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**TOWN OF ERIE**  
**MEMORANDUM**

**TO: PLANNING COMMISSIONERS**

**FROM: KENDRA L. CARBERRY, TOWN ATTORNEY** *JK*  
**EVIN B. KING, ESQ.**

**DATE: SEPTEMBER 27, 2018**

**RE: PROPOSED CODE AMENDMENTS RELATING TO ANNEXATIONS**

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Annexation of unincorporated territory into the Town is governed by state law, more specifically, the Municipal Annexation Act of 1965, C.R.S. § 31-12-101, *et seq.* (the "Act"). This memorandum addresses how certain sections of the Title 10 of the Erie Municipal Code (the "UDC") do not comply with the Act. This memorandum further discusses the appropriate process for repeal of these provisions.

**Annexation and Pre-Annexation Agreements**

Under the Act, additional terms and conditions may be imposed by the annexing municipality through an annexation agreement. C.R.S. § 31-12-107(4). Section 10.7.3 of the UDC addresses the procedure by which land may be annexed to the Town, including a provision relating to annexation agreements and the procedure for adoption of such agreements. Simply put, the procedures set forth in Section 10.7.3 are inconsistent with the Act.

Similarly, Section 10.7.17 of the UDC specifies what content must be included within an annexation agreement. Section 10.7.17 includes provisions stating that no annexation agreement may create a vested right, and that the landowner requesting annexation must waive any pre-existing vested property rights as a condition of annexation. Again, these provisions are not authorized by the Act. More importantly, the creation of new vested rights and extension of

existing vested rights are common elements of negotiated annexation agreements, and the Town should retain its ability to negotiate such elements.

### **Amending the UDC**

The UDC may be amended in accordance with Section 10.7.21 of the UDC. The Board of Trustees may amend the UDC via an ordinance only after receiving a recommendation from the Planning Commission. The Planning Commission must make a recommendation to approve or deny the amendment, based on the following standards:

- The proposed amendment will promote the public health, safety, and general welfare;
- The proposed amendment is generally consistent with the Town's Comprehensive Master Plan and the stated purposes of the UDC; and
- The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions.

UDC, § 10.7.21.

After reviewing the recommendation, and following a public hearing, the Board of Trustees must approve, approve with amendments, or deny the proposed amendment.

### **Conclusion**

Sections 10.7.3 and 10.7.17 of the UDC currently conflict with state law, and therefore, an amendment to the UDC repealing these provisions is recommended. Pursuant to the Section 10.7.21, the Board of Trustees is only permitted to approve an ordinance amending the UDC after the Planning Commission has recommended approval. Therefore, we encourage the Planning Commission to recommend a repeal of Sections 10.7.3 and 10.7.17 of the UDC.

As always, please let us know if this memorandum raises any questions.