

No. 581

AN ACT

SB 769

Concerning boroughs, and revising, amending and consolidating the law relating to boroughs.

TABLE OF CONTENTS

	Sections
Article I.	Preliminary Provisions . . . . . 101- 111
Article II.	Creation of Boroughs . . . . . 201- 235
	(a) Incorporation of Boroughs . . . . . 201- 219
	(b) Consolidation of Boroughs . . . . . 221- 228
	(c) Creation of Boroughs from Cities of the Third Class . . . . . 231- 235
Article III.	Annulment of Charters and Change of Corporate Names . . . . . 301- 305
Article IV.	Change of Borough Limits . . . . . 401- 453
	(a) Annexation of Townships of First Class or Parts Thereof . . . . . 401- 406
	(b) Annexation of a Township of the Second Class or Part Thereof by Petition to Court
	(1) Where territory is in one county . . . 411- 414
	(2) Where territory is in two or more counties . . . . . 416- 421
	(c) Annexation of Lands in Townships of the Second Class by Petition to Council . . . 426- 428
	(d) Annexation of Adjacent Territory Owned by a Borough . . . . . 429
	(e) Detachment of Territory . . . . . 431- 433
	(f) Adjustment of Indebtedness and Public Property . . . . . 441- 448
	(g) When Territory Is Detached . . . . . 451- 453
Article V.	Borough Boundaries . . . . . 501- 506
Article VI.	Borough Wards . . . . . 601- 607
Article VII.	Associations and Organizations . . . . . 701- 703
Article VIII.	Elections of Officers . . . . . 801- 861
	(a) General Provisions Relating to Elected Officers . . . . . 801- 806
	(b) Councilmen . . . . . 811- 818
	(c) Mayor . . . . . 821
	(d) Auditors . . . . . 831

	Sections
	(e) Controller ..... 841
	(f) Assessors ..... 851
	(g) Tax Collector ..... 861
Article IX.	Vacancies in Office ..... 901- 905
Article X.	Powers and Duties of Elected Borough Officials .1001-1086
	(a) Council .....1001-1016
	(b) Mayor .....1021-1030
	(c) Auditors .....1041-1059
	(d) Controller .....1061-1071
	(e) Assessors .....1081
	(f) Tax Collector .....1086
Article XI.	Powers, Duties and Rights of Appointed Officers and Employes .....1101-1195
	(a) General Provisions .....1101-1105
	(b) Treasurer .....1106-1107
	(c) Secretary .....1111-1113
	(d) Solicitor .....1116-1118
	(e) Police .....1121-1127
	(f) Police Pension Fund in Boroughs Having a Police Force of Less Than Three Mem- bers .....1131-1137
	(g) Borough Manager .....1141-1143
	(h) Borough Planning Commission .....1151-1156
	(i) Mine and Quarry Inspection and Surface Support .....1161-1168
	(j) Civil Service for Police and Firemen . . .1171-1195
	(k) Independent Auditor .....1196-1199
Article XII.	Corporate Powers .....1201-1202
Article XIII.	Taxation and Finance .....1301-1315
Article XIV.	Contracts .....1401-1411
Article XV.	Eminent Domain; Assessment of Damages and Benefits; Damages for Injury to Property . . . .1501-1565
	(a) General Provisions Relating to Eminent Domain .....1501-1502
	(b) Procedure for the Assessment of Benefits by Viewers .....1521-1547
	(c) Damages for Injury to Property .....1561-1565
Article XVI.	Land Subdivision .....1601-1609
Article XVII.	Streets .....1701-1782
	(a) General Provisions Relating to Streets ..1701-1706

