

TOWNSHIP OF POTTER
ORDINANCE NO. 01 OF 2024

**AN ORDINANCE AUTHORIZING COLLECTION OF COSTS, EXPENSES AND FEES,
INCLUDING REASONABLE ATTORNEY'S FEES, EXPENDED IN PURSUIT
OF THE COLLECTION OF TAXES, MUNICIPAL CLAIMS, AND THE
LIENING OF REAL PROPERTY**

WHEREAS, the Township of Potter (the "Township") is a township, a body politic and corporate, and a political subdivision of the Commonwealth of Pennsylvania, formed under the act of May 1, 1933 (P.L. 103, No. 101), known as the "Second Class Township Code," presently codified at 53 P.S. §§65101-65110, as amended; and

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. §§ 65601, 66505, as amended, the Township is governed and supervised, and its corporate powers exercised, by and through its Board of Supervisors; and

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. §§ 66506, 66601, as amended, the Board of Supervisors is authorized to adopt, repeal and revise ordinances; and

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. §§ 66514-66515, 66521, 66523-66528, 66531, 66535, 66537-66539, 66541-66547, 66550-66553, 66701, 66704, 66801-66804, 66901, 66903-66904, 66907-66908, 66910, 66915, 67001-67003, 67101-67107, 67202, 67204, 67205-67207, 67301, 67304-67308, 67313-67316, 67320, 67327, 67330-67332, 67401, 67501-67502, 67506-67511, 67513, 67515-67516, 67601-67608, 67611-67614, 67701-67705, 67801-67805, 67901- 67908, 68001, 68009, 68202, as amended, the Township is authorized to provide, contract, or otherwise arrange for, and must fund or make appropriations to fund: municipal services, utilities, facilities and infrastructure, vehicles, equipment, maintenance, repair and management of any of the foregoing, hire and employ personnel, establish subordinate boards and commissions, and pursue community and economic development and other initiatives and programs; and

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. §§ 66508-66508.1, 66509, 68202, 67806, and 70104-70105, as amended, and act of December 31, 1965 (P.L. 1257, No. 511), presently codified at 53 P.S. §§ 6901-6924.901, known as the "Local Tax Enabling Act," 53 P.S. § 6924.307, as amended, the Township is authorized to establish and revise an annual budget, to establish capital reserve and operating reserve funds, and to incur indebtedness, subject to specified limitations and to the extent consistent with the act of July 12, 1972 (P.L. 781 No. 185), known as the "Local Government Unit Debt Act," presently codified at 53 Pa. C.S. §§ 8001-8049, as amended; and

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. §§ 66532, 66506, 67101, 67207, 67314-67315, 67322, 67328, 67401, 67502, 67506-67511, 67611-67614, 67513, 67515-67516, 67603, 67604, 67610, 67705, 67803-67804, 68006, 68205, 68207-68208, 68210, 70101, as amended, the Local Tax Enabling Act, 53 P.S. § 6924.301.1, the Township is authorized

to assess and levy uniform taxes, make special and other assessments, and to impose certain fees and generate revenue, as provided by statute; and

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. § 68202(c), as amended, except as otherwise provided by law, the Township's total appropriation shall not exceed its projected revenues available for the current fiscal year; and

WHEREAS, the Township and its agents designated by statute or ordinance are authorized by the Second Class Township Code, 53 P.S. §§ 66001, 68301-68303, the Local Tax Enabling Act, 53 P.S. § 6924.313, as amended, and the act of May 25, 1945 (P.L. 1050, No. 394), presently codified at 72 P.S. §§ 5511.1-5511.42, as amended, known as the "Local Tax Collection Law," to collect such taxes, assessments, and fees and as otherwise imposed by Township Ordinance; and

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. § 66501, the Township is authorized to sue in its own name; and

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. § 68601, as amended, the Township is authorized to pursue the recovery of municipal claims;

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. §§ 70102-70103, and the act of May 16, 1923 (P.L. No. 207, No. 153), known as the "Municipal Claims and Tax Lien Act" (hereinafter, the "MCTLA"), presently codified at 53 P.S. §§ 7101-7505, as amended, the Township is authorized to lien properties for the collection of delinquent taxes and other obligations owed to the Township, through *scire facias* or to pursue liability against individuals personally through assumpsit proceedings; and

