

## CHAPTER 13

### LICENSES, PERMITS AND GENERAL BUSINESS REGULATIONS

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## Part 1

## Licensing of Transient Retail Businesses

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

LEGAL HOLIDAY - 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 -

A. 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; or,

B. 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 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. 189, 6/12/1967; as revised by Ord. 288, 8/8/1994)

§102. License Required; Conditions of Issuance; Fee. No person shall engage in any transient retail business within the Borough without first having obtained from the Borough Secretary a license, for which a fee, which shall be for the use of the Borough, shall be charged, established by resolution of the Borough Council. (Ord. 189, 6/12/1967; as revised by Ord. 288, 8/8/1994)

§103. Exceptions.

1. No license fee shall be charged:

A. To farmers selling their own produce.

B. 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.

C. To any manufacturer or producer in the sale of bread and bakery products, meat and meat products, or milk and milk products.

D. 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.

E. To any honorably discharged member of any of the armed services who complies with the Act of 1867, April 8, P.L. 50, 60 P.S. §61, 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.

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

G. To any person who has complied with the provisions of the Charitable Organization Reform Act, 10 P.S. §161.1 et seq., as hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania.

H. For taking orders for merchandise, by sample, from dealers or merchants for individuals or companies who pay a license or business privilege tax at their chief place of business.

2. But all persons exempted hereby from the payment of the license fee shall be required to register with the Borough Secretary and obtain a license without fee; provided, any person dealing in one (1) or more of the above mentioned exempted categories, and dealing with other 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 Secretary may 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.

(Ord. 189, 6/12/1967; as revised by Ord. 288, 8/8/1994)

§104. License Application. Every person desiring a license under this Part shall first make application to the Borough Secretary 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:

- A. His criminal record, if any.
- B. Name and address of the person by whom he is employed.
- C. Type of goods, wares, and merchandise he wishes to deal with in such transient retail business.
- D. Length of time for which license is to be issued.
- E. Type and license number of the vehicle to be used, if any.

(Ord. 189, 6/12/1967; as revised by Ord. 288, 8/8/1994)

§105. Issuance of License; Custody, Display and Exhibit. Upon receipt of such application and the prescribed fee, the Borough Secretary, 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. (Ord. 189, 6/12/1967; as revised by Ord. 288, 8/8/1994)

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

A. Sell any product or type of product not mentioned in his license.

B. Hawk or cry his wares upon any of the streets, alleys, sidewalks, or public grounds in the Borough.

C. When operating from a vehicle, stop or park such vehicle upon any of the streets or alleys in the Borough for longer than necessary in order to sell therefrom to persons residing or working in the immediate vicinity.

D. Park any vehicle upon any of the streets or alleys in the Borough 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.

E. 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 4:00 P.M. on any day of the week other than a Sunday or legal holiday.

(Ord. 189, 6/12/1967; as revised by Ord. 288, 8/8/1994)

§107. Supervision; Records and Reports. The Borough Secretary shall supervise the activities of all persons holding licenses under this Part. He shall keep a record of all licenses issued hereunder and shall make a report thereof each month to the Borough Council. (Ord. 189, 6/12/1967; as revised by Ord. 288, 8/8/1994)

§108. Denial, Suspension and Revocation of License; Appeal. The Borough Secretary is hereby authorized to deny, suspend or revoke any license issued under this Part when he deems such denial, suspension or revocation to be beneficial to the public health, safety, or morals, or for violation of any provision of this Part, or for giving false information upon any application for a license hereunder. Appeals from any suspension, revocation or denial of a license may be made to the Borough Council at any time within ten (10) days after such suspension, revocation or denial and a hearing shall be held within thirty (30) days of the petition for appeal. No part of a license fee shall be refunded to any person whose license shall have been suspended or revoked. (Ord. 189, 6/12/1967; as revised by Ord. 288, 8/8/1994)

§109. 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 six hundred dollars (\$600.00) plus costs, and in default of payment, to imprisonment for not more than thirty (30) days. Each day that a violation of this Part continues shall constitute a separate offense. (Ord. 189, 6/12/1967; as revised by Ord. 288, 8/8/1994)

## Part 2

## Amusement Devices Restricted

§201. Definitions.