	Sections
	(b) Plan of Streets .....1711
	(c) Laying Out Streets .....1721-1724
	(d) Opening and Acceptance of Streets .....1731-1737
	(e) Vacating Streets .....1741-1744
	(f) Straightening and Relocating Streets ....1751
	(g) Improvement of Borough Streets .....1761-1763
	(h) Improvement of Streets Outside or Partly Outside Borough Limits .....1771-1775
	(i) Acquisition and/or Use of Abutting Lands for Embankments, Slopes, Fills and Cul- verts, or for Unobstructed View .....1781-1782
Article XVIII.	Sidewalks .....1801-1806
Article XIX.	Bridges, Viaducts and Underground Passageways 1901-1905
Article XX.	Sanitary Sewers .....2001-2072
	(a) Laying Out, Ordaining and Construction of Sewers and Construction of Sewage Treatment Works .....2001-2013
	(b) Joint Sewers .....2021-2026
	(c) Power to Supply Sewerage Service Outside Borough Limits .....2031-2032
	(d) Acquisition of Sewer Systems .....2041-2043
	(e) Connection and Use of Sewers .....2051-2054
	(f) Annual Rentals .....2061-2064
	(g) Sewers on Boundary Streets .....2071-2072
Article XXI.	Collection by Installment of Street and Sewer Assessments .....2101-2105
Article XXII.	Storm Sewers and Water Courses .....2201-2204
Article XXIII.	Underground Conduits .....2301-2304
Article XXIV.	Public Service .....2401-2493
	(a) Water Supply and Waterworks .....2401-2463
	(1) General Powers to Supply Water ...2401-2409
	(2) Acquisition by Eminent Domain ....2411-2413
	(3) Acquisition by Purchase after Ap- praisement .....2421-2427
	(4) Power to Lease Waterworks .....2431-2434
	(5) Joint Waterworks .....2436-2438
	(6) Condemnation of Lands for Road Pur- poses and to Prevent Contamination 2441-2444
	(7) Commission of Waterworks .....2451-2458
	(8) Water Connections .....2461-2463

	Sections
	(b) Manufacture and Supply of Electricity ..2471-2479
	(c) Operation of Gas Wells; Gas Works ....2481
	(d) Airports .....2491-2493
Article XXV.	Public Buildings and Works .....2501-2514
	(a) Eminent Domain; General Provisions ...2501-2505
	(b) Refuse Disposal Facilities .....2511-2514
Article XXVI.	Wharves and Docks .....2601-2608
Article XXVII.	Recreation Places, Shade Trees, Forests .....2701-2759
	(a) Parks and Playgrounds, Et Cetera .....2701-2713
	(b) Shade Trees .....2721-2743
	(1) Shade Tree Commission .....2721-2730
	(2) Power of Boroughs as to Shade Trees 2741-2743
	(c) Forests .....2751-2759
Article XXVIII.	Cemeteries .....2801-2816
Article XXIX.	Licenses and License Fees .....2901-2906
Article XXX.	Real Estate Registry .....3001-3006
Article XXXI.	Health and Sanitation .....3101-3114
Article XXXII.	Zoning .....3201-3210
Article XXXIII.	Enforcement of Ordinances .....3301-3309
Article XXXIV.	Actions by and Against Boroughs .....3401-3415
	(a) Municipal Claims .....3401
	(b) Defenses by Taxpayers .....3411-3415
Article XXXV.	Acts of Assembly Repealed; Saving Clause ...3501

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I  
PRELIMINARY PROVISIONS

Section 101. Short Title.—This act shall be known and may be cited as “The Borough Code.”

Section 102. Excluded Provisions.—This act does not include any provisions, and shall not be construed to repeal any acts, relating to:

- (1) The assessment and valuation of property and persons for the purpose of taxation and the collection of taxes, except as provided herein.
- (2) The collection of municipal claims by liens.
- (3) The method of incurring or increasing indebtedness.
- (4) Conduct of elections.
- (5) Public schools.
- (6) Borough and ward constables.
- (7) Justices of the peace.

- (8) The giving of municipal consent to public utility corporations.
- (9) State highways.
- (10) Validations of elections, bonds, ordinances, and acts of corporate officers.
- (11) Any of the provisions of The Penal Code.

