

BOROUGH OF ABBOTTSTOWN
COUNTY OF ADAMS, PENNSYLVANIA

ORD. NO. 2021-03

AN ORDINANCE TO APPROVE, ADOPT AND ENACT AN ORDINANCE CODIFICATION FOR THE BOROUGH OF ABBOTTSTOWN, COUNTY OF ADAMS, COMMONWEALTH OF PENNSYLVANIA; TO PROVIDE FOR THE REPEAL OF CERTAIN LEGISLATION NOT INCLUDED THEREIN; TO SAVE FROM REPEAL CERTAIN OTHER LEGISLATION NOT INCLUDED THEREIN; AND TO PROVIDE PENALTIES FOR TAMPERING WITH THE CODE

Be it enacted and ordained by the Borough Council of the Borough of Abbottstown, County of Adams, Commonwealth of Pennsylvania, and it is enacted and ordained as follows:

ARTICLE I
Adoption of Code

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

Pursuant to Section 3301.5 of the Borough Code (8 Pa.C.S.A. § 3301.5), the codification of a complete body of legislation for the Borough of Abbottstown, County of Adams, Commonwealth of Pennsylvania, as revised, codified and consolidated into chapters, articles and sections by General Code, and consisting of Chapters 1 through 204, together with an Appendix, is hereby approved, adopted, ordained and enacted as a single ordinance of the Borough of Abbottstown, which shall be known and is hereby designated as the "Code of the Borough of Abbottstown," hereinafter referred to as the "Code."

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

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 Only such provisions of former ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3 below, and only new or changed provisions, as described in § 1-6 below, shall be deemed to be enacted from the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

§ 1-3. Inconsistent legislation repealed.

- A. Repeal of inconsistent ordinances. Except as provided in § 1-4, Legislation saved from repeal; matters not affected by repeal, below, all ordinances or parts of ordinances inconsistent with the provisions contained in the Code adopted by this ordinance are hereby repealed as of the effective date given in § 1-15; provided, however, that such repeal shall only be to the extent of such inconsistency, and any valid legislation of the Borough of Abbottstown which is not in conflict with the provisions of the Code shall be deemed to remain in full force and effect.
- B. Repeal of specific ordinances. The Borough Council of the Borough of Abbottstown has determined that the following ordinances are no longer in effect and hereby specifically repeals the following legislation:
 - (1) Ordinance No. 1985-1, Water Connection Fees, adopted July 18, 1985.
 - (2) Ordinance No. 1987-1, Intergovernmental Cooperation: Mutual Police Protection, adopted in 1987.

§ 1-4. Legislation saved from repeal; matters not affected by repeal.

The adoption of this Code and the repeal of ordinances provided for in § 1-3 of this ordinance shall not affect the following ordinances, rights and obligations, which are hereby expressly saved from repeal; provided, however, that the repeal of ordinances pursuant to § 1-3 or the saving from repeal of ordinances pursuant to this section shall not be construed so as to revive any ordinance previously repealed, superseded or no longer of any effect:

- A. Any ordinance adopted subsequent to July 16, 2020.
- B. Any right or liability established, accrued or incurred under any legislative provision of the Borough prior to the effective date of this ordinance or any action or proceeding brought for the enforcement of such right or liability or any cause of action acquired or existing.
- C. Any offense or act committed or done before the effective date of this ordinance in violation of any legislative provision of the Borough or any penalty, punishment or forfeiture which may result therefrom.
- D. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this ordinance, brought pursuant to any legislative provision of the Borough.
- E. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Borough or any lawful contract, obligation or agreement.
- F. Any ordinance appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Borough or other instruments or evidence of the Borough's indebtedness.
- G. Any ordinance adopting an annual budget or establishing an annual tax rate.

- H. Any ordinance providing for the levy, imposition or collection of special taxes, assessments or charges.
- I. Any ordinance authorizing the purchase, sale, lease or transfer of property or acquiring property by acceptance of deed, condemnation or exercise of eminent domain.
- J. Any ordinance annexing land to the Borough.
- K. Any ordinance providing for or requiring the construction or reconstruction or opening of sidewalks, curbs and gutters.
- L. Any ordinance or part of an ordinance providing for laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, sidewalk, park or other public place or property or designating various streets as public highways.
- M. Any ordinance establishing water, sewer or other special purpose districts and designating the boundaries thereof; providing for a system of sewers or water supply lines; or providing for the construction, extension, dedication, acceptance or abandonment of any part of a system of sewers or water supply lines.
- N. Any ordinance providing for the making of public improvements.
- O. Any ordinance providing for the salaries and compensation of officers and employees of the Borough or setting the bond of any officer or employee.
- P. Any ordinance concerning changes and amendments to the Zoning Map.
- Q. Any ordinance relating to or establishing a pension plan or pension fund for municipal employees.
- R. Any ordinance or portion of an ordinance establishing a specific fee amount for any license, permit or service obtained from the Borough.
- S. Any currently effective ordinance providing for intergovernmental cooperation or establishing an intermunicipal agreement.

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

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

§ 1-6. Changes and revisions in previously adopted legislation; new provisions.

- A. Nonsubstantive changes. In compiling and preparing the ordinances and resolutions of the Borough for adoption and revision as part of the Code, certain nonsubstantive grammatical and style changes were made in one or more of said ordinances and resolutions. It is the intention of the Borough Council that all such changes be adopted as

part of the Code as if the ordinances and resolutions so changed had been previously formally amended to read as such.

- B. Substantive changes and revisions. In addition to the changes and revisions described above, changes and revisions of a substantive nature, as set forth in Schedule A attached hereto and made a part hereof, are hereby made to various ordinances and resolutions included in the Code. These changes are enacted to bring provisions into conformity with the desired policies of the Borough Council, and it is the intent of the Borough Council that all such changes be adopted as part of the Code as if the legislation so changed had been previously formally amended to read as such. All such changes and revisions shall be deemed to be in effect as of the effective date of the Code specified in § 1-15.
- C. Nomenclature changes. Throughout the Code, the following titles are revised as indicated:
 - (1) The term “Justice of the Peace,” “District Magistrate” or “District Justice” is amended to read “Magisterial District Judge.”
 - (2) The term “Department of Environmental Resources” is amended to read “Department of Environmental Protection.”
 - (3) The term “Department of Community Affairs” is amended to read “Department of Community and Economic Development.”
 - (4) The term “Burgess” is amended to read “Mayor.”
- D. Statutory references. Pursuant to recodification of the Borough Code in 2012 and 2014 (see now 8 Pa.C.S.A. § 101 et seq.), statutory citations referring to specific sections of the Borough Code have been updated accordingly throughout the Code.

§ 1-7. Interpretation of provisions.

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

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

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

supplements to the Code for the convenience of persons using the Code and are not part of the legislation.

§ 1-9. Filing of copy of Code.

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

§ 1-10. Amendments to Code.

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

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

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

§ 1-12. Publication of notices.

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

§ 1-13. Altering or tampering with Code; violations and penalties.

It shall be unlawful for anyone to improperly change or amend, by additions or deletions, or to alter or tamper with the Code or any part or portion thereof in any manner whatsoever which will cause the law of the Borough to be misrepresented thereby. Any person who violates or permits a

violation of this section of this ordinance shall, upon being found liable therefor in a civil enforcement proceeding, pay a fine of not more than \$600, plus all court costs, including reasonable attorney’s fees, incurred by the Borough in the enforcement of this chapter. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense. Further, the appropriate officers or agents of the Borough are hereby authorized to seek equitable relief, including injunction, to enforce compliance herewith.

§ 1-14. Severability.

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

§ 1-15. Effective date.


All provisions of this ordinance and of the Code shall be in accordance with Section 3301.3(b) of the Borough Code.

ENACTED AND ORDAINED by the Borough Council of the Borough of Abbottstown this 20th day of May 2021.

