

Title 8

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CHAPTER 17 STREETS

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Enactment. Chapter 17 was added April 18, 2014, P.L.432, No.37, effective in 60 days.

SUBCHAPTER A GENERAL PROVISIONS

Sec.

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§ 1701. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Improving a street." The term includes work upon a street or portion thereof done or proposed to be done in order to open the street if the street has not previously been opened or, if previously opened, to make the street more usable or more suitable for use by the traveling public or safer for use. The term includes, but is not limited to, grading, paving, curbing and macadamizing.

"Laying out." The term includes the plotting of:

(1) An unopened street or portion of the street on a borough plan or official map adopted in accordance with the Pennsylvania Municipalities Planning Code on a subdivision or land development plan or by the enactment of an ordinance adopted in accordance with this chapter.

(2) An unopened street in a case where any of the lines of the street are proposed to be revised or in a case where the street was never previously laid out although the street may

have been opened and used.

"Opened streets." The term includes the streets within the borough used as public passageways.

"Opening a street." The term includes the construction and grading of a street or portion thereof and the act of physically taking possession of an area or laid-out street for the purpose of making the same usable to the traveling public.

"Person." The term includes a natural person, association, firm, corporation or political subdivision.

"Personal notice." The term includes notice upon the owner of a premises either by personal service upon the owner or by certified mail to the owner at the owner's last known address. Where service has not been successfully made by either of the two methods first mentioned, it may be made by leaving the notice at or upon the premises.

"Portion." The term includes a portion either of the width or length of a street. Opening a portion of a street may mean extending or widening a street, and vacating a portion of a street may mean closing or narrowing a street.

"Street." The term includes a street, road, lane, court, cul-de-sac, alley, public way and public square, either for or intended for public use, and includes the cartway, sidewalk, gutter and the right-of-way area, whether or not the street or a part of the street is owned in fee by others than the borough. Streets are of two classes, opened and unopened.

"Unopened streets." The term includes the streets within the borough neither used as a public passageway nor accepted or maintained, but plotted in one of the following:

- (1) a borough plan or official map adopted in accordance with the Pennsylvania Municipalities Planning Code;
- (2) an ordinance laying out the street in accordance with this chapter;
- (3) a subdivision or land development plan; or
- (4) an individual deed.

Cross References. Section 1701 is referred to in section 21A01 of this title.

§ 1702. (Reserved).

§ 1703. (Reserved).

§ 1704. Streets connecting with street of other municipality.

No action may be taken under this chapter that would result in the change of location or grade or the vacation of a street or portion thereof that connects with a street of another municipality, without approval of the court of common pleas of the county in which the municipality is located, unless the municipality first files with the borough secretary its approval of the proposed action.

§ 1705. Entry on land to maintain marks and monuments.

The council, its agents and employees, may enter upon any land or property and maintain marks and monuments, so far as the council may deem necessary, in carrying out its powers and duties under this chapter.

§ 1706. Exclusive nature of provisions.

No street may be dedicated, accepted, acquired, laid out, opened or vacated by a borough except under this chapter.

§ 1707. Failure of council to hold hearing.

If, after the filing of a petition under this chapter, council fails to hold a required hearing, an aggrieved party may file a mandamus action in the court of common pleas requesting that a hearing be held.

§ 1708. Street lighting, ornamental lighting and traffic control signals and devices.

Council may provide street lights and ornamental lighting and make regulations for the protection of lighting. Council may assess the costs for the erection of lighting in accordance with Chapter 21A (relating to assessments and charges for public improvements). Council may provide for the erection, maintenance

improvements). Council may provide for the erection, maintenance and operation of traffic control signals and devices in accordance with 75 Pa.C.S. (relating to vehicles).

SUBCHAPTER B PLAN OF STREETS

Sec.

1711. (Reserved).

1712. Borough street plan.

§ 1711. (Reserved).

§ 1712. Borough street plan.