Section 103. Construction of Act Generally.—The provisions of this act, so far as they are the same as those of existing laws, are intended as a continuation of such laws and not as new enactments. The repeal by this act of any act of Assembly, or part thereof, shall not revive any act or part thereof heretofore repealed or superseded, nor affect the corporate existence of any borough heretofore incorporated. The provisions of this act shall not affect any act done, liability incurred, or right accrued or vested, or affect any suit or prosecution pending or to be instituted to enforce any right or penalty or punish any offense under the authority of such repealed laws. All ordinances, regulations, and rules made pursuant to any act of Assembly repealed by this act, shall continue with the same force and effect as if such act had not been repealed to the extent that such ordinances, regulations and rules could have been made pursuant to this act. Any person holding office under any act of Assembly repealed by this act shall continue to hold such office until the expiration of the term thereof, subject to the conditions attached to such office prior to the passage of this act.

Section 104. Constitutional Construction.—The provisions of this act shall be severable and, if any of the provisions shall be held to be unconstitutional, such decision shall not affect the validity of any of the remaining provisions of this act. It is hereby declared as a legislative intent that this act would have been adopted had such unconstitutional provision not been included therein.

Section 105. Construction of References.—Whenever in this act reference is made to any act by title, such reference shall also apply to and include any codification wherein the provisions of the act referred to are substantially reenacted.

Section 106. Boroughs to Which Act Applies.—This act shall apply to all boroughs incorporated under general laws, and to all boroughs incorporated under special law which have accepted the provisions of the act of April 3, 1851 (P. L. 320), entitled "An act regulating boroughs," and also to all boroughs incorporated since April 3, 1851, by special act of Assembly which by the act of incorporation under the general law, and also to all boroughs incorporated under or which have accepted the provisions of, the act of May 14, 1915 (P. L. 312), entitled "An act providing a system of government for boroughs, and revising, amending, and

consolidating the law relating to boroughs," and also to all boroughs incorporated under or which have accepted the provisions of, the act of May 4, 1927 (P. L. 519), known as "The Borough Code." This act shall not annul or repeal any local or special act in force at the date of the passage of this act, or any provision thereof, nor shall this act repeal any act so far as any such act applies to, or may have heretofore applied to, any boroughs incorporated under special acts of Assembly, and to which boroughs, as limited by the provisions of this section, this act does not apply.

The provisions of this act, in so far as similar provisions of the said act of May 14, 1915 (P. L. 312), and in so far as similar provisions of the said act of May 4, 1927 (P. L. 519), were extended to boroughs acting under local laws, shall apply to such boroughs incorporated under local laws.

Section 107. Acceptance of Act by Boroughs and Incorporated Towns.—Any borough or incorporated town, incorporated or acting under any local or special act of Assembly, may surrender the provisions of its special and local acts in their entirety, or so far as they are inconsistent with this act, and be governed by the provisions of this act, by presenting a petition to the court of quarter sessions of the county setting forth the desire of such borough or incorporated town to accept the provisions of this act. The petition shall also set forth whether it is the desire of the petitioners to surrender all of the provisions of its special and local acts or to retain such provisions of its special and local acts as are not inconsistent with this act. Such petition shall be made by the council or by at least ten percent of the registered electors of the borough or incorporated town as of the date the petition is filed.

Upon the presentation of the petition, the court shall fix a day for hearing, of which such notice shall be given as may be directed by the court. At such hearing any inhabitant of the borough or incorporated town may remonstrate against the granting of the petition, and the court may grant or refuse the petition as to it appears just and proper.

If the court grant the petition, the decree of the court shall be recorded in the office for the recording of deeds, and thereafter the borough or incorporated town shall be subject to all the provisions of this act, and any such incorporated town shall become a borough and the local and special acts of Assembly in force in any such boroughs or incorporated town shall be annulled in their entirety, or so far as they are inconsistent with the provisions of this act, as may be set forth in the petition in the particular case. When any incorporated town accepts the provisions of

this act, the decree of the court permitting such acceptance shall set forth the title of the new borough.