AMUSEMENT DEVICE - an amusement device is any machine or device which operates or may be operated for use as a game, contest or amusement of any description for which a monetary charge is made or paid for the privilege of using said device including pinball machines and video games. (Ord. 256, 10/10/1983, §1)

§202. Locations Prohibited. No amusement device referred to herein shall be located out of doors or on any porch or on or in any temporary structure nor under any circumstances shall such a device be located on any sidewalk within the Borough except that such devices may be located in a temporary structure as part of a block party or carnival event under the sponsorship of the local Fire Company or other civic non-profit organization and such location and temporary structure is approved by the Mayor. (Ord. 256, 10/10/1983, §2)

§203. Penalty. Any person who violates any provision of this Part shall, upon conviction, be sentenced to pay a fine of not more than six hundred (\$600.00) dollars plus costs 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 person fails to comply with this shall be regarded as a separate violation. (Ord. 256, 10/10/1983; as amended by Ord. 288, 8/8/1994)





Part 3  
Cable Television Systems

§301. Definitions.

**BASIC SERVICE** - the basic service tier shall, at a minimum, include all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system) any public, education and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming signals a service added to the basic tier by the cable operator.

**CABLE PROGRAMMING SERVICE** - includes any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

A. Video programming carried on the basic service tier as defined in this Section;

B. Video programming offered on a pay-per-channel or pay-per-program basis.

C. A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:

- (1) Consists of commonly identified video programming; and,
- (2) Is not bundled with any regulated tier of service.

**COMMISSION** - the Federal Communications Commission.

**FCC** - the Federal Communications Commission.

**FRANCHISING AUTHORITY** - Borough of Elizabethville, Dauphin County, Pennsylvania.

**SMALL SYSTEM** - a cable television system that serves fewer than one thousand (1,000) subscribers. The service area of a small system shall be determined by the number of subscribers that are served by a system's principal headend, including any other headends or microwave receive sites that are technically integrated to the system's principal headend.

**BOROUGH** - the Borough of Elizabethville, Dauphin County, Pennsylvania.  
(Ord. 287, 5/9/1994, §1)

§302. Standards for Identification of Cable Systems Subject to Effective Competition.

1. Only the rates of cable systems that are not subject to effective competition may be regulated by the Borough.

2. A cable system is subject to effective competition when any one (1) of the following conditions is met:

A. Fewer than thirty (30) percent of the households in its franchise area subscribe to the cable service of a cable system.

B. The franchise area is:

(1) Served by at least two (2) unaffiliated multichannel video programming distributors each of which offers comparable programming to at least fifty (50) percent of the households in the franchise area; and,

(2) The number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds fifteen (15) percent of the households in the franchise area.

C. A multichannel video programming distributor, operated by the franchising authority for that franchise area, offers video programming to at least fifty (50) percent of the households in the franchise area.

3. Each separately billed or billable customer will count as a household subscribing to or being offered video programming services, with the exception of multiple dwelling buildings billed as a single customer. Individual units of multiple dwelling buildings will count as separate households.

4. A multichannel video program distributor, for purposes of this Section, is an entity such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive only satellite program distributor, a video dial tone service provider, or a satellite master antenna television service provider that makes available for purchase, by subscribers or customers, multiple channels of video programming.

5. Service of a multichannel video programming distributor will be deemed offered:

A. When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and,

B. When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.

6. For purposes of determining the number of households subscribing to the services of a multichannel video programming distributor other than the largest multichannel video programming distributor, under subsection (2)(B)(2) of this Section, the number of subscribers of all multichannel video programming distributors that offer services to at least fifty (50) percent of the households in the franchise area will be aggregated.

7. In order to offer comparable programming within the meaning of subsection (2)(B)(1) of this Section, a competing multichannel video programming distributor must offer at least twelve (12) channels of video programming, including at least one (1) channel of nonbroadcast service programming.

(Ord. 287, 5/9/1994, §5)

§303. Presumption of No Effective Competition. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition. (Ord. 287, 5/9/1994, §6)

§304. Change in Status of Cable Operator.

