cause to be damaged any wire, cable, conduit, apparatus, appurtenance, or equipment of a franchisee operating a cable television system within the Borough, or commit any act with intent to cause such damage, or to tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, apparatus, appurtenance or equipment of such franchisee with the intent to obtain a signal or impulse from the cable system without authorization from or compensation to such franchisee, or to obtain cable television or other communications service with intent to cheat or defraud said franchisee of any lawful charge to which it is entitled.

2. Whoever shall violate any provision of this section shall be guilty of the appropriate offenses enumerated under the Crimes Code of Pennsylvania and shall be liable for punishment thereunder.

(Ord. 553, 8/9/1976, §21)

§322. Revocation for Cause. In the event Company shall fail to perform its obligations or shall be in default under this franchise and shall fail to correct such failure to perform with sixty (60) days after written notice thereof by the Borough, the franchise may be revoked by the Borough, provided, however, that the Company shall not be responsible for any failure to perform due to Federal, State, or Municipal action, statute, ordinance or regulation, strike or other labor trouble; act of God, riot or other civil disturbance; inability to secure materials or supplies, or, without limiting the foregoing, by any other cause, contingency or circumstance beyond the control of the Company which hinders or prevents its performance under the franchise. The Borough Council may extend the period within which the Company shall correct any failure to perform upon application of the Company for good cause. No revocation of the franchise shall occur except upon written notice thereof to the Company by the Borough Council and upon public notice and a public proceeding affording due process. (Ord. 553, 8/9/1976, §22)

Part 4

Transient Retail Merchants

§401. Definitions. As used in this Part the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

LEGAL HOLIDAYS - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas.

PERSON - any natural person, partnership, association, corporation, or other legal entity.

TRANSIENT RETAIL BUSINESS -

1. engaging in peddling, soliciting or taking orders, either by sample or otherwise, for any goods, wares or merchandise upon any street, alley, sidewalk or public ground, or from house to house, within the Borough of Emmaus; or

2. selling, soliciting or taking orders for any goods, wares or merchandise, from a fixed location within the Borough, on a temporary basis, which shall include, but not be limited to, such activities conducted at the time of special occasions or celebrations, for seasonal purposes, or for or in advance of specific yearly holidays.

The singular shall include the plural; the plural shall include the singular; and the masculine shall include the feminine and the neuter.

(Ord. 497, 9/17/1973; as revised by Ord. 675, 11/17/1986)

§402. License Required; Conditions of Issuance; Fee. No person shall engage in any transient retail business within the Borough of Emmaus without first having obtained from the Borough Manager a license, for which a fee, which shall be for the use of the Borough, shall be charged. (Ord. 497, 9/17/1973; as revised by Ord. 675, 11/17/1986)

§403. Exceptions. No license fee shall be charged:

1. To farmers selling their own produce;
2. For the sale of goods, wares and merchandise, donated by the owners thereof, the proceeds whereof are to be applied to any charitable or philanthropic purpose;
3. To any manufacturer or producer in the sale of bread and bakery products, meat and meat products, or milk and milk products;
4. To children under the age of eighteen (18) years who take orders for and deliver newspapers, greeting cards, candy, bakery products, and the like, or who represent the Boy Scouts or Girl Scouts or similar organizations;
5. To any honorable discharged member of any of the armed services who complies with the Act of 1867, April 8, P.L. 50, 60 P.S. §61 (1982), hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania, and who procures from the Prothonotary a certificate in pursuance of the Act of 1867;

6. To the seeking or taking of orders by insurance agents or brokers licensed under the insurance laws of the Commonwealth of Pennsylvania;

7. To any person who has complied with the provisions of the Solicitation of Charitable Funds Act, August 9, 1963, P.L. 628, 10 P.S. §§160-1 et seq. (1982), as hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania; or

But all persons exempted hereby from the payment of the license fee shall be required to register with the Borough Manager and obtain a license without fee; provided, any person dealing in one or more of the above mentioned exempted categories, and dealing with our goods, wares, or merchandise not so exempted, shall be subject to the payment of the license fee fixed by this section for his activities in connection with the sale of goods, wares and merchandise not in such exempted categories. Provided further, the Borough Manager shall similarly exempt from payment of the license fee, but not from registering with him, persons working without compensation and selling goods, wares or merchandise for the sole benefit of any nonprofit corporation. Provided further: every license issued under the provisions of this Part shall be issued on an individual basis to any person or persons engaging in such business; every individual shall obtain a separate license, issued to him in his name, and the license fee hereby imposed shall be applicable to every such individual license, except that a representative of a charitable organization may obtain licenses for the applicants therein.