When any borough or incorporated town shall accept the provisions of this act, as provided by this section, all liabilities incurred, rights accrued or vested, obligations issued or contracted, and all suits and prosecutions pending or to be instituted to enforce any right or penalty accrued or punish any offense committed prior to such acceptance, and all ordinances shall continue with the same force and effect as if no such acceptance had been made.

Section 108. Effective Date.—This act shall take effect January 1, 1966.

Section 109. Publication of Notices.—Wherever, in any of the provisions of this act, notice is required to be given in one newspaper of general circulation in the borough, such notice shall be published in a newspaper of general circulation as defined by the act of May 16, 1929 (P. L. 1784), known as the "Newspaper Advertising Act," and its amendments, which is published and circulated in the borough or boroughs affected, or such newspaper of general circulation, circulated in the borough or boroughs affected, which has bona fide paid circulation equal to or greater than any newspaper published in the borough or boroughs affected by the notice. Such notice shall also be published in the legal journal, if any, designated by the rules of court for the publication of legal notices and advertisements, when such notice refers to any proceeding in any court or the holding of elections for the increase of indebtedness or the sale of bonds, unless such publication is dispensed with by special order of the court.

Section 110. Terms of Existing Officers Saved.—This act shall not be construed as affecting or terminating the term of any officer of a borough holding office at the time the same becomes effective.

Section 111. Definitions.—As used in this act, unless the context clearly indicates otherwise, the following words and terms shall be construed as follows:

(1) "Abutting property," or "abutting real estate" in reference to any street shall mean any property physically adjoining such street, regardless of what the reversion rights in such street may be and regardless of where the lot lines may be in relation to such street.

(2) "Corporate authorities" means the borough council even though the action taken is by ordinance which is subject to the approval or veto of the mayor.

(3) "Department of Highways" means the Pennsylvania Department of Highways.

(4) "Highway" means a State highway of the Commonwealth of Pennsylvania.

(5) "Latest official census" shall be either the most recent decennial census of the United States or a later census conducted by the United States Bureau of the Census, whichever shall be the later.

(6) "Street" means and includes any street, road, lane, court, cul-de-sac, alley, public way and public square.

## ARTICLE II CREATION OF BOROUGHS

### (a) Incorporation of Boroughs

Section 201. Areas May be Incorporated.—The courts of quarter sessions may incorporate any area within their jurisdiction, not already incorporated or a part of an incorporated municipality, as a borough, which, after having been so incorporated, shall be a body corporate and politic by the name which shall be decreed by the court.

Section 202. Applications for Incorporation.—The application for incorporation shall be by a petition signed by a majority of the freeholders residing within the limits of the proposed borough, when all parts of the proposed borough are in the same township, and, where portions of the proposed borough are in different townships, the petition shall be signed by a majority of the freeholders residing in each of such separate portions. The signatures must be secured within three months immediately preceding the presentation thereof to the court. Such petition shall be subscribed by and sworn to by at least one of the signers. The number of signers required to the petition shall be ascertained as of the date the petition was presented to court.

Section 203. Contents of Petition.—The petition shall set forth the name of the proposed borough, with a particular description of the boundaries thereof, exhibiting the courses and distances and be accompanied with a plot of the same.

Section 204. Filing of Petition; Notice; Decree; Costs.—Upon presentation to the court, the petition shall be filed with the clerk, and notice thereof shall be given in one newspaper of general circulation in the county and in the legal journal, if any, for a period of not less than thirty days immediately following the filing thereof, during which time exceptions may be filed to the petition by any person interested. The notice shall be published once a week for four consecutive weeks. The notice shall state when and where the petition was filed and the time during which exceptions may be filed to the petition. The court, if it shall find, after hearing, that the conditions prescribed by this article have been complied with, may grant the prayer of the petitioners and make a



decree accordingly, but, if the court shall deem further investigation necessary, it may make such order thereon as to right and justice shall appertain. The petition and the decree shall be recorded in the recorder's office of the county, at the expense of the petitioners, who shall also pay all other expenses and costs in connection therewith.