WHEREAS, the Township is required, from time to time, to enforce the collection of delinquent balances owed to the Township; and

WHEREAS, the expense of such enforcement and the record keeping, administration, and other services, costs of postage and supplies made necessary by and related to the collection of delinquent accounts, transmittal of notice, filing of satisfaction, assignment, and revival of municipal claims when incurred by the Township constitutes an additional burden on the Township's limited resources and diverts those resources from their proper uses in support and furtherance of the Township's authorized purposes, projects, and activities, and its budgeted appropriations; and

WHEREAS, when taxpayers write bad checks or otherwise present payment instruments for negotiation, despite being unsupported by sufficient funds, the Township is forced to pay insufficient funds fees, which constitute unanticipated incidental expenditures and an additional burden on the Township's limited resources, which diverts those resources from their proper use in support and furtherance of the Township's authorized purposes, projects, and activities, and its budgeted appropriations; and

WHEREAS, Act 1 of 1996 amended the MCTLA to permit "municipalities," as defined thereunder to recover charges, expenses and fees, including reasonable attorney fees, in connection with the collection of municipal claims, as defined under the MCTLA (hereinafter, "Claims"),

from persons and property legally obligated for the payment of such Claims, pursuant to 53 P.S. §§7101, 7106; and

WHEREAS, the MCTLA, 53 P.S. § 7101, as amended, broadly defines “municipal claim” as inclusive of taxes assessed, services supplied, work done, improvements authorized and undertaken, rates for municipal utilities, and to recover for work, material and services rendered during construction, improvement, and maintenance of projects, together with “all penalties, interest, costs, fines, charges, expenses and fees, including reasonable attorney fees, as allowed by this act and all other applicable laws”; and

WHEREAS, the MCTLA, 53 P.S. § 7101, as amended, defines “charges, expenses, and fees” to include “all sums paid or incurred by a municipality to file, preserve and collect unpaid taxes, tax claims, tax liens, municipal claims and municipal liens, but not limited to, prothonotary and sheriff fees, postage expenses, and title search expenses. A ... township ... may also recover as ‘charges, expenses, and fees’ the charges, expenses, commissions and fees of third-party collectors retained by the ... township ... provided that the charges, expenses, commissions and fees of such third-party collectors are approved by legislative action of the ... township ... which levies the unpaid taxes, tax claims, tax liens, municipal claims and municipal liens”; and

WHEREAS, the MCTLA, 53 P.S. § 7101, as amended defines “municipality” to include townships, such as the Township; and

WHEREAS, the MCTLA, 53 P.S. §§ 7102-7105, as amended, makes lawfully-imposed taxes assessed by townships and other municipalities a “first lien on such real property (but subordinate to the lien of taxes imposed by the Commonwealth) ... from the day on which the millage or tax rate is fixed ...” to be divested from the proceeds of judicial sale of such property; and

WHEREAS, the MCTLA, 53 P.S. §§ 7106, 7144-7145, 7447, 7450, and 7453, as amended, authorizes the indexing of record of municipal claims, in perfection of a municipal lien, which may include all such charges, expenses and fees incurred in collection of any delinquent account, specifically including reasonable counsel fees, subject to the procedures specified by the MCTLA, and having a priority right to funds from judicial sale of a property subject to such lien, which enjoys a priority higher than any other obligation except tax liens; and

WHEREAS, the MCTLA, 53 P.S. §§ 7106(b), as amended, provides that municipal claims and liens, as well as tax claims, shall include “interest, penalty, and costs” and “shall be a judgment only against the said property when the lien has been docketed by the prothonotary. The docketing of the lien shall be given the effect of a judgment against the said property only with respect to which the claim is filed as a lien” which the prothonotary shall maintain in “an in rem index....”; and

WHEREAS, the MCTLA, 53 P.S. §§ 7448, 7451, and 7454 provide that, when filed with the Prothonotary, municipal liens “shall be prima facie evidence of all matters therein set forth and the right of the ... township to recover the amount therein claimed to be due, together with interest

from the date of the lien or completion of the improvement, costs and an attorney's commission of five per centum for collecting."; and