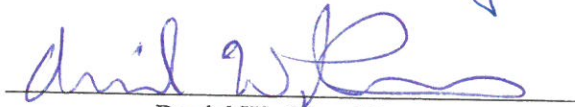
ATTEST:

BOROUGH OF ABBOTTSTOWN


Borough Secretary

BY: 
Dennis Posey, Council President

APPROVED this 20th day of May 2021.


Daniel Watkins, Mayor

Borough of Abbottstown Code Adoption Ordinance

Schedule A Specific Revisions at Time of Adoption of Code

Chapter 18, Emergency Services.

Article I, Recognition and Authorization of Fire Company.

Section 18-1 is amended to change "The Abbottstown Fire Company" to read "United Hook & Ladder 33."

Article III, Firemen's Relief Association.

This article is adopted to read as follows:

§ 18-10. Payment of certain moneys.

The Secretary/Treasurer of the Borough is hereby authorized to pay to the Treasurer of the Firemen's Relief Association such sums of money that may be received, annually, from the State Treasurer as a tax on foreign fire insurance companies.

Chapter 57, Alarm Systems.

- A. Section 57-5 is amended to delete the specific fee and replace it with the phrase "as set forth from time to time by resolution of the Borough Council."
- B. Section 57-10B and C are amended to delete the specific fee and replace it with the phrase "as set from time to time by resolution of the Borough Council."
- C. Section 57-11A is amended to standardize the penalty with maximums of \$1,000 fine or in default imprisonment for not more than 30 days.

Chapter 64, Animals.

This chapter is adopted to read as follows:

§ 64-1. Purpose and scope.

Uncontrolled dogs and animals are detrimental to the physical, mental and social well-being of the residents of Abbottstown Borough. Uncontrolled dogs and animals disturbing the peace, running at large, harboring disease or causing unsanitary conditions could adversely effect the health of individuals and interferes with their peaceable enjoyment of property within the Borough. This chapter is adopted pursuant to 8 Pa.C.S.A. § 1202(5), (6), (9), (12), (13), (14), (15) and (20) of the Borough Code. In considering the adoption of this chapter, the Borough makes the following findings:

- A. There is growing concern in the Borough with the failure of some property owners and/or some dog or animal owners to properly control the conduct of their respective dogs or animals.*

B. There is growing concern in the Borough created by a multitude of citizen complaints with the increased noise disturbance created by dogs or other animals within the Borough, especially concern due to the close proximity of the properties within the Borough.

C. Borough police records indicate an increasing number of complaints being made by the citizens of the Borough, said complaints including dogs found running at large within the Borough and noise disturbances created by barking dogs.

§ 64-2. Definitions.

Unless otherwise expressly stated, the following terms shall, for purposes of this chapter, have the meanings indicated as follows:

ANIMAL CONTROL OFFICER — Duly authorized police officers of the Borough and such other person or persons as may be designated by the Borough to enforce this chapter.

ANIMAL(S) — Dogs, cats, birds, reptile, livestock, fowl, insects, arachnids, and any other creatures utilized by a person for personal, agricultural, commercial, or business purposes.

BOROUGH — The Borough of Abbottstown, Adams County, Pennsylvania.

DANGEROUS DOG — Any one of the following:

A. Any dog which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation on public or private property;

B. Any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals;

C. Any dog used in the commission of a crime;

D. Any dog which in a vicious or terrorizing manner approaches any person in apparent attitude of attack upon the streets, sidewalks or any public grounds or places; or

E. Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.

KENNEL — Any establishment wherein dogs or other animals are kept for the purpose of breeding, hunting, training, renting, buying, boarding, sale, show or any other similar purpose and is so constructed that said dogs or other animals cannot stray therefrom.

PERSON — A natural individual, unincorporated association, partnership, corporation, estate, trust or any other legally recognized entity, and the members of such partnership and the officers of such corporation.

PROPERTY — Any parcel of real estate within the Borough, including the land, all buildings and appurtenant structures.

§ 64-3. Noise disturbance.

A. It shall be illegal within the Borough for any person to own, possess or control any dog, cat or other animal that makes noises continuously or repeatedly either for a period of at least 15 minutes between the hours of 7:00 a.m. to 10:00 p.m. daily, or for a period of at least five minutes between the hours of 10:00 p.m. to 7:00 a.m. daily, regardless of whether the animal is physically situated in or upon private property. Such noises shall be considered a nuisance and shall be illegal, provided that none of the exceptions, set forth hereinbelow, are applicable.

B. The following shall not be considered a violation of this chapter and shall constitute exceptions thereto:

(1) Noises made by farm animals located on farms that constitute agricultural operations protected from nuisance suits by the Right to Farm Law or any similar legislation now in force or hereinafter enacted to protect farm operations from legal actions that have the effect of restricting lawful agricultural operations.

(2) Barking or other noises made by dogs or other animals in response to a person who is trespassing upon private property in or upon which the animal is lawfully situated or if the noise is made in response to an unlawful physical assault upon the dog or other animal or upon a person lawfully on the property on which the

dog or other animal is situated. By way of illustration, but not limitation, this exception does not apply to noises made in response to a person walking, running or being present on a sidewalk intended for the public or within the public right-of-way of any road regardless of whether the animal may perceive the presence of such person as being intrusive or alarming.

(3) Barking or other noises made by dogs or other animals located in a licensed kennel, veterinarian's office or other similar lawful place of business, provided that the operator of the facility has adopted and implemented reasonable policies to avoid adverse impacts to the occupants of neighboring properties such as, by way of illustration, but not limitation, installing or constructing buffers between the location of the animals and affected neighboring properties, the placement of loud animals indoors or the refusal to accept, on other than an emergency basis, animals which have previously created noise problems for the operator.

C. Each day that such noises occur shall constitute a separate violation of this chapter; and multiple violations may be cited if such noises occur on different days.

§ 64-4. Running at large and other nuisances.

No person who owns, maintains, keeps or has custody of a dog, cat or other animal shall fail to use all reasonable precautions to confine or contain such dog, cat or other animal to the property of such person or the property which the owner, custodian or keeper has permission to use for such purposes. It shall be unlawful for any person to permit any dog, cat or other animal to become a nuisance in any way within the Borough. Nuisances shall include, but not be limited to, the following:

A. Permitting any dog, cat or other animal to run at large within the Borough.

B. Permitting a dog, cat or other animal to be upon any public or private property, including sidewalks and streets, within the Borough unless said dog, cat or other animal is on a leash or upon property owned by the owner of said dog, cat or other animal. The person holding the leash must be of sufficient size and experience to handle the dog or animal on the leash.

C. Failing to immediately remove the droppings when a dog, cat or other animal is upon property other than that of the owner.

D. Placing or otherwise securing any dog, cat or other animal in any of the streets of the Borough or at any location that allows the dog, cat or animal to enter any of the streets of the Borough or any other public place.

E. Owning an animal that acts in such a manner as to cause annoyance or discomfort to a reasonable person of normal sensitivities.

§ 64-5. Restriction on number.

Due to the close proximity of the properties located within the Borough and due to the increased number of citizen complaints received by the Borough:

A. It shall be unlawful for any person to keep or to maintain on any property of 1/2 acre or greater more than four dogs over six months of age, eight cats over six months of age, or a total of 10 animals of any type over six months of age, including both dogs and cats.

B. Any person shall be permitted to make application to the Borough for a permit granting said person permission under this chapter to keep or maintain on any property dogs, cats or other animals in a number which exceed the limits as detailed in Subsection A of this section. The permit shall be granted by the Borough at the sole discretion of the Borough if the person demonstrates the following:

(1) No adverse impact on adjoining property owners or residents;

(2) The dogs, cats or other animals will be kept or maintained in a safe and sanitary manner;

(3) That the keeping and maintaining of the dogs, cats or other animals shall be done

without violating any other section of this chapter; and
(4) Adherence with any other conditions as required by the Borough.

§ 64-6. Treatment.

No person shall treat a dog, cat or other animal in the Borough in a cruel or inhuman manner. Beating, underfeeding, overloading and abandoning animals shall be considered cruel and inhuman treatment within the meaning of this section.