(Ord. 497, 9/17/1973; as revised by Ord. 675, 11/17/1986)

§404. License Application. Every person desiring a license under this Part shall first make application to the Borough Manager for such license. He shall, when making such application, exhibit a valid license from any state or county officer, if such license is also required. The applicant shall state:

1. His criminal record, if any;
2. Name and address of the person by whom he is employed;
3. Type of goods, wares and merchandise he wishes to deal with in such transient retail business;
4. Length of time for which license is to be issued; and
5. Type and license number of the vehicle to be used, if any.

(Ord. 497, 9/17/1973; as revised by Ord. 675, 11/17/1986)

§405. Issuance of License; Custody, Display and Exhibit. Upon receipt of such application and the prescribed fee, the Borough Manager, if he shall find such application in order, shall issue the license required under this Part. Such license shall contain the information required to be given on the application therefor. Every license holder shall carry such license upon his person if engaged in transient retail business from house to house or upon any of the streets, alleys, sidewalks or public grounds, or shall display such license at the location where he shall engage in such business if doing so at a fixed location. He shall exhibit such license,

upon request, to all police officers, municipal officials, and citizens or residents of the Borough of Emmaus. (Ord. 497, 9/17/1973; as revised by Ord. 675, 11/17/1986)

§406. Prohibited Acts. No person in any transient retail business shall:

1. Sell any product or type of product not mentioned in his license;
2. Hawk or cry his wares upon any of the streets, alleys, sidewalks, or public grounds in the Borough of Emmaus.
3. When operating from a vehicle, stop or park such vehicle upon any of the streets or alleys in the Borough of Emmaus for longer than necessary in order to sell therefrom to persons residing or working in the immediate vicinity;
4. Park any vehicle upon any of the streets or alleys in the Borough of Emmaus for the purpose of sorting, rearranging, or cleaning any of his goods, wares or merchandise or of disposing of any carton, wrapping material, or stock, wares or foodstuffs which have become unsaleable through handling, age or otherwise;
5. Engage in any business activity, except by prior appointment, at any time on a Sunday or legal holiday or at any time before 9:00 A.M. or after sundown on any day of the week other than a Sunday or legal holiday.

(Ord. 497, 9/17/1973; as revised by Ord. 675, 11/17/1986)

§407. Supervision; Records and Reports. The Borough Manager shall supervise the activities of all persons holding licenses under this Part. He shall keep a record of all licenses issued hereunder. (Ord. 497, 9/17/1973; as revised by Ord. 675, 11/17/1986)

§408. Suspension and Revocation of License; Appeal. The Borough Manager is hereby authorized to suspend or revoke any license issued under this Part when he deems such suspension or revocation to be beneficial to the public health, safety or morals, for violation of any provision of this Part, or for giving false information upon any application for a license hereunder. Appeals from any suspension or revocation may be made to the Borough Council at any time within ten (10) days after such suspension or revocation. No part of a license fee shall be refunded to any person whose license shall have been suspended or revoked. (Ord. 497, 9/17/1973; as revised by Ord. 675, 11/17/1986)

§409. Penalties. Any person, firm or corporation who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine not more than three hundred dollars (\$300.00); and/or to imprisonment for not more than ninety (90) days. Each day that a violation of this Part continues shall constitute a separate offense. (Ord. 497, 9/17/1973; as revised by Ord. 675, 11/17/1986)

Part 5

Pawnbrokers and Secondhand Dealers

§501. Reports to Chief of Police. All pawnbrokers, jewelers or dealers buying secondhand jewelry, or dealers of secondhand coins shall make out and deliver to the Chief of Police, or his designee, at his office every Monday and Thursday before 10:00 a.m., a legible and accurate report of all articles taken in pawn or purchase during the preceding business days. Such reports shall be on a form furnished by the Chief of Police and shall contain an accurate description, as the form prescribes, of all articles taken in pawn or purchase, of the amount loaned on or paid for such articles, and of the person pawning or selling the same. The buyer shall require proof of identity and current address of anyone selling said items. (Ord. 949, 5/20/2002, §501)

§502. Penalty. Any person violating the provisions of §501 as aforesaid, shall be fined not more than three hundred dollars (\$300.00) or imprisoned not more than ninety (90) days, or both. (Ord. 949, 5/20/2002, §502)

