

SUBCHAPTER D
OPENING, ACCEPTANCE AND
VACATION OF STREETS

Sec.

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§ 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