§ 64-7. Dangerous dogs.

No person shall permit a dangerous dog to run at large within the Borough. In addition, no person shall keep, maintain or harbor any dangerous dog out of doors unless said dangerous dog is secured within a kennel, or is on a leash held by a person of sufficient size and experience to handle the dangerous dog on the leash. Any person who keeps, maintains or harbors any dangerous dog shall place a sign upon his or her property warning all persons of the presence of a dangerous dog. The sign shall be conspicuously posted such that any person entering the property would be warned of the presence of the dangerous dog. Members of the Police Department and the Animal Control Officer are hereby authorized to kill any dangerous dog or other animal of any kind when it is necessary for the protection of persons or property.

§ 64-8. Diseased animals.

A. No person shall maintain or expose any dog, cat or other animal that is afflicted with a contagious or infectious disease whereby the health of humans or other animals may be affected, nor shall any person ship any such diseased animal or remove it from the premises of the owner thereof except under the supervision of the Chief of Police, Animal Control Officer or any other duly authorized officer of the Borough.

B. It is hereby made the duty of the Animal Control Officer or any other duly authorized officer of the Borough to secure such disposition of any diseased animal and such treatment of affected premises as to prevent the communication or spread of the contagion or infection, except in cases where the State Veterinarian is empowered to act.

§ 64-9. Keeping of certain animals prohibited.

A. No person shall keep or maintain out of doors any live swine or pig, chicken, turkey, pigeon or other domestic or wild fowl within the Borough, unless said person has applied for and obtained a permit from the Borough authorizing the keeping or maintaining of such animals. A person may keep or maintain such animals indoors if the conditions are safe, secure, sanitary and appropriate.

B. No person shall keep or maintain within the Borough any reptile with an overall length in excess of five feet nor any poisonous arachnid, insect, or reptile regardless of its length or size, unless said person has applied for and obtained a permit from the Borough authorizing the keeping or maintaining of such animals.

§ 64-10. Removal and disposal of dead animals.

It shall be the duty and obligation of all owners, lessors or occupiers of property within the Borough to provide for the removal and disposal of any and all dead cats, dogs and other animals upon such property.

§ 64-11. Cleanliness of enclosures.

No person shall cause or allow any stable, house, hut, area or place where any dog, cat or other animal is or may be kept to become unclean or unwholesome.

§ 64-12. Authorized actions of Animal Control Officer.

Police officers or the Animal Control Officer of the Borough are hereby authorized to secure and use, with reasonable precautions, any device or gun that propels an instrument, pellet or drug for the purpose of immobilizing or anesthetizing an animal for the purpose of securing and impounding such animal. Further, it shall be the duty of the Animal Control Officer to take into custody any and all dogs, cats or other animals found in violation of any provision

of this chapter and not restrained, leashed or secured upon the owner's property or property which the owner has permission to use and to convey the same to such shelter or pound as is from time to time designated by the Borough. A notice of seizure shall be sent to the owner of such dog, cat or other animal, if known, in accordance with the laws of the Commonwealth of Pennsylvania.

§ 64-13. Violations and penalties.

A. Any person who shall violate any provision of this chapter shall, upon conviction thereof, be sentenced to pay a fine as follows:

- (1) Fifty dollars, plus costs, for the first violation;*
- (2) One hundred dollars, plus costs, for the second violation;*
- (3) One hundred fifty dollars, plus costs, for third violation;*
- (4) Two hundred dollars, plus costs, for the fourth violation;*
- (5) Two hundred fifty dollars, plus costs, for all subsequent violations.*

B. For purposes of this section, "one year" shall mean 365 days from the first violation.

C. For purposes of this section "costs" shall include, but not be limited to, any and all money spent on investigating, mitigating, prosecuting, or otherwise addressing any violation of this chapter, including, but not limited to, police officer and Animal Control Officer charges and attorneys' fees.

D. In default of payment of any fine assessed pursuant to this chapter, the violator shall be subject to imprisonment for a term not to exceed 30 days.

§ 64-14. Pennsylvania Dog Law.

This chapter seeks to supplement the provisions of the Pennsylvania Dog Law, 3 P.S. § 459-101 et seq., and this chapter shall be interpreted in such a manner.

Chapter 78, Buildings, Numbering of.

Article I, Display of Numbers.

Section 78-5 is amended to standardize the penalty with maximums of \$1,000 fine or in default imprisonment for not more than 30 days.

Article II, Numbering of Buildings on Streets.

This article is adopted to read as follows:

§ 78-6. Compliance required.

It shall be unlawful for any property owner or the tenant of any building in the Borough of Abbottstown to attach or to display on any building in the Borough of Abbottstown any number purporting to be a house number, building number or street number that does not comply with the provisions of this article. Numbers must comply with this article.

§ 78-7. Division streets.

For the purpose of allocating numbers, King Street shall be a division street for streets extending northwardly and southwardly; and Queen Street shall be a division street for streets extending eastwardly and westwardly. Streets not intersecting a division street, if connected to and a logical continuation of a street intersecting with a division street, shall be numbered in the same manner as the street of which they are a continuation. For example, Borough Road shall be numbered as though it were a continuation of North Queen Street. Streets not intersecting with a division street and not a continuation of another street so intersecting shall be numbered as though they were an extension of the nearest street intersecting with a division street. For example, Sutton Road shall be numbered as though it were an extension

or continuation of St. James Street below Fleet Street.

§ 78-8. North and south streets.

A. All buildings on streets extending northwardly and southwardly shall be numbered beginning with number one within the first 12 1/2 feet on the right-hand side of each street from the property line of its division streets, with odd numbers on each 12 1/2 feet on the right-hand side of each of said streets, extending from said division streets, and even numbers for each 12 1/2 feet on the left-hand side thereof; in numbers from one to 99 in the first block, 101 to 199 in the second block and with numbers in succeeding one hundreds in each block to the Borough limits.

B. All streets parallel to the streets extending northwardly and southwardly and at angles therewith not exceeding angles of 45° shall be numbered within the 100 limitations provided for on streets extending northwardly and southwardly.

§ 78-9. East and west streets.

A. All buildings on streets extending eastwardly and westwardly shall be numbered beginning with number one within the first 12 1/2 feet on the right-hand side of each street from the property lines of its division street with odd numbers for each 12 1/2 feet on the right-hand side of each of said streets, extending from said division streets, and even numbers for each 12 1/2 feet on the left-hand side thereof; in numbers from 1 to 99 in the first block, 101 to 199 in the second block and with numbers in succeeding one hundreds in each block to the Borough limits.

B. All streets parallel to the streets extending eastwardly and westwardly at angles therewith less than 45° shall be numbered within the 100 limitations for each block provided for on streets extending eastwardly and westwardly.

§ 78-10. Numbers by Center Square.

Buildings on Center Square shall be given numbers from one to 100 for each 12 1/2 feet starting at the east building line of South Queen Street and extending clockwise around said Center Square.

§ 78-11. Multiple entrances.

In the event of more than one entrance to a building or buildings within the space or distance of 12 1/2 feet, fractional numbers are to be used.

§ 78-12. Allocation of numbers.

It shall be the duty of the Borough Council and through the proper officers and employees acting under the supervision of the Borough Council, on request, to allocate numbers for any and all buildings within the Borough.

§ 78-13. Dispute.

All questions and disputes relating to the allocation of numbers to buildings shall be determined by the Borough Council; provided, however that any person not satisfied with or aggrieved by any such determination may appeal to a court having jurisdiction of like matters.

§ 78-14. Violations and penalties.

Any person, persons, firm or corporation violating any provision of this article shall upon conviction therefor before the Magisterial District Judge be sentenced to pay a fine not to exceed \$1,000, plus costs of prosecution, and, in default of payment of such fine and costs, to undergo imprisonment not to exceed 30 days. Each day's violation thereof shall be deemed to be a separate offense.