Section 205. **When Borough Government Becomes Effective.**—When the petition and decree have been recorded, such area shall become an incorporated borough, and shall be entitled to the several rights, privileges and immunities conferred by this act, subject, however, to the provisions of section 211 of this act.

Section 206. **Exclusion of Farm and Unsettled Lands.**—When, in any petition for the incorporation of a borough, the boundaries fixed by the petitioners shall embrace lands exclusively used for the purposes of farming or other large and unsettled lands, the court may, if it deems such land does not properly belong to the proposed borough, at the request of any party aggrieved, change the boundaries so as to exclude therefrom the land used for farming or such other purposes.

Section 207. **Corporate Name.**—The corporate name of boroughs, incorporated under this act, shall be “The Borough of . . . . .”

Section 208. **Requisites of Charter.**—The decree of the court shall constitute the charter of the borough. All charters granted under this act shall set forth:

- (1) The corporate name of the borough.
- (2) The boundaries thereof.

Section 209. **Appeals to Superior Court.**—An appeal to the Superior Court may be had in the manner provided by law for appeals to said court from any decree incorporating a borough by any person aggrieved thereby.

Section 210. **Certificates of Clerk of Court; Fees; Penalty.**—When a borough is created, the clerk of the court of quarter sessions in each county within thirty days shall certify to the Department of Highways and to the Secretary of Internal Affairs a copy of the decree of court incorporating such borough. For such services the clerk shall be allowed a fee of three dollars and fifty cents (\$3.50) to be paid as part of the costs of the proceeding.

Any clerk of the court, who shall fail, neglect or refuse to furnish such certifications or either of them, as herein provided, shall upon conviction in a summary proceeding be sentenced to pay a fine of not more than fifty dollars (\$50).

Section 211. **Existing Government Preserved Temporarily; Organization of Borough; Election of Borough Officers.**—(a) The said area

shall continue to be governed as before said incorporation until the first Monday of January following the municipal election after the issuance of the final decree establishing such new borough, at which time the officers of said borough chosen, in accordance with section 805 of this act, at such municipal or special election shall enter upon their respective terms of office, and the borough government shall be duly organized under this act.

(b) Borough officers shall be chosen at the next municipal election occurring at least ninety days following the issuance of the decree establishing the borough, or at the request of the petitioners, at a special election called by the court of quarter sessions.

(c) The court shall fix the time, place and manner of holding the special election, and shall designate a person to give notice of such special election and the manner thereof, and appoint from among the electors of the newly established borough a judge and inspectors to hold the election.

(d) Municipal officers chosen at such special election shall serve until the first Monday in January following the next succeeding municipal election at which time their successors shall be elected in the manner provided in section 805 of this act and shall take office.

Section 212. Marking Borough Boundaries.—The boundaries of the borough shall, as soon as practicable after its incorporation, be appropriately marked, due notice being first given to the commissioners and supervisors of adjoining townships and to the corporate authorities of adjoining municipalities.

Section 213. Agreement to Adjust Indebtedness Where Borough Created.—Whenever a borough is created out of a township, the commissioners or supervisors of the township and the council of the borough shall make a just and proper adjustment and apportionment of all the public property owned by the township at the time of the incorporation of the borough, both real and personal, including funds, as well as indebtedness between the borough and township: Provided, That in adjusting property and indebtedness, streets, sewers, and utilities shall not be considered except to the extent that current and unpaid indebtedness was incurred for the construction and improvement thereof. In making such adjustment and apportionment, the taxable borough shall be entitled a division of the property and indebtedness in the proportion that the assessed valuation of the taxable real estate included within the territorial limits of the newly incorporated borough, bears to the assessed valuation of the taxable real estate in the entire township immediately prior to the incorporation of such borough, and the township shall be

entitled to the remainder of such property and indebtedness: Provided, That where indebtedness was incurred by the township for an improvement located wholly within the territorial limits of the newly incorporated borough, such indebtedness shall be assumed by the borough, and where any part of such improvement is located within the newly incorporated borough, the part of such indebtedness, representing the part of the improvement located within the borough, shall be assumed by the borough and the adjustment and apportionment of any remaining debt and the public property of the township shall be made as above provided.