1. A cable operator that becomes subject to effective competition may petition the Borough for change in its regulatory status. The operator bears the burden of proving the existence of effective competition. Oppositions may be filed within fifteen (15) days of public notice of the filing of the petition, and must be served on the operator. Cable operators may reply within seven (7) days of filing of oppositions.

2. Franchising authority decisions on petitions for change in status must be made within thirty (30) days after the pleading cycle, set forth in subsection (1) of this Section, closes. The Borough shall notify the Commission within ten (10) days of any decision changing status. Unless the Commission receives an opposition to such change in status, the decision will become final thirty (30) days after adoption by the franchising authority.

3. After an initial determination of the Borough that effective competition exists becomes final, the Borough will then cease regulating basic cable service rates, and the Commission's regulatory authority over cable programming services for the system in the franchise area will also cease.

4. A cable operator and the Borough may submit a joint statement that effective competition exists. The joint statement must stipulate which of the three (3) tests for effective competition as set forth in §302(2)(A)-(C), above, has been met and explain how the test has been satisfied. These joint statements will become final decisions within thirty (30) days of filing with the Commission, unless challenged by an interested party.

5. Cable operators denied a change in status by the Borough may seek review of that finding at the Commission by filing a petition for revocation.

6. In cases where the Borough has not been certified to regulate rates, a cable operator may petition the Commission for change in its regulatory status. The time periods in subsection (1) of this Section, will apply to oppositions and replies concerning these petitions.

(Ord. 287, 5/9/1994, §15)

§305. Buy-Through of Other Tiers Prohibited.

1. No cable system operator may require the subscription to any tier other than the basic service tier as a condition of subscription to video programming offered on a per channel or per program charges basis. A cable operator may, however, require the subscription to one (1) or more tiers of cable programming services as a condition of access to one or more tiers of cable programming services.

2. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program charge basis.

3. Prior to October 5, 2002, the provisions of subsection (1) of this Section shall not apply to any cable system that lacks the capacity to offer basic service and all programming distributed on a per channel or per program basis without also providing other intermediate tiers of service.

A. By controlling subscriber access to nonbasic channels of service through addressable equipment electronically controlled from a central control plant; or,

B. Through the installation, noninstallation or removal of frequency filters (traps) at the premises of subscribers without other alteration in system configuration or design and without causing degradation in the technical quality of service provided.

4. Any retiering of channels or services that is not undertaken in order to accomplish legitimate regulatory, technical or customer service objectives and that is intended to frustrate or has the effect of frustrating compliance with subsections (1) through (3) of this Section is prohibited.

(Ord. 287, 5/9/1994, §21)

§306. Rates for the Basic Service Tier and Cable Programming Service Tiers. Basic service tier and cable programming service rates shall be subject to regulation by the Borough as is appropriate, in order to assure that the rates are in compliance with the requirements of the Federal Cable Act, 47 U.S.C. §543. The determination of whether or not the rates and any charges for equipment or installation are in compliance with the Act shall be made in accordance with the Commission's rules and regulations, specifically §§76.922 and 76.923 as printed in the Federal Registers, 58 Fed. Reg. 29756-758, May 21, 1993, as amended, and which are adopted herein by reference. (Ord. 287, 5/9/1994, §22)

§307. Rates for Equipment and Installation Used to Receive Basic Service Tier. The Borough adopts herein by reference §76.923, as set forth in the Federal Register, 58 Fed. Reg. 29757-758, May 21, 1993, as amended. (Ord. 287, 5/9/1994, §23)

§308. Cost Accounting and Cost Allocation Requirements. The Borough adopts herein by reference §76.924(b) through (h), as set forth in the Federal Register, 58 Fed. Reg. 29758, May 21, 1993, as amended. (Ord. 287, 5/9/1994, §24)

§309. Cost of Franchise Request. The Borough adopts herein by reference §76.925, as set forth in the Federal Register, 58 Fed. Reg. 29758, May 21, 1993, as amended. (Ord. 287, 5/9/1994, §25)

§310. Initiation of Review of Basic Cable Service and Equipment Rates. A cable operator shall file its schedule of rates for the basic service tier and associated equipment with the Borough within thirty (30) days of receiving written notification from the Borough that the Borough has been certified by the commission to regulate rates for the basic service tier. (Ord. 287, 5/9/1994, §30)

§311. Notification of Proposed Rate Increase. A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least thirty (30) days before any proposed increase is effective. The notice should include the name and address of the Borough. (Ord. 287, 5/9/1994, §32)

§312. Review of Basic Cable Rates and Equipment Costs.