Chapter 113, Fire Prevention and Fire Protection.

Article I, Reimbursement of Emergency Services Costs.

This article is adopted to read as follows:

§ 113-1. Definitions.

For the purposes of this article, the following terms shall be defined as follows:

FIRE COMPANY — *The designated fire protection agency for Abbottstown Borough and/or any other volunteer fire department authorized to provide service in the Borough.*

HAZARDOUS MATERIALS — *Any substances or materials in a quantity or form which pose an unreasonable and imminent risk to the life, health or safety of persons or property or to the ecological balance of the environment, and shall include, but not be limited to, such substances as explosives, radioactive materials, petroleum products or gases, poisons, etiologic (biologic) agents, flammables, corrosives or materials listed in the hazardous substances list of the Pennsylvania Department of Labor and Industry. This definition shall also conform to the corresponding definition contained in the Hazardous Material Emergency Planning and Response Act, 35 P. S. § 6022.103, as amended.*

§ 113-2. Authorization of Borough to abate.

The Borough, through its emergency services, is authorized to clean up, dispose or abate, or cause to be cleaned up, disposed, or abated, the effects of any hazardous materials or substances spilled or deposited upon or into properties or facilities within the municipal boundaries of the Borough or having a direct identifiable effect on persons or property within the municipal boundaries of the Borough, including, but not limited to, traffic control, evacuation, relocation, substance monitoring, establishment of medical care facilities and other costs incurred in the mitigation of the emergency situation.

§ 113-3. Emergency service costs subject to reimbursement.

Any person who intentionally, negligently, accidentally or otherwise causes a hazardous material or substance spill, deposit, or any other act or omission necessitating the providing of emergency services by the Borough or by the Fire Company within the boundaries of the Borough or the service areas of the Fire Company shall be liable for all reasonable costs incurred by the Borough and/or the Fire Company as a result of such spill, deposit, or other act or omission. The remedy provided by this article shall be in addition to any other remedies provided by law.

§ 113-4. Emergency service costs defined.

For the purpose of this article, reasonable costs incurred by the Borough and/or the Fire Company for emergency services shall include, but not be limited to, the following: actual labor costs of Borough and Fire Company personnel, including, but not limited to, worker's compensation benefits, insurance, fringe benefits, wages and administrative overhead; cost of equipment operation; cost of repair or replacement of damaged equipment; cost of special fire extinguishing agents; cost of materials and/or supplies; and any costs of any contracted labor and materials.

§ 113-5. Procedure for reimbursement.

For purposes of this article, the charges for use of the Borough's or the Fire Company's emergency services equipment, materials and personnel shall be billed by the entity incurring the costs, provided that such charges or costs shall not be billed without the prior approval of the Borough Council. Payment of said charges shall be remitted within 30 days of receipt of the entity's bill or invoice. If such charges are not paid within 30 days, the billing entity may initiate an appropriate action in any tribunal of competent jurisdiction for the collection of any amounts due hereunder plus attorneys' fees, interest and costs; provided that any such legal action shall not be commenced without the prior approval of the Borough Council.

Chapter 134, Junkyards.

This chapter is adopted to read as follows:

§ 134-1. Definitions.

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

JUNKYARD — *Includes a salvage yard or other place used and maintained for the collection, accumulation, storage or disposal of used or secondhand goods or material, and expressly includes a salvage yard or other place used in conjunction with or part of a garage or service station operation.*

PERSON — *Includes any person, firm or corporation owning or having a present interest in any real estate in the Borough of Abbottstown, of any nature.*

§ 134-2. Restrictions and specifications.

No persons shall use, permit, or suffer to be used any portion of real estate in which that person has an interest for the establishment or maintenance of a junkyard within 1,500 feet of a church, cemetery, school, playground, ball park, road, highway, alley or place of public resort unless all of the goods and material of the junkyard are contained and stored entirely within a substantial building or other structure which is not of an unsightly appearance, or unless the junkyard has been in continuous operation since prior to October 21, 1959. No persons shall use or permit to be used any portion of real estate in which that person has an interest for the establishment or maintenance of a junkyard which constitutes a noxious or offensive business, or would constitute a noxious or offensive business if established or maintained.

§ 134-3. License required.

No person may establish or operate a junkyard without obtaining from the Permit Officer a license therefor.

§ 134-4. Licensing procedure.

Upon application for a license, the Permit Officer shall cause inspection to be made of the premises proposed to be used for the junkyard and described in the application. After such inspection, the Permit Officer shall make a finding of whether or not granting the license would result in a violation of § 134-2. If the finding is to the effect that granting a license will not violate any provision of this chapter, the Permit Officer shall issue a license for the term of one year from the date of issuance. The license shall be renewed annually by the Permit Officer if, after investigation by the Permit Officer, it is found that no provisions of this chapter have been violated.

§ 134-5. Display of license.

The license issued under the provisions of this chapter shall be conspicuously displayed on the interior of a building on the licensed premises during the entire term of the license.

§ 134-6. Maintenance.

All junkyards licensed under the provisions of this chapter shall be kept in a neat and orderly manner.

§ 134-7. Revocation of license.

The Permit Officer may, at any time, upon finding that the provisions of this chapter have been violated by a licensed junkyard, revoke the license of the junkyard so violating this chapter.

§ 134-8. Burning prohibited.

No person shall use, or allow to be used, the real estate in which that person has an interest, for the burning of wrecked or junked motor vehicles or parts thereof.

§ 134-9. Nuisances.

Any junkyard which violates the provisions of this chapter is hereby declared to be an obnoxious and offensive business, detrimental to the health, safety and comfort of the inhabitants of the Borough and to the public in attendance at places of public resort

mentioned herein, and is hereby declared to constitute a public nuisance.

§ 134-10. Violations and penalties.

Any person who violates any provision of this chapter shall, upon conviction before the Magisterial District Judge, be subject to a fine of not more than \$1,000, plus costs of prosecution, and, in addition, shall be liable to pay 110% of the cost of removal of material deposited or stored in violation of this chapter. In default of payment of fine and costs, and cost of removal of materials aforesaid, a person convicted hereunder shall undergo imprisonment in the Adams County Jail for a period of not more than 30 days.

Chapter 148, Peddling.

This chapter is adopted to read as follows:

§ 148-1. Definitions.

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

PEDDLING — *Offering for sale on the public streets, alleys or square of the Borough any goods, wares or merchandise whatsoever, except farm produce offered for sale by the actual producer thereof.*

§ 148-2. License required for peddling.

It shall be unlawful for any person to peddle without first obtaining a license from the Borough Secretary as hereinafter provided.

§ 148-3. Licensing requirements and fees.

It shall be the duty of the Borough Secretary to issue licenses for peddling, the fees for which are to be set from time to time by resolution of the Borough Council. Any person desiring a license shall make written application therefor to the Borough Secretary. The Borough Secretary may require such information as, in his discretion, seems advisable relating to the applicant's background, responsibility and honesty, and shall make a reasonable investigation of the applicant before issuing the license.

§ 148-4. Display of license.

It shall be the duty of any holder of a license under this chapter to display the same upon request by any peace officer, constable or official of the Borough.

§ 148-5. Violations and penalties.

Any person violating the provisions of this chapter shall be subject to a fine of not more than \$600, plus costs of prosecution, and in default of payment of such fine and costs, imprisonment not to exceed 30 days. Each day's violation shall be construed to be a separate offense.

Chapter 162, Rental Property Registration.

A. Section 162-1 is amended by adding the following definition:

RENTAL UNIT — *That portion of a dwelling rented or offered for rent for living and dwelling purposes, or any lots rented for the placement of mobile homes to an individual or family unit, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such portion of the property. Multiple use properties which have one or more rental units in addition to any and all other uses.*

- B. Section 162-3 is amended to standardize the penalty with maximums of \$600 fine or in default imprisonment for not more than 30 days.

Chapter 169, Sewers.

Article I, Holding Tanks.