The adjustment and apportionment as made shall be reduced to writing, and shall be duly executed and acknowledged by the secretary or clerk of the township and borough, and shall be filed in the office of the clerk of the court of quarter sessions of the county, and a copy thereof shall also be filed with the Department of Internal Affairs of the Commonwealth.

Section 214. **Judicial Adjustment on Failure of Agreement.**—In case the township and the borough authorities cannot make an amicable adjustment and apportionment of the property and indebtedness within six months after the government of the newly incorporated borough is established, then the commissioners or supervisors of the township or the council of the borough may present a petition to the court of quarter sessions. The court shall then appoint three disinterested commissioners, all residents and taxpayers of the county, but none residing in or owners of real estate in the township or borough, who, after hearing, notice of which shall be given to the township and borough as the court shall direct, shall make report to the court making an adjustment and apportionment of all the property as well as the indebtedness between the township and the borough. The report shall state the amount that shall be due and payable from the borough to the township, or from the township to the borough, and the amount of indebtedness that shall be assumed by the borough or the township or both of them.

Section 215. **Proceeding on Judicial Adjustment Award.**—The commissioner shall give the township and the borough at least five days' notice of the filing of their report. Unless exceptions are filed to such report within thirty days after the date of the filing, the report shall be confirmed by the court absolutely. Any sum awarded by said report to the township or borough shall be a legal and valid claim in its favor against the borough or township charged therewith. Any property real or personal given to the township or borough shall become its property.

Any claim or indebtedness charged against the borough or township may be collected from it.

**Section 216. Exceptions to Report.**—In case exceptions are filed to the report of the commissioners, the court shall dispose of the same, taking testimony therein if it deems the same advisable. The court shall enter its decree confirming the award of the commissioners, or modifying the same as to it appears just and proper. The decision of the court shall be final unless an appeal is taken to the Supreme or Superior Court as in other cases.

**Section 217. Compensation and Expenses of Commissioners; Costs.**—The commissioners shall be allowed such compensation and expenses for their services as the court shall fix. The costs of the proceedings, including the compensation and expenses of the commissioners, shall be apportioned by the court between the borough and township as it deems proper.

**Section 218. Where Territory of Borough or Annexed Territory is Located in Two or More Counties.**—In case the territory, included within the limits of a newly incorporated borough is located in two or more counties, the court of quarter sessions of the county where the larger part of the territory of the borough is located shall have exclusive jurisdiction over the proceedings to adjust and apportion the indebtedness between the borough and township.

**Section 219. Bond Issues; Taxation.**—In any such proceeding the township or the borough shall have power to issue and deliver to the borough or township interest-bearing bonds in liquidation of the indebtedness ascertained, to be its proportionate share payable, if such bonds are acceptable to the borough or township entitled to receive the same. The court may also make all needful orders for the collection and payment by the township or borough by special taxes to be collected in one year, or by annual installments, the amount needed to pay the share of any indebtedness apportioned to it.

#### (b) Consolidation of Boroughs

**Section 221. Adjacent Boroughs May be Consolidated.**—Whenever two or more boroughs, situate in the same county or in different counties, shall be adjacent and of compact territory they may be consolidated into one borough.

**Section 222. Joint Agreement for Consolidation; Decree of Court.**—Such consolidation shall be made under the following conditions:

(1) The councils of the boroughs may of their own initiative, or shall, within sixty days after each is requested in writing by at least ten percent of the registered electors of the respective borough, enter into a joint agreement, under the corporate seal of each borough, for the con-

solidation thereof into one borough. The joint agreement shall set forth the name of the new borough, the number of wards, if any, into which the borough is to be divided, and the territorial boundaries thereof. Where such agreement provides for wards, if the consolidation becomes effective, one or two councilmen shall be elected in each ward as the joint agreement for consolidation may provide. It may also set forth such terms as have been agreed upon for the disposition of the assets of each of the boroughs, and for the liquidation of the indebtedness of each of the boroughs, either jointly, separately, or in certain defined proportions, and the adjusting and paying of the same by separate rates of taxation on all property subject to taxation within the boundaries of such boroughs respectively.