(a) **Adoption of plan.**--A borough that has not maintained an accurate plan of borough streets adopted in accordance with this part prior to July 16, 2012, may only adopt a plan of streets under the Pennsylvania Municipalities Planning Code, governing the adoption of an official map.

(b) **Amendments to plan.**--If a borough maintains a plan of streets adopted prior to July 16, 2012, or maintains an official map containing opened and unopened streets, a street laid out in accordance with this part by ordinance or by final approval of a subdivision or land development plan must be deemed an amendment to the plan. Notwithstanding any other provision of law, a deemed amendment as provided in this section and a subsequent placement of the street on a plan may not be subject to public notice or public hearing, if the street has been laid out in accordance with the requirements of this chapter.

(c) **Prohibition.**--The maintenance of a plan of streets or official map shall not be required in order for a borough to lay out streets in accordance with section 1721.2(b) (relating to laying out streets and procedure) or lay out and open a street in accordance with section 1724 (relating to effect of laying out street).

SUBCHAPTER C LAYING OUT STREETS

Sec.

1721. (Reserved).

1721.1. Power to lay out, open, etc.

1721.2. Laying out streets and procedure.

1722. (Reserved).

1723. (Reserved).

1724. Effect of laying out street.

§ 1721. (Reserved).

§ 1721.1. Power to lay out, open, etc.

(a) **Authority of borough.**--In accordance with the provisions of this chapter, boroughs may, with or without petition of abutting property owners, lay out, open, widen, straighten, alter, extend and improve, and may establish or reestablish the grades of, and keep in order and repair and in safe passable condition, a street or portion of a street within the borough limits or may vacate the street or portion of a street if deemed expedient for the public good and provide for the costs of alteration.

(b) **Laying out or opening streets.**--Boroughs may lay out or open:

(1) a street or portion of a street as it appears upon a borough plan or an official map adopted in accordance with the Pennsylvania Municipalities Planning Code or is described in an ordinance adopted in accordance with this chapter;

(2) a street or portion of a street that the borough determines to acquire by eminent domain;

(3) a street to which the public has acquired rights by constant use over a period exceeding 21 years; or

(4) a street or portion of a street, laid out or constructed by a person that the borough sees fit to open or accept as provided in this chapter.

§ 1721.2. Laying out streets and procedure.

(a) Streets deemed to be laid out.--A street identified in a plan of streets, an official map adopted in accordance with the Pennsylvania Municipalities Planning Code or a recorded subdivision or land development plan is deemed to be laid out for purposes of this part.

(b) Future street opening.--A borough has the authority, by ordinance, to lay out an area for future opening as a public street. The proposed ordinance laying out the street must be advertised in a newspaper of general circulation once a week for two successive weeks. On or before the publication of the first advertisement, personal notice must be provided to the owners of a property abutting the proposed street or through which the proposed street is to be laid out, and, if the proposed street will lead into an adjacent municipality, a copy of the proposed ordinance must be sent to the adjacent municipality. The proposed ordinance must have appended to the ordinance or referenced a map sufficient to apprise the public of the proposed location, profile and dimensions of the street and must list the names of the owners of a property through which the proposed street has been laid out.

(c) Hearing, notice and enactment.--Within ten days after the second publication of the notice required under subsection (b), an interested party may petition council for a hearing, which council shall hold within 60 days after the date of the petition. Council shall give at least 15 days' notice of the hearing in a newspaper of general circulation and by personal notice to persons entitled to the notice under subsection (b). Council may enact the ordinance no later than 30 days following the date of the hearing or, where no timely petition has been filed, within 30 days of the second publication of the notice required by subsection (b). The enactment of the ordinance constitutes public notice of the borough's intent to recognize the street within the system of borough streets and the borough's rights in the street. Within 30 days of the enactment of the ordinance, a party aggrieved by council's action may appeal to the court of common pleas.

(d) Filing of ordinance.--If, at the time of the enactment of an ordinance in accordance with subsection (c), the lines of the laid out street include property not subject to use as a public passageway, the ordinance must be filed with the recorder of deeds of the county where the borough is located. The recorder of deeds shall index the ordinance by name of borough, name of the property owner and, if applicable, parcel number of the property through which the proposed street is laid out.