Section 169-8 is amended to standardize the penalty with maximums of \$600 fine or in default imprisonment for not more than 30 days.

Article II, Connections.

Section 169-13A is amended to standardize the penalty with maximums of \$600 fine or in default imprisonment for not more than 30 days.

Chapter 173, Skateboards, Roller Blades and Skates.

Section 173-3 is amended as indicated: Any person violating any provision of this chapter shall, upon conviction thereof, be sentenced to pay a fine of not more than \$600 plus costs of prosecution, and, in default of payment of said fine and costs, imprisonment for not more than 30 days the fine of \$50, together with costs which may be assessed by law.

Chapter 183, Streets and Sidewalks.

Article I, Openings and Excavations.

Section 183-15 is amended to standardize the penalty with maximums of \$1,000 fine or in default imprisonment for not more than 30 days.

Article II, Obstructions

This article is adopted to read as follows:

§ 183-16. Definitions.

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

BOROUGH — *The Borough of Abbottstown and any of its servants, workmen or agents.*

OWNER — *An owner or other person having a present interest in real estate abutting on a street, highway or sidewalk with the Borough.*

SHRUBBERY — *Includes trees, shrubbery, flowers and other foliage.*

SNOW — *Includes ice and snow.*

STREET — *Includes streets and highways.*

UTILITY — *A public service corporation or firm providing public service, including telephone, electricity, light and gas.*

§ 183-17. Trim requirements for shrubbery.

Every owner shall maintain shrubbery growing on that owner's property in a proper state of trim and condition so as not to interfere with the normal use of sidewalks and streets within the Borough.

§ 183-18. Owners to remove snow.

Every owner shall maintain the sidewalk upon which his property abuts free and clean of snow.

§ 183-19. Accumulation of snow; shrubbery interference.

Accumulations of snow upon sidewalks and shrubbery which interferes with the use of sidewalks and streets are prohibited.

§ 183-20. Notice to comply.

In applicable cases, the Borough or its designee shall give an owner notice to comply with the requirements of §§ 183-17 and 183-18, and the notice shall state that the owner shall comply within 24 hours of notice.

§ 183-21. Removal by Borough; payment of cost by owner.

If, after having received notice, an owner fails or refuses to comply with the provisions of §§ 183-17 and 183-18 within 24 hours of said notice, the person shall upon conviction thereof, be sentenced to pay a fine of up to \$600.

§ 183-22. Interference with utility wires and streetlighting.

The Borough may trim shrubbery for a vertical distance of 10 feet above the surface of sidewalks and streets in order that said shrubbery does not interfere with utility wires or streetlighting.

§ 183-23. Removal of trees.

The Borough may remove any trees on or abutting a sidewalk or street if a tree obstructs traffic, streetlighting, utility lines, or is inconvenient or dangerous to the passing public.

§ 183-24. Cost of work.

Cost of work done under preceding sections for work specially required to protect and maintain utility wires or streetlighting shall be paid by the utility concerned. All other costs shall be paid by the Borough from the general fund.

§ 183-25. Declaration of governmental services.

Services by the Borough pursuant to this article are hereby declared to be governmental services, and there shall be no liability on the part of the Borough for performance or nonperformance of said services.

Chapter 190, Taxation.**Article I, Realty Transfer Tax.**

This article is amended in its entirety to read as follows:

§ 190-1. Short title.

This article shall be known as the "Realty Transfer Tax Ordinance of Abbottstown."

§ 190-2. Authority.

A realty transfer tax for general revenue purposes is hereby imposed upon the transfer of real estate or interest in real estate situated within Abbottstown, regardless of where the documents making the transfer are made, executed or delivered, or where the actual settlements on such transfer took place as authorized by Article XI-D, "Local Real Estate Transfer Tax," 72 P.S. § 8101-D et seq.

§ 190-3. Definitions.

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

§ 190-3 § 190-3

ASSOCIATION — A partnership, limited partnership, or any other form of unincorporated enterprise owned or conducted by two or more persons other than a private trust or decedent's

estate.

CORPORATION — A corporation, joint-stock association, business trust, or banking institution which is organized under the laws of this commonwealth, the United States, or any other state, territory, foreign country or dependency.

DOCUMENT — Any deed, instrument or writing which conveys, transfers, demises, vests, confirms or evidences any transfer or demise of title to real estate, but does not include wills, mortgages, deeds of trust or other instruments of like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding 30 years, or instruments which solely grant, vest or confirm a public utility easement.

"Document" shall also include a declaration of acquisition required to be presented for recording under § 190-8 of this article.

FAMILY FARM CORPORATION — A corporation of which at least 75% of its assets are devoted to the business of agriculture and at least 75% of each class of stock of the corporation is continuously owned by members of the same family. The business of agriculture shall include the leasing to members of the same family of property which is directly and principally used for agricultural purposes. The business of agriculture shall not be deemed to include:

- A. Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;*
- B. The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;*
- C. Fur farming;*
- D. Stockyard and slaughterhouse operations; or*
- E. Manufacturing or processing operations of any kind.*

FAMILY FARM PARTNERSHIP — A partnership of which at least 75% of its assets are devoted to the business of agriculture and at least 75% of the interests in the partnership are continuously owned by members of the same family. The business of agriculture shall include the leasing to members of the same family of property which is directly and principally used for agricultural purposes. The business of agriculture shall not be deemed to include:

- A. Recreational activities, such as but not limited to hunting, fishing, camping, skiing, show competition or racing;*
- B. The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;*
- C. Fur farming;*
- D. Stockyard and slaughterhouse operations; or*
- E. Manufacturing or processing operations of any kind.*

LIVING TRUST — Any trust, other than a business trust, intended as a will substitute by the settlor which becomes effective during the lifetime of the settlor, but from which trust distributions cannot be made to any beneficiaries other than the settlor prior to the death of the settlor.

MEMBERS OF THE SAME FAMILY — Any individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing. Individuals related by the half-blood or legal adoption shall be treated as if they were related by the whole-blood.

ORDINARY TRUST — Any trust, other than a business trust or a living trust, which takes effect during the lifetime of the settlor and for which the trustees of the trust take title to property primarily for the purpose of protecting, managing or conserving it until distribution

to the named beneficiaries of the trust. An ordinary trust does not include a trust that has an objective to carry on business and divide gains, nor does it either expressly or impliedly have any of the following features: the treatment of beneficiaries as associates, the treatment of the interests in the trust as personal property, the free transferability of beneficial interests in the trust, centralized management by the trustee or the beneficiaries, or continuity of life.

PERSON — Every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person," as applied to associations, shall include the responsible members or general partners thereof, and as applied to corporations, the officers thereof.

REAL ESTATE —

A. All lands, tenements or hereditaments within Abbottstown, including without limitation buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees, and other improvements, immovables or interests which by custom, usage or law pass with a conveyance or land, but excluding permanently attached machinery and equipment in an industrial plant.

B. A condominium unit.

C. A tenant-stockholder's interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

REAL ESTATE COMPANY — A corporation or association which is primarily engaged in the business of holding, selling or leasing real estate, 90% or more of the ownership interest in which is held by 35 or fewer persons and which:

A. Derives 60% or more of its annual gross receipts from the ownership or disposition of real estate; or

B. Holds real estate, the value of which comprises 90% or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.

TITLE TO REAL ESTATE —

A. Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including without limitation an estate in fee simple, life estate, or perpetual leasehold; or

B. Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold, including without limitation a leasehold interest or possessory interest under a lease or occupancy agreement for a term of 30 years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

TRANSACTION — The making, executing, delivering, accepting, or presenting for recording of a document.

VALUE —

A. In the case of any bona fide sale of real estate at arm's length for actual monetary worth, the amount of the actual consideration therefor, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate; provided that where such documents shall set forth a nominal consideration, the value thereof shall be determined from the price set forth in or actual consideration for the contract of sale;

B. In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy

agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio factor developed by the Pennsylvania Department of Revenue for Pennsylvania realty transfer tax base calculations;

C. In the case of an easement or other interest in real estate the value of which is not determinable under Subsection A or B, the actual monetary worth of such interest; or D. The actual consideration for or actual monetary worth of any executor agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not removed thereby or between the grantor, the agent or principal of the grantor of a related corporation, association or partnership and the grantee existing before or effective with the transfer.