WHEREAS, pursuant to the act of July 9, 1976 (P.L. 586, No. 142), presently codified under Part VII of the "Judicial Code," 42 Pa. C.S. § 8101, as amended, and the act of January 30, 1974 (P.L. 13, No. 6), presently codified under Article II of the provisions addressing "Maximum Interest Rates" and "Legal rate of interest", 41 P.S. § 202, as amended, the post-judgment rate of interest is generally established at the "lawful rate" of six percent (6%) per annum; and

WHEREAS, the MCTLA, 53 P.S. § 7143, as amended, provides for interest at the rate of ten percent (10%) per annum, or up to twelve percent (12%) interest for bond-financed projects, dependent upon the bond rate; and

WHEREAS, the MCTLA, 53 P.S. § 7203, as amended, provides that townships "shall have the right to impose a penalty, not exceeding five per centum, for failure to pay any municipal assessment which remains unpaid for ninety days after the assessment shall have been levied. Such assessment shall be added to the assessment and included in the amount for which the municipal lien is filed for such unpaid assessment."; and

WHEREAS, the MCTLA, 53 P.S. § 7106(c), as amended, authorizes pursuit of a writ of execution directly, without prosecution to judgment of a writ of *scire facias*; and

WHEREAS, the MCTLA, 53 P.S. §§7181-7203, as amended, provides an alternative procedure for enforcement of claims/liens; and

WHEREAS, the MCTLA, 53 P.S. §7106(a.1), requires a municipality, unless "of a class which does not have the power to enact an ordinance" to adopt a schedule of attorney's fees by ordinance;

NOW, THEREFORE, be it enacted and ordained by the Board of Supervisors of the Township of Potter, County of Centre, Commonwealth of Pennsylvania, that a new Chapter 196 be added to the Township's Code of Ordinances, as follows:

CHAPTER 196

§196-1 – Statutory Collection Procedures Authorized.

The Township and its agents may utilize any procedure provided under the Second Class Township Code, the Municipal Claims and Tax Lien Act ("MCTLA"), or any other act of the Pennsylvania General Assembly, for the collection of unpaid or delinquent taxes, assessments, fees, rates, or other charges lawfully imposed, levied, or assessed by the Township, or on its behalf by its authorized agents. It is intended that this provision be limited only to the maximum extent of authorization provided by the foregoing statutes, and subject to satisfaction of any notice and procedural requirements imposed thereby. This shall specifically include, but shall not be limited to, the indexing of a municipal claim against real property of a delinquent taxpayer, ratepayer, feepayer, assessee or owner of assessed property.

§196-2 – Township to Recoup All Charges, Expenses and Fees.

In order to avoid the diversion of the Township's limited resources from their proper uses in support and furtherance of the Township's authorized purposes, projects, and activities, and its budgeted appropriations, the Township and its agents shall be entitled to collect any and all "charges, expenses, and fees", as that term is defined in the MCTLA, which are incurred by the Township or its authorized agents in the pursuit of collecting delinquent taxes, assessments, rates, fees, or any other charge lawfully levied, assessed, or imposed, but not timely paid by the taxpayer, ratepayer, feepayer, assessee, or owner of assessed property. This shall include, without limitation: reimbursement to the Township and its agents for direct expenses such as postage for the mailing of any past due or delinquency notice, service of any notice required by law, and any other mailing or transmittal reasonably required, in the discretion of the Township and its agents, to facilitate payment of any such delinquent balance.

§196-3 – Charges Expenses and Fees to Include Incidental Expenses and Costs.

Limited only by the maximum extent of authorization found within the provisions of the MCTLA or any other act of the Pennsylvania General Assembly, the Township shall be entitled to recoup any and all incidental expenses or costs incurred by the Township incident to the conduct of a taxpayer, ratepayer, feepayer, or owner of assessed property, including but not limited to payment by the Township or its agent of any insufficient funds fee imposed upon the issuance of a bad check, or other payment instrument unsupported by sufficient funds, by the taxpayer, ratepayer, feepayer, assessee, or owner of assessed property, resulting in an insufficient funds or similar fee being imposed against the Township or its authorized agent. If such fees are associated with a bad or insufficient check for the payment of taxes with respect to any real property made subject to proceedings under the Real Estate Tax Sale Law ("RETSL"), the incidental charges shall independently support a separate and distinct "municipal claim," consistent with that term's definition under the MCTLA, 53 P.S. § 7101, as amended.