(e) Landowners.--If a street has been laid out by ordinance as provided in this section, the owner or subsequent owner has no right to damages for buildings or improvements placed on streets after the date of enactment, and the buildings or improvements must be removed at the expense of the landowner after the opening of the street in accordance with this part.

(f) Laying out without opening.--The laying out of a street, without opening the street, creates no right to public use of the street and does not constitute the taking or acceptance of a property or obligate the borough to improve or maintain the street or the property on which the street has been laid out.

(g) Previously laid out streets.--Nothing in this section may affect the validity or legal effect of a street laid out in accordance with law prior to July 16, 2012.

Cross References. Section 1721.2 is referred to in sections 1712, 1724 of this title.

§ 1722. (Reserved).

§ 1723. (Reserved).

§ 1724. Effect of laying out street.

(a) Street unopened after ten years.--At any time after a street or portion of the street has remained laid out but not opened for a period of ten years or longer, an owner of 50% of the front feet of the land over which the street or portion of the street was laid out may petition the council to cancel the laying out of the street. Following at least 15 days' notice in a newspaper of general circulation and at least 15 days' personal notice to the owners of the real estate abutting upon the land over which the street or portion of the street was laid out, council shall hold a public hearing on the matter. Council may, on motion, deny the petition or, by ordinance, grant the petition and cancel the laying out of the street. A person aggrieved by the decision of the council, either granting or denying the petition, may appeal it. The ordinance providing for the cancellation of the laying out of a street must be filed with the recorder of deeds in accordance with section 1721.2(d) (relating to laying out streets and procedure).

(b) Street unopened after 21 years.--If a street has been laid out and has not been opened to or used by the public for a period of 21 years, the street may not thereafter be opened without the consent of at least 51% of the number of owners of the abutting real estate and without the consent of the owners of at least 51% of the property abutting the street, based on a front foot basis.

Cross References. Section 1724 is referred to in section 1712 of this title.

SUBCHAPTER D
OPENING, ACCEPTANCE AND
VACATION OF STREETS

Sec.

- 1731. Authority to open and vacate streets and procedure.
- 1732. Petition for opening or vacating street and action thereon.
- 1733. Action for damages and benefits and award.
- 1734. Acceptance and dedication of streets.
- 1735. Streets not to be constructed, dedicated or opened to travel without the approval of council.
- 1736. (Reserved).
- 1737. (Reserved).

§ 1731. Authority to open and vacate streets and procedure.

(a) Authority of council.--By ordinance, council has the authority to:

(1) Open a street or portion of a street previously laid out or simultaneously to lay out and open a street or portion thereof. A street or portion of a street so opened is a public street of the borough.

(2) Vacate or close a street or portion of a street previously opened or laid out provided that no street or portion of a street providing the sole means of access to a tract of land is vacated without the consent of those to whom access would be denied. Vacation of a street terminates the public right in or to the street but does not affect a private right acquired by an owner of abutting property.

(b) Notice.--The proposed ordinance opening or vacating a street or portion of a street must be advertised in a newspaper of general circulation once a week for two successive weeks. On or before the publication of the first advertisement, personal notice must be provided to the owners of a property abutting the street proposed to be opened or vacated. The proposed ordinance must have appended to it or reference a map or survey sufficient to apprise the public of the proposed location, profile and dimensions of the street and must list the names of the owners of a property abutting the street.

(c) Hearing.--Within ten days after the second publication of

the notice required under subsection (b), an interested party may petition council for a hearing, which council shall hold within 60 days after the date of the petition. Council shall give at least 15 days' notice of the hearing in a newspaper of general circulation and by personal notice to persons entitled to notice under subsection (b). Council may enact the ordinance no later than 30 days following the date of the hearing or, where no timely petition has been filed, within 30 days of the second publication of the notice required under subsection (b). Within 30 days of the enactment of the ordinance, any party aggrieved by council's action may appeal to the court of common pleas.