§ 190-4. Imposition of tax; interest.

A. Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for, and in respect to the transaction or any part thereof, a tax at the rate of 1% of the value of the real estate represented by such document, which tax shall be payable at the earlier of the time the document is presented for recording or within 30 days of acceptance of such document or within 30 days of becoming an acquired company.

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

C. It is the intent of this article that the entire burden of the tax imposed herein on a person or transfer shall not exceed the limitations prescribed in the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. § 6924.101 et seq., so that if any other political subdivision shall impose or hereafter shall impose such tax on the same person or transfer then the tax levied by Abbottstown under the authority of that Act shall during the time such duplication of the tax exists, except as hereinafter otherwise provided, be 1/2 of the rate and such 1/2 rate shall become effective without any action on the part of Abbottstown; provided, however, that Abbottstown and any other political subdivision which imposes such tax on the same person or transfer may agree that, instead of limiting their respective rates to 1/2 of the rate herein provided, they will impose respectively different rates, the total of which shall not exceed the maximum rate permitted under the Local Tax Enabling Act.

D. If for any reason the tax is not paid when due, interest at the rate in effect at the time the tax is due shall be added and collected.

§ 190-5. Exempt parties.

The United States, the commonwealth, or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this article. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

§ 190-6. Excluded transactions.

A. The tax imposed by § 190-4 shall not be imposed upon:

(1) A transfer to the commonwealth, or to any of its instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property line adjustments provided said reconveyance is made within one year from the date of

condemnation.

- (2) A document which Abbottstown is prohibited from taxing under the Constitution or statutes of the United States.*
- (3) A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or tax claim bureau sale.*
- (4) A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest.*
- (5) A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants; however, if any of the parties take shares greater in value than their undivided interest, tax is due on the excess.*
- (6) A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister, and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.*
- (7) A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir.*
- (8) A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries that are entitled to receive the property or proceeds from the sale of the property under the trust, whether or not such beneficiaries are contingent or specifically named. A trust clause which identifies the contingent beneficiaries by reference to the heirs of the trust settlor as determined by the laws of the intestate succession shall not disqualify a transfer from the exclusion provided by this clause. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.*
- (9) A transfer for no or nominal actual consideration to a trustee of a living trust from the settlor of the living trust. No such exemption shall be granted unless the Recorder of Deeds is presented with a copy of the living trust instrument.*
- (10) A transfer for no or nominal actual consideration from a trustee of an ordinary trust to a specifically named beneficiary that is entitled to receive the property under the recorded trust instrument or to a contingent beneficiary where the transfer of the same property would be exempt if the transfer was made by the grantor of the property into the trust to that beneficiary. However, any transfer of real estate from a living trust during the settlor's lifetime shall be considered for the purposes of this article as if such transfer were made directly from the settlor to the grantee.*
- (11) A transfer for no or nominal actual consideration from a trustee of a living trust after the death of the settlor of the trust or from a trustee of a trust created pursuant to the will of a decedent to a beneficiary to whom the property is devised or bequeathed.*

- (12) *A transfer for no or nominal actual consideration from the trustee of a living trust to the settlor of the living trust if such property was originally conveyed to the trustee by the settlor.*
- (13) *A transfer for no or nominal actual consideration from trustee to successor trustee.*
- (14) *A transfer for no or nominal actual consideration between principal and agent or straw party; or from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this article. Where the document by which title is acquired by a grantee or agreement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.*
- (15) *A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation, except where the department reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this article.*
- (16) *A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two years.*
- (17) *A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt or the grantee or a transfer to a nonprofit industrial development agency or authority.*
- (18) *A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if:*
- (a) *The grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and*
 - (b) *The agency or authority has the full ownership interest in the real estate transferred.*
- (19) *A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person.*
- (20) *Any transfer between religious organizations or other bodies or persons holding title for a religious organization if such real estate is not being or has not been used by such transfer or for commercial purposes.*
- (21) *A transfer to a conservancy which possesses a tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954 [68A Stat. 3, 26 U.S.C. § 501(c)(3)] and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities; or a transfer from such a conservancy to the United States, the commonwealth or to any of their instrumentalities, agencies or political subdivisions; or any transfer from such a conservancy where the real estate is encumbered by a perpetual agricultural conservation easement as defined by the act of June 30, 1981 (P.L. 128, No. 43), known as the "Agricultural Area Security Law," and such*

conservancy has owned the real estate for at least two years immediately prior to the transfer.

(22) A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least 75% of each class of the stock thereof.

(23) A transfer of real estate devoted to the business of agriculture to a family farm partnership by a member of the same family, which family directly owns at least 75% of the interests in the partnership.

(24) A transfer between members of the same family of an ownership interest in a real estate company, family farm corporation or family farm partnership which owns real estate.

(25) A transaction wherein the tax due is \$1 or less.

(26) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

B. In order to exercise any exclusion provided in this section, the true, full and complete value of the transfer shall be shown on the statement of value. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this article.

§ 190-7. Documents relating to associations or corporations.

Except as otherwise provided in § 190-6, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this article, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

§ 190-8. Acquired company.

A. A real estate company is an acquired company upon a change in the ownership interest in the company, however effected, if the change does not affect the continuity of the company; and of itself or together with prior changes has the effect of transferring, directly or indirectly, 90% or more of the total ownership interest in the company within a period of three years.

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

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

D. Within 30 days after becoming an acquired company, the company shall present a declaration of acquisition with the recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county. A copy of the Pennsylvania Realty Transfer Tax Declaration of Acquisition may be submitted for this purpose.

§ 190-9. Credits against tax.

A. Where there is a transfer of a residential property by a licensed real estate broker,

which property was transferred to him within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer.

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

C. Where there is a transfer of real estate which is leased by the grantor, a credit for the amount of tax paid at the time of the lease shall be given the grantor toward the tax due upon the transfer.

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

E. If the tax due upon the transfer is greater than the credit given under this section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carryover credit shall be allowed.

§ 190-10. Extension of lease.

In determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lessee is fixed or if a method for calculating the rental charge is established.

§ 190-11. Proceeds of judicial sale.

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

§ 190-12. Duties of Recorder of Deeds.

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

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

C. On or before the 10th of each month, the Recorder shall pay over to Abbottstown all local realty transfer taxes collected, less 2% for use of the county, together with a report containing the information as is required by the Commonwealth of Pennsylvania in reporting collections of the Pennsylvania realty transfer tax. The two-percent commission shall be paid to the county.

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

§ 190-13. Statement of value.

Every document lodged with or presented to the Recorder of Deeds for recording shall set forth therein and as a part of such document the true, full and complete value thereof, or shall

be accompanied by a statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. The provisions of this subsection shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship. Other documents presented for affixation of stamps shall be accompanied by a certified copy of the document and statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article.

§ 190-14. Civil penalties.

A. If any part of any underpayment of tax imposed by this article is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment.

B. In the case of failure to record a declaration required under this article on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax 5% of the amount of such tax if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 50% in the aggregate.

§ 190-15. Tax to become lien.

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

§ 190-16. Enforcement.

All taxes imposed by this article, together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered.

§ 190-17. Regulations.

The Borough Council of Abbottstown is charged with enforcement and collection of the tax and is empowered to regulate and enforce reasonable regulations for enforcement and collection of the tax. The regulations which have been promulgated by the Pennsylvania Department of Revenue under 72 P.S. § 8101-C et seq. are incorporated into and made a part of this article.

Article II, Earned Income and Net Profits Tax.

This article is amended in its entirety to read as follows:

§ 190-18. Statutory authority.