§196-4 – Charges Expenses and Fees to Include Reasonable Counsel Fees at Solicitor Rate.

As part of the "charges, expenses, and fees" authorized hereby, the Township shall be entitled to collect any and all reasonable counsel fees, calculated on an hourly basis at a rate equal to the then-current regular hourly charges imposed by the Township's Solicitor, which are hereby determined to be fair and reasonable compensation for services provided in furtherance of the Township's collection efforts, including, without limitation, the following:

- a. Review and preparation of demand letters and other legal notices;
- b. Preparation and filing of municipal or tax claims;
- c. Preparation and filing of writs of *scire facias*;
- d. Preparation of discovery materials necessitated by any litigation regarding the validity or amount of any claim, writ of *scire facias*, or any efforts to collect

through sale or foreclosure against property subject to the lien of a tax or municipal claim;

- e. Attendance at depositions or Court proceedings necessitated by any litigation regarding a claim, writ of *scire facias*, or any efforts to collect upon sale or foreclosure against property thereunder;
- f. Preparation and filing of writs of execution;
- g. Preparation and service of legal notices or pleadings;
- h. Attendance at judicial, upset or Sheriff's Sales;
- i. Negotiation and preparation of documents relating to payment plans or other agreements entered by the Township and any delinquent party or owner of property subject to a delinquent obligation for the purpose of resolving the delinquency through negotiation;
- j. Preparation, filing, and service of discontinuances or satisfactions, as the case may be;
- k. Filing of proofs of claim and participation in any bankruptcy or other insolvency proceedings; and
- l. Any other services reasonably necessary to collect delinquent balances through any procedures made available under the Second Class Township Code, or the MCTLA;

In any case where the Township Solicitor prosecutes a claim for collection to completion, in addition to its reasonable hourly fees, the Solicitor is hereby authorized to claim a five percent (5%) commission, as authorized by the MCTLA, 53 P.S. §§ 7448, 7451, and 7454, as amended.

In any case where counsel fees are imposed with respect to any municipal claim, whether pursued by *scire facias* proceedings, upon a writ of execution, or by a claim in assumpsit, the Township shall follow the procedure specified under the MCTLA, e.g., 53 P.S. § 7106, and shall provide any notice required thereby to the delinquent party.

§196-5 – Interest to Apply to Delinquencies.

Simple interest shall apply, from the date of delinquency, at the maximum rate permitted under the MCTLA, 53 P.S. § 7143, as amended, which is currently ten percent (10%) per annum, except for bond-financed projects, and shall apply at the maximum legal rate otherwise applicable following the Court's entry of judgment on any *scire facias* litigation, through foreclosure or satisfaction.

§196-6 – Penalty.

In addition to the principal balance owed by any taxpayer, ratepayer, assessee or owner of assessed property, and any charges, expenses and fees added thereto pursuant to the Second Class Township Code, the MCTLA, or any other provision of this Code of Ordinances, if such

delinquency persists for a period of at least ninety (90) days, a penalty of five percent (5%) of the principal balance shall be added thereto.

§196-7 – Ordinance Effective Immediately.

This Ordinance shall take effect immediately upon adoption, following the provision of notice and official action required by law.

§196-8 – Ordinance Severable.

If anything stated herein is found to be unconstitutional, illegal, invalid, or void by a Court of competent jurisdiction, such unconstitutional, illegal, invalid or void provision shall be deemed severable and severed from the remainder of this Ordinance, which shall remain in full force and be given effect to the greatest extent permissible under the law and its intentions.


§196-9 – Repealer.

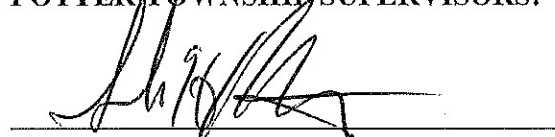
Any prior ordinances or resolutions or parts thereof, which are to the contrary or which conflict with the provisions of this Ordinance are hereby rescinded and repealed, to the extent necessary to give this Ordinance full force and effect.

ENACTED AND ORDAINED this 24th day of April, 2024 **BY THE POTTER TOWNSHIP BOARD OF SUPERVISORS:**

ATTEST:

POTTER TOWNSHIP SUPERVISORS:


Secretary


Chairman