Cross References. Section 1731 is referred to in sections 1732, 1733, 1734, 1751 of this title.

§ 1732. Petition for opening or vacating street and action thereon.

(a) Petitioning council.--Any person or persons constituting a majority in number and interest of the owner of the real estate abutting upon an area not opened as a street or abutting upon an existing street or portion of a street may petition the council to:

(1) Open or lay out and open the area as a street or portion of a street.

(2) Vacate a street or portion of a street.

(b) Hearing and decision.--Council shall hold a hearing after receiving a petition filed with council in accordance with subsection (a), following at least 15 days' personal notice to the owners of abutting real estate not joining in the petition and following at least 15 days' notice thereof in a newspaper of general circulation. Following the hearing, council shall either by motion deny the petition or by ordinance open, lay out and open or vacate the street or portion of the street. The provisions of section 1731 (relating to authority to open and vacate streets and procedure) applicable to ordinances enacted by authority of that section apply to ordinances enacted by authority of this section.

(c) Release.--A petition for the vacation of a street or portion of a street may release the borough from the damages sustained as a result of the vacation if the petition is signed by the owners of the property abutting upon the street or portion of the street. Where the release has been included in the petition, no proceedings for award of damages may be had, and no damages as a result of the vacation may, under any conditions, be awarded to an abutting property owner.

Cross References. Section 1732 is referred to in sections 1733, 1734 of this title.

§ 1733. Action for damages and benefits and award.

(a) Authority of borough.--Upon the effective date of an ordinance enacted to open a street or portion of a street by authority of section 1731 (relating to authority to open and vacate streets and procedure) or 1732 (relating to petition for opening or vacating street and action thereon), the borough has authority to enter upon and take possession of the street or portion of the street opened by the ordinance, if no structures are upon the street. If a structure has been located upon the street or portion of the street so opened, prior to the laying out of the street or prior to the simultaneous laying out and opening of the street, the street may not be opened until the owner of the structure has been given 60 days' personal notice to vacate the structure. Council may not be required to file any bond or security for the exercise of the right granted by this section.

(b) Limitation.--The parties whose ground is taken in the opening of a street or portion of the street have three years from and after the effective date of the ordinance opening the street or portion of the street in which to bring an action for damages resulting from the opening of the street or portion of the street.

In case of the assessment of damages for the opening of a street or portion of the street, the award of damages, if any, includes:

- (1) the damages resulting from the grade at which the street or portion of the street is to be opened; and
- (2) the plan attached to the report of the viewers awarding the damages must include a profile plan showing the existing grade as well as the grade to which the street or portion of the street is to be opened.

Costs and expenses that cannot be assessed upon property benefited must be paid by the borough.

(c) No agreement on damages.--If the parties cannot agree upon damages sustained by reason of the opening or vacation of any street or portion of a street, the damages shall be assessed by a jury of view under the law governing eminent domain.

§ 1734. Acceptance and dedication of streets.

(a) Accept an opened street.--A borough may, by ordinance, accept an opened street not previously dedicated to or laid out by the borough by following the procedure set forth in section 1731 (relating to authority to open and vacate streets and procedure) or 1732 (relating to petition for opening or vacating street and action thereon), and the effect of the acceptance shall be the same as of opening the street. No street may be accepted unless the street connects with at least one other previously opened street or State highway.

(b) Prohibition.--No borough may acquire a right in or responsibility for a street privately constructed until dedication of the street has been presented to and accepted by the borough and until the dedication has been recorded in the county office for the recording of deeds.

§ 1735. Streets not to be constructed, dedicated or opened to travel without the approval of council.