This article is enacted under the authority of the Local Tax Enabling Act, 53 P.S. § 6924.101 et seq.

§ 190-19. Title.

This article shall be known and may be cited as the "Abbottstown Earned Income and Net Profits Tax Ordinance."

§ 190-20. Definitions.

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

ASSOCIATION — A partnership, limited partnership or any other unincorporated group of two or more persons.

BUSINESS — An enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit whether by a person, partnership, association or any other entity.

CORPORATION — A corporation or joint-stock association organized under the laws of the United States, the Commonwealth of Pennsylvania or any other state, territory, foreign country or dependency.

CURRENT YEAR — The calendar year for which the tax is levied.

DOMICILE — The place where one lives and has his permanent home and to which he has the intention of returning whenever he is absent. Actual residence is not necessarily "domicile," for domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. "Domicile" is the voluntary fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce him to adopt some other permanent home. In the case of businesses or associations, the domicile is that place considered as the center of business affairs and the place where its functions are discharged.

EARNED INCOME — Compensation as determined under Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971," and regulations in 61 Pa. Code Part I, Subpart B, Article V (relating to personal income tax), not including, however, wages or compensation paid to individuals on active military service. Employee business expenses are allowable deductions as determined under Article III of the Tax Reform Code of 1971. The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income.

EARNED INCOME AND NET PROFITS TAX OFFICER or OFFICER — That person, public employee, private agency or other entity designated by the Borough Council to collect and administer the tax on earned income and net profits. The elected (or appointed) Real Property Tax Collector shall be and shall serve as the Earned Income and Net Profits Tax Officer of the Borough of Abbottstown.

EMPLOYER — A person, partnership, association, corporation, institution, governmental body or unit or agency or any other entity employing one or more persons for a salary, wage, commission or other compensation.

NET PROFITS — The net income from the operation of a business, profession, or other activity, except corporations, determined under Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971," and regulations in 61 Pa. Code Part I, Subpart B, Article V (relating to personal income tax). The term does not include income which is not paid for services provided and which is in the nature of earnings from an investment. For taxpayers engaged in the business, profession or activity of farming, the term shall not include:

A. Any interest earnings generated from any monetary accounts or investment instruments of the farming business;

B. Any gain on the sale of farm machinery;

C. Any gain on the sale of livestock held 12 months or more for draft, breeding or dairy purposes; and

D. Any gain on the sale of other capital assets of the farm.

NONRESIDENT — A person, partnership, association or other entity domiciled outside the Borough of Abbottstown.

PERSON OR INDIVIDUAL — A natural person.

PRECEDING YEAR — The calendar year before the current year.

RESIDENT — A person, partnership, association or other entity domiciled in the Borough of Abbottstown.

SUCCEEDING YEAR — *The calendar year following the current year.*

TAXPAYER — *Person, partnership, association or any other entity required hereunder to file a return of earned income or net profits or to pay a tax thereon.*

§ 190-21. Imposition of tax.

The following taxes are hereby imposed, for general municipal purposes, under the authority of Act No. 511 of 1965, the Local Tax Enabling Act:

- A. One percent of all earned income earned during the current year by residents.*
- B. One percent of all earned income earned during the current year by nonresidents for work done or services rendered in the Borough of Abbottstown.*
- C. One percent of all net profits earned during the current year by businesses, professions and other activities conducted by residents.*
- D. One percent of the net profits earned during the current year by businesses, professions and other activities conducted in the Borough of Abbottstown by nonresidents.*

§ 190-22. Exemption.

Persons whose total income from all sources is less than \$12,000 per annum are hereby exempted from this tax.

§ 190-23. Declaration and payment of tax.

A. Net profits.

- (1) Every taxpayer making net profits shall, on or before April 15 of the current year, make and file with the Officer on a form prescribed or approved by the Officer, a declaration of his estimated net profits during the period beginning January 1 and ending December 31 of the current year and pay to the Officer in four equal quarterly installments the tax due thereon as follows: the first installment at the time of filing the declaration and the other installments on or before June 15 of the current year, September 15 of the current year and January 15 of the succeeding year, respectively.*
- (2) Any taxpayer who first anticipates any net profit after April 15 of the current year shall make and file the declaration hereinabove required on or before June 15 of the current year, September 15 of the current year or December 31 of the current year, whichever of these dates next follows the date on which the taxpayer first anticipates such net profit and pay to the Officer in equal installments the tax due thereon on or before the quarterly payment dates which remain after the filing of the declaration.*
- (3) Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the Officer on a form prescribed or approved by the Officer a final return showing the amount of net profits earned during the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of tax due thereon and the total amount of tax paid thereon. At the time of filing the final return, the taxpayer shall pay to the Officer the balance of tax due or shall make demand for refund or credit in the case of overpayment.*
- (4) Any taxpayer may, in lieu of paying the fourth quarterly installment of his estimated tax, elect to make and file with the Officer on or before January 31 of the succeeding year, the final return as hereinabove required.*
- (5) The Officer is hereby authorized to provide by regulation for the making and filing of adjusted declarations of estimated net profits and for the payments of the estimated tax in cases where a taxpayer who has filed the declaration hereinabove required anticipates additional net profits not previously declared or finds that he has overestimated his anticipated net profits.*
- (6) Every taxpayer who discontinues business prior to December 31 of the current year shall, within 30 days after the discontinuance of business, file his final return as hereinabove required and pay the tax due.*

B. Earned income.

(1) Annual earned income tax return. Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the Officer on a form prescribed or approved by the Officer, a final return showing the amount of earned income received during the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of tax due thereon, the amount of tax paid thereon, the amount of tax thereon that has been withheld pursuant to the provisions relating to the collection at source and the balance of tax due. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

(2) Earned income not subject to withholding. Every taxpayer who is employed for a salary, wage, commission or other compensation and who received any earned income not subject to the provisions relating to collection at source, shall make and file with the Officer on a form prescribed or approved by the Officer, a quarterly return on or before April 30 of the current year, July 31 of the current year, October 31 of the current year and January 31 of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding earned by him during the three-month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year and December 31 of the current year, respectively, and subject to the tax, together with such other information as the Officer may require. Every taxpayer making such return shall at the time of filing thereof pay to the Officer the amount of tax shown as due thereon.

§ 190-24. Collection at source.

A. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Borough of Abbottstown who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, who has not previously registered, shall, within 15 days after becoming an employer, register with the Officer his name and address and such other information as the Officer may require.

B. Every employer having an office, factory, workshop, branch warehouse or other place of business within the Borough of Abbottstown who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall deduct at the time of payment thereof, the tax imposed by this article on the earned income due to his employee or employees and shall, on or before April 30 of the current year, July 31 of the current year, October 31 of the current year and January 31 of the succeeding year, file a return and pay to the Officer the amount of taxes deducted during the preceding three-month period ending March 31 of the current year, June 30 of the current year, September 30 of the current year and December 31 of the current year, respectively. Such return unless otherwise agreed upon between the Officer and employer shall show the name and social security number of each such employee, the earned income of such employee during said preceding three-month period, the tax deducted therefrom, the political subdivisions imposing the tax upon such employee, the total earned income of all such employees during such preceding three-month period and the total tax deducted therefrom and paid with the return.

C. Any employer who for two of the preceding four quarterly periods has failed to deduct the proper tax, or any part thereof, or has failed to pay over the proper amount of tax to the Borough of Abbottstown, may be required by the Officer to file his return and pay the tax monthly. In such cases, payments of tax shall be made to the Officer on or before the last day of the month succeeding the month for which the tax was withheld.

D. On or before February 28 of the succeeding year, every employer shall file with the

Officer:

(1) *An annual return showing the total amount of earned income paid, the total amount of tax deducted and the total amount of tax paid to the Officer for the period beginning January 1 of the current year and ending December 31 of the current year.*

(2) *A return withholding statement for each employee employed during all or any part of the period beginning January 1 of the current year and ending December 31 of the current year, setting forth the employee's name, address and social security number, the amount of earned income paid to the employee during said period, the amount of tax deducted, the political subdivisions imposing the tax upon such employee and the amount of tax paid to the Officer. Every employer shall furnish two copies of the individual return to the employee for whom it is filed.*

E. Every employer who discontinues business prior to December 31 of the current year shall, within 30 days after the discontinuance of business, file the returns and withholding statements hereinabove required and pay the tax due.