1. After a cable operator has submitted for review its existing rates for the basic service tier and associated equipment costs, or a proposed increase in these rates (including increases in the baseline channel change that results from reductions in the number of channels in a tier), the existing rates will remain in effect or the proposed rates will become effective after thirty (30) days from the date of submission; provided, however, that the Borough may toll this thirty (30) day deadline for an additional time by issuing a brief written order as described in subsection (2), below, within thirty (30) days of the rate submission explaining that it needs additional time to review the rates.

2. If the Borough is unable to determine, based upon the material submitted by the cable operator, that the existing or proposed rates are within the Commission's permitted basic service tier charge or actual cost of equipment as defined in §§76.922 and 76.923, 58 Fed. Reg. 29756-29758, May 21, 1993, as amended, or if a cable operator has submitted a cost-of-service showing pursuant to §§76.937(c), 58 Fed. Reg. 29759, May 21, 1993, as amended, and §76.924, 58 Fed. Reg. 29758, May 21, 1993, as amended, seeking to justify a rate above the Commission's basic service tier charge as defined in §§76.922 and 96.923, therein, the Borough may toll the thirty (30) day deadline in subsection (1) of this Section to request and/or consider additional information or to consider the comments from interested parties as follows:

A. For an additional ninety (90) days in cases not involving cost-of-service showing; or,

B. For an additional one hundred fifty (150) days in cases involving cost-of-service showings.

3. If the Borough has availed itself of the additional ninety (90) or one hundred fifty (150) days permitted in subsection (2) of this Section, and has taken no action within these additional time periods, then the proposed rates will go into effect at the end of the ninety (90) or one hundred fifty (150) day periods, or existing rates will remain in effect at such times, subject to refunds if the Borough subsequently issues a written decision disapproving any portion of such rates; provided, however, that in order to order refunds, a Borough must have issued a brief written order to the cable operator by the end of the ninety (90) or one hundred fifty (150) day period permitted in subsection (2) of this Section directing the operator to keep an accurate account of all amounts received by reason of the rate in issuance and on whose behalf such amounts were paid.

(Ord. 287, 5/9/1994, §33)

§313. Small Systems. A small system, as defined in §301, above, is permitted to certify that its rates for basic service and associated equipment comply with §306 herein and the Commission's substantive rate regulations. (Ord. 287, 5/9/1994, §34)

§314. Participation of Interested Parties. If the thirty (30) day period set forth in subsection 312(1), above, is tolled by the Borough, the Borough will publish a notice at least once in a newspaper of general circulation in the Borough. The notice shall contain a summary description of the proposed rates and provide for a thirty (30) day public comment period. The Borough Secretary shall keep a record or log of all written comments received. The Borough may also, at its option, hold a public hearing in lieu of or in addition to receiving public comment. (Ord. 287, 5/9/1994, §35)

§315. Written Decision.

1. The Borough must issue a written decision in a rate making proceeding whenever it disapproves an initial rate for the basic service tier or associated equipment in whole or in part, disapproves a request for a rate increase in whole or in part, or approves a request for an increase in whole or in part over the objections of interested parties. The Borough is not required to issue a written decision that approves an unopposed existing or proposed rate for the basic service tier or associated equipment.

2. Public notice must be given of any written decision required in subsection (1) of this Section, including releasing the text of any written decision to the public.

(Ord. 287, 5/9/1994, §36)

§316. Burden of Proof.

1. A cable operator has the burden of proving that its existing or proposed rate for basic service and associated equipment comply with 47 U.S.C. §543, and §§306 and 307 herein, and FCC regulations.