(2) If the councils are unable to effect such joint agreement within sixty days after each shall have been requested so to do in writing as aforesaid, or if for any reason the councils fail to effect such joint agreement within said sixty-day period, the court of quarter sessions of the county or, where the boroughs are situated in more than one county, of the county in which the most populous borough is situate shall, if satisfied, after petition or petitions presented by at least ten percent of the registered electors of each borough and hearing held thereon, that the councils have failed, after being duly requested in writing as aforesaid, to enter into such joint agreement, enter a decree for an election to be held in said boroughs on the question of consolidation of said boroughs into one borough. The decree of the court shall fix the date for such election, designate the name of the new borough (which name shall be as prayed for in the petition or petitions), the number of wards, if any, into which the consolidated borough is to be divided, the territorial boundaries thereof, and for the election of one or two councilmen in each such ward, and shall also set forth such terms as appear equitable, just and proper to the court for the disposition of the assets of each of the boroughs and for the liquidation of indebtedness of each of the boroughs, either jointly, separately, or in certain defined proportions, and the adjusting and paying of the same, by separate rates of taxation on all property subject to taxation within the boundaries of such boroughs respectively.

The court shall direct the county board of elections to furnish to each election district in such boroughs the necessary ballots and supplies for such election.

On presentation of such petition or petitions, the court shall fix a date for hearing, which shall be held within thirty days from the date of presentation of the petition or petitions. Notice of the time and

place of the hearing shall be given by the secretary of each of the boroughs at least fifteen days before the date fixed for the hearing in such manner as may be provided by order of court.

The petition or petitions aforesaid, may be presented to court at any time after councils have failed to enter into a joint agreement in response to the written request aforesaid.

**Section 223. Elections on Question of Consolidation.**—The question of the consolidating of such boroughs shall be submitted to the vote of the electors of each of the boroughs at a special election to be held on the day to be designated in the joint agreement or in the decree of court, as the case may be. Such election shall be held on the day of any general, municipal or primary election. The election shall be held by the legal election officers and in accordance with the provisions of the laws regulating general elections. Notice of such election shall be given in such manner as may be prescribed by the court.

The election shall be by ballot and the question to be submitted shall be framed by the county board in the manner provided by the Pennsylvania Election Code.

If the majority of the votes cast on the question submitted at such election, in each of the boroughs, is in favor of the consolidation of the boroughs, that fact shall be certified to the council of each of the boroughs by the county board of elections and the mayor and secretary of the respective boroughs shall cause a certification of the result to be endorsed upon the said agreement, if the councils have entered into an agreement or, if not, then on a certified copy of the decree of court.

**Section 224. Agreement or Certified Copy of Decree to be Recorded; Effect Thereof.**—The agreement or a certified copy, or copies thereof, with all its endorsements, or a certified copy of the decree of the court of quarter sessions, with all its endorsements, shall be recorded in the office for the recording of deeds in said county or counties, and when so recorded shall constitute the charter of the consolidated boroughs.

**Section 225. Payment of Costs and Expenses.**—All costs and expenses incurred in such consolidation or proposed consolidation, except those incurred in any general, municipal or primary election at which the question of consolidation is submitted, shall be paid by the consolidated borough, if such consolidation takes place, and, if not, such costs and expenses shall be paid in equal shares by each of the boroughs proposing to consolidate.

**Section 226. Effect of Consolidation.**—The ordinances in force in each of such boroughs, at the time of such consolidation, shall continue in force throughout the territory for which they were originally enacted,

until altered or repealed by the council of the consolidated borough. All rights, privileges and franchises of each of the boroughs, and all property, real, personal and mixed, and all debts due on whatever account, and other things in action, belonging to each of such boroughs, shall be vested in the new borough. The title