F. Except as otherwise provided in Section 9 of Act 511 of 1965, every employer who willfully or negligently fails or omits to make the deductions required by this section shall be liable for payment of the taxes which he was required to withhold to the extent that such taxes have not been recovered from the employee.

G. The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the tax or from complying with the requirements of this article relating to the filing of declarations and returns.

§ 190-25. Powers and duties of Earned Income and Net Profits Tax Officer.

A. It shall be the duty of the Officer to collect and receive the taxes, fines and penalties imposed by this article. It shall also be his duty to keep a record showing the amount received by him from each person or business paying the tax and the date of such receipt.

B. The Officer, before entering upon his official duties, shall give and acknowledge a bond to the Borough of Abbottstown in such amount and with such surety as designated from time to time by the Borough Council.

C. The Officer is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the reexamination and correction of declarations and returns and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred and to make refunds in case of overpayment, for any period of time not to exceed six years subsequent to the date of payment of the sum involved, and to prescribe forms necessary for the administration of this article. No rule or regulation of any kind shall be enforceable unless it has been approved by resolution of the Borough Council. A copy of such rules and regulations currently in force shall be available for public inspection.

D. The Officer shall refund, on petition of and proof by the taxpayer, earned income tax paid on the taxpayer's ordinary and necessary business expenses to the extent that such expenses are not paid by taxpayer's employer.

E. The Officer and agents designated by him are hereby authorized to examine the books, papers and records of any employer or of any taxpayer or of any person whom the Officer reasonably believes to be an employer or taxpayer, in order to verify the accuracy of any declaration or return or if no declaration or return was filed, to ascertain the tax due. Every employer and every taxpayer and every person whom the Officer reasonably believes to be an employer or taxpayer is hereby directed and required to give to the Officer, or to any agent designated by him, the means, facilities

and opportunity for such examination and investigations, as are hereby authorized.

F. Any information gained by the Officer, his agents or by any other official or agent of the Borough of Abbottstown, as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this article shall be confidential, except for official purposes and except in accordance with a proper judicial order or as otherwise provided by law.

G. The Officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

H. The Officer shall distribute earned income taxes to the appropriate political subdivisions within 60 days of the deadline for payment by an employer as set forth in § 190-24B. The political subdivisions shall not be required to request the Officer to distribute the funds collected but shall at least annually reconcile their receipts with the records of the Officer and return to or credit the Officer with any overpayment. A political subdivision shall not be required to pay a fee or commission to the other political subdivision or its tax officer for tax revenue distributed under this subsection. If the Officer, within one year after receiving a tax payment, cannot identify the taxing jurisdiction entitled to a tax payment, he shall make payment to the municipality in which the tax was collected. If earned income taxes are not distributed to the appropriate political subdivision within one year of receipt, the political subdivision may make a written demand on a tax officer or political subdivision for tax revenues collected and attributable to residents of the political subdivision making the demand. If the taxes attributable to residents of the political subdivision making the demand are not paid within 30 days from the date of the demand, the political subdivision, person, public employee or private agency designated by the political subdivision may enter into an arbitration agreement with the officer under 42 Pa.C.S.A. Ch. 73, Subch. A (relating to statutory arbitration), or bring an action in an appropriate court of common pleas in the name of the taxing district for the recovery of taxes not distributed in accordance with this subsection. The action must be brought within seven years of the collection of the taxes.

§ 190-26. Compensation of Officer.

The Officer shall receive such compensation for his services and expenses as determined by the Borough Council.

§ 190-27. Suit for collection of tax.

A. The Officer may sue in the name of the Borough of Abbottstown for the recovery of taxes due and unpaid under this article.

B. Any suit brought to recover the tax imposed by this article shall be begun within three years after such tax is due, or within three years after the declaration or return has been filed, whichever date is later; provided, however, that this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

(1) Where no declaration or return was filed by any person although a declaration or return was required to be filed by him under provisions of this article there shall be no limitation.

(2) Where an examination of the declaration or return filed by any person or of other evidence relating to such declaration or return in the possession of the Officer reveals a fraudulent evasion of taxes there shall be no limitation.

(3) In the case of substantial understatement of tax liability of 25% or more and no fraud, suit shall be begun within six years.

(4) Where any person has deducted taxes under the provision of this article and has failed to pay the amounts so deducted to the Officer, or where any person has willfully failed or omitted to make the deductions required by § 190-24, there

shall be no limitation.

C. This section shall not be construed to limit the Borough Council from recovering delinquent taxes by any other means provided by law.

D. The Officer may sue for recovery of an erroneous refund provided such suit is begun two years after making such refund, except that the suit may be brought within five years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.

§ 190-28. Interest and penalties.

A. If for any reason the tax is not paid when due, interest at the rate of 6% per annum on the amount of said tax and an additional penalty of 1/2 of 1% of the amount of the said tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

B. Notwithstanding the provisions of Subsection A, the governing body may, by ordinance or resolution, establish a one-time period during which interest or interest and penalties that would otherwise be imposed for the nonreporting or underreporting of earned income tax liabilities or for the nonpayment of earned income taxes previously imposed and due shall be waived in total or in part if the taxpayer voluntarily files delinquent returns and pays the taxes in full during the period so established. The governing body may adopt regulations to implement the provisions of this subsection.

C. The provisions of § 190-28B shall not affect or terminate any petitions, investigations, prosecutions or other proceedings pending under the provisions of this article or prevent the commencement or further prosecution of any proceedings by the proper authorities for violations of this article. No proceedings shall, however, be commenced on the basis of delinquent returns filed pursuant to § 190-28B if the returns are determined to be substantially true and correct and the taxes are paid in full within the prescribed time.

§ 190-29. Violations and penalties.

A. Any person who fails, neglects or refuses to make any declaration or return required by this article, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees or fails, neglects or refuses to deduct or withhold the tax from his employees and any person who refuses to permit the Officer or any agent designated by him to examine his books, records and papers and any person who knowingly makes any incomplete, false or fraudulent return or attempts to do anything whatsoever to avoid the full disclosure of the amount of his net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by this article shall, upon conviction thereof before any Magisterial District Judge or court of competent jurisdiction, be sentenced to pay a fine of not more than \$500 for each offense and costs and, in default of payment of said fine and costs, to be imprisoned for a period not exceeding 30 days.

B. Any person who divulges any information which is confidential under the provisions of this article shall, upon conviction thereof before any Magisterial District Judge or court of competent jurisdiction, be sentenced to pay a fine of not more than \$500 for each offense and costs and, in default of payment of said fines and costs, to be imprisoned for a period not exceeding 30 days.

C. The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this article.

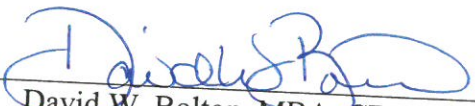
D. The failure of any person to receive or procure forms required for making the declaration or returns required by this article shall not excuse him from making such declaration or return.

§ 190-30. Applicability.

This article shall not apply to any person or property as to whom or which it is beyond the legal power of the Borough of Abbottstown to impose the tax or duties herein provided for.

CERTIFICATION

I hereby certify that I am the Secretary for Abbottstown Borough, Adams County, Pennsylvania, and that Ordinance No. 2021-03 was advertised in The Gettysburg Times on 5/3/2021, a newspaper of general circulation in the municipality, was available at the Borough Office and online at the Borough website during this same period, was duly enacted and approved as set forth at the regular meeting of the Abbottstown Borough Council held on May 20, 2021 and that this is a true and correct copy of that Ordinance.



David W. Bolton, MBA, CBO



Date