2. For an existing or proposed rate for basic tier service or associated equipment that is within the permitted tier charge and actual cost of equipment as set forth in §306 and §307 herein, and the FCC regulations, the cable operator must submit the appropriate FCC form.

3. For an existing or proposed rate for basic tier service that exceeds the permitted tier charge as set forth in §306 and §307, the cable operator must submit a cost-of-service showing to justify the proposed rate.

(Ord. 287, 5/9/1994, §37)

§317. Proprietary Information. The Borough may require the production of proprietary information to make a rate determination and in such cases must apply procedures analogous to those set forth in FCC regulations regarding requests for confidentiality. (Ord. 287, 5/9/1994, §38)

§318. Prospective Rate Reduction. The Borough may order a cable operator to implement a reduction in basic service tier or associated equipment rates where necessary to bring rates into compliance with the standards set forth in §306 and §307 herein, and FCC regulations. (Ord. 287, 5/9/1994, §40)

§319. Rate Prescription. The Borough may prescribe a reasonable rate for the basic service tier or associated equipment after it determines that a proposed rate is unreasonable. (Ord. 287, 5/9/1994, §41)

§320. Refunds.

1. The Borough may order a cable operator to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted tier charge or above the actual cost of equipment, unless the operator has submitted a cost-of-service showing which justifies the rate charged as reasonable. Before ordering a cable operator to refund previously paid rates to subscribers, the Borough must give the operator notice and opportunity to comment.

2. An operator's liability for refunds is limited to a one (1) year period, except that an operator that fails to comply with a valid rate order issued by the Borough or the Commission shall be liable for refunds commencing from the effective date of such order until such time as it complies with such order.

3. The refund period shall run as follows:

A. From the date the operator implements a prospective rate reduction back in time to June 21, 1993, or one (1) year, whichever is shorter.

B. From the date the Borough issues an accounting order pursuant to §312(3), herein, and ending on the date the operator implements a prospective rate reduction ordered by a franchising authority or one (1) year, whichever is shorter.

4. The cable operator, in its discretion, may implement a refund in the following manner:

A. By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified credit to those subscribers' bills; or,

B. By means of a prospective percentage reduction in the rates for the basic service tier or associated equipment to cover the cumulative overcharges. This shall be reflected as specifically identified, one (1) time credit on prospective bills to the class of subscribers that currently subscribe to the cable system.

5. Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments.

(Ord. 287, 5/9/1994, §42)

§321. Fines.

1. The Borough may impose fines or monetary forfeitures on a cable operator that does not comply with a rate decision or refund order directed specifically at the cable operator. Fines shall not exceed five hundred dollars (\$500.00) per violation. Each day that cable operator does not comply with a rate decision or refund order shall constitute a separate violation.

2. A cable operator shall not be subject to franchise forfeiture because its rate for basic service or equipment is determined to be unreasonable.

(Ord. 287, 5/9/1994, §43)

§322. Appeals.

1. The Commission shall be the sole forum for appeals of decisions by the Borough on rates for the basic service tier or associated equipment involving whether or not the Borough has acted consistently with the Cable Act or §§306 and 307, herein, or FCC regulations. Appeals of rate making decision by the Borough that do not depend upon determining whether the Borough has acted consistently with the Cable Act or §§306 and 307, herein, or FCC regulations, may be heard in the Dauphin County Court of Common Pleas.

2. Any participant at the Borough level in a rate making proceeding may file an appeal of the Borough's decision with the Commission within thirty (30) days of the release of the text or the Borough's decision as computed under FCC regulations. Oppositions may be filed within fifteen (15) days after the appeal is filed. Replies may be filed seven (7) days after the last day for oppositions.

(Ord. 287, 5/9/1994, §44)

§323. Adoption of Cable Act Regulations. The Borough of Elizabethville hereby adopts, for the purpose of establishing rules and regulations regulating cable operator's rates, those regulations promulgated under the Federal Cable Act, 47 U.S.C. §543, save and except such portions as are herein deleted, modified or amended. (Ord. 287, 5/9/1994, §47)