(a) Requirements.--No person may construct, dedicate or open to travel a street or a drainage facility in connection with the street for public use or travel or for the common use of occupants of buildings abutting thereon in a borough without first submitting suitable plans to the council and obtaining its approval. The plans must:

- (1) be prepared in accordance with rules and regulations as may be prescribed by the council; and
- (2) show the profiles of the street, the course, structure and capacity of a drainage facility, and the method of drainage of the adjacent or contiguous territory, and any other or further details that may be required under the rules or regulations adopted by the council.

(b) Pennsylvania Municipalities Planning Code.--The Pennsylvania Municipalities Planning Code shall apply to the construction, security requirements and dedication of streets and connected drainage facilities if the streets proposed to be constructed are part of a plan required by an ordinance adopted under the Pennsylvania Municipalities Planning Code.

(c) Authority and duties of council.--

(1) Before acting upon plans not subject to review under subsection (b), council may, at its discretion, arrange for a public hearing after giving the notice as it may deem desirable in each case. Council may alter the plans and specify changes or modifications of any kind and may make its approval of the plans subject to alterations, changes or modifications. Plans, when so approved, must be:

- (i) signed on behalf of the borough by the officer as the council may designate; and
- (ii) must be filed where the plans are available for public inspection among the records of the borough at reasonable times.

(2) No approval of plans by council may obligate or require the borough to construct, reconstruct, maintain, repair or grade a street or drainage facilities associated therewith.

(d) No plan approved.--If the council refuses to approve any

plans submitted to it, a person aggrieved by the action of council may, within 30 days after the action, appeal from the action by petition to the court of common pleas of the county, and the court shall hear the matter de novo. After hearing, the court may enter a decree affirming, reversing or modifying the action of the council as may appear just. The court shall designate the manner in which notice of the hearing of an appeal shall be given to all parties interested. The decision of the court shall be final. A plan approved by the action of council or by the court on appeal must be recorded by the person applying for approval in the office of the recorder of deeds in the county.

(e) Restriction.--If a street or a drainage facility in connection with the street is opened, constructed or dedicated for public use or travel, except in strict accordance with a plan approved by the council or the court on appeal as provided in this chapter, neither the council nor any other public authority may place, construct or operate a sewer, drain, water pipe or other facility or do any work in or upon the street. Neither council nor any other public authority has a responsibility with respect to the street or drainage facility, notwithstanding the use of the street or drainage facility by the public. Nothing in this chapter prevents the laying of a trunk sewer, drain or water or gas main, if required by engineering necessity for the accommodation of other territory.

(f) Failure to comply with chapter.--A person who constructs, opens or dedicates a street or drainage facility in connection with a street, for public use or travel in a borough, without having first complied with this chapter is guilty of a misdemeanor of the third degree and is subject to a suit for the costs and damages incurred by the borough or property owners in the course of correcting the substantive violations of State law or borough ordinance resulting from or arising out of the unlawfully constructed street or facility. Nothing under this section may be construed to apply to the Department of Transportation.

§ 1736. (Reserved).

§ 1737. (Reserved).

SUBCHAPTER E
VACATING STREETS
(Reserved)

SUBCHAPTER F
STRAIGHTENING AND RELOCATING STREETS

Sec.

1751. Authority to straighten and relocate streets and procedure.

§ 1751. Authority to straighten and relocate streets and procedure.

Council may, by ordinance, provide for straightening or relocating any street previously opened which involves the opening of a portion of the straightened or relocated street over land not previously a portion of the street or the vacation of a portion of the previously opened street no longer to be used for street purposes. The straightening or relocation shall be considered as an opening or vacation and shall be effected in the same manner and by the same procedure as provided in section 1731 (relating to authority to open and vacate streets and procedure) but may be considered as a single proceeding to be effected by enactment of a single ordinance.

SUBCHAPTER G
IMPROVEMENT OF BOROUGH STREETS

Sec.

1761. Proceedings with or without petition.

1762. (Reserved).

1763. (Reserved).

§ 1761. Proceedings with or without petition.

Boroughs may improve streets, portions of streets or a particular width or additional widths of streets, with or without the assistance or contribution of the Federal Government, the Commonwealth, the county or a corporation occupying the thoroughfare, and may assess and collect the whole cost of improvement, the whole cost not aided or contributed or any part of the cost from the owners of real estate abutting on the improvement in accordance with Chapter 21A (relating to assessments and charges for public improvements).

§ 1762. (Reserved).

§ 1763. (Reserved).

SUBCHAPTER H

**IMPROVEMENT OF STREETS OUTSIDE OR PARTLY
OUTSIDE BOROUGH LIMITS**

Sec.

1771. Improvement of streets outside or partly outside borough limits.

1772. (Reserved).

1773. (Reserved).

1774. (Reserved).

1775. (Reserved).

§ 1771. Improvement of streets outside or partly outside borough limits.

(a) General rule.--

(1) Any borough may enter into a written agreement with an adjoining municipality for improving streets, including streets that are boundaries between the borough and the municipality, and may provide in the contract for the division of the damages, costs and expenses of the improvement.

(2) The borough may assess its share of the costs against the owner of property abutting upon the borough's side of the improvement in the manner provided in Chapter 21A (relating to assessments and charges for public improvements) or may agree to pay any part of the costs, damages and expenses of the improvements out of the general funds.

(3) The portion of the damages, costs and expenses agreed to be paid by the borough shall be ascertained as provided in the law governing eminent domain.

(b) Street dividing borough and township.--

(1) If the center line of any street constitutes the dividing line between a borough and a township located in the same county, any agreement to improve and maintain the street shall be made with the governing bodies of the township and, if necessary, the county.

(2) The improvement shall be constructed and subsequent repairs shall be made under the supervision of the borough and in compliance with plans to be agreed upon, in writing, by the parties.

(3) One-half of the cost of the repairs shall be borne by the borough. The borough may assess its share of costs against the owners of real property abutting on the borough's side of the improvement in the manner provided in Chapter 21A.

(c) Street dividing borough and any other municipality.--

(1) If any street, more than one-half the width or the entire width of which is within the limits of any borough, divides the borough from any other municipality, the street may be improved by the borough.

(2) The property abutting on the side of the street which is located outside the limits of the borough making the improvements may, for a depth of 150 feet, plus one-half the width of the street, from its center line, be assessed for any and all municipal improvements to or on the street in accordance with Chapter 21A.

(d) Street outside limits of borough.--A borough may appropriate and expend money for the improvement of a street, not to exceed one mile in length, outside the limits of the borough for the purpose of connecting improved streets in the borough with State highways, interstate highways and county roads.

§ 1772. (Reserved).

§ 1773. (Reserved).

§ 1774. (Reserved).

§ 1775. (Reserved).

SUBCHAPTER I ACQUISITION OR USE OF ABUTTING LANDS

Sec.

1781. (Reserved).

1782. Acquisition of property for unobstructed view.

§ 1781. (Reserved).

§ 1782. **Acquisition of property for unobstructed view.**

(a) General rule.--Any borough may, singly or jointly with another municipality, acquire, by purchase or by the right of eminent domain, a free and unobstructed view down and across lands located at or near the intersection of any two streets or highways or a street or highway and a railroad or railway or at a curve in any street or highway as may be necessary to accomplish the following:

(1) Assure a free and unobstructed view in all directions at the crossings.

(2) Prevent the use of the lands for any purpose or in any manner which may interfere with or obstruct the view of persons traveling upon the street or highway.

(b) Obstructions to be abated or removed.--After condemnation, the borough may abate or remove or cause to be abated or removed any obstruction to the view over and across the lands except poles used in furnishing service to the public.

(c) Condemnation proceedings.--The proceedings for the condemnation of the view over and across lands and for the assessment of damages for property taken, injured or destroyed, or the portion thereof agreed to be paid by the borough if the taking is jointly with another municipality, shall be taken in the manner provided in the law governing eminent domain.

(d) Use of lands.--Upon the purchase or condemnation of a view, the owner of the lands may make every use of the lands as will not interfere with a free and unobstructed view at the dangerous crossing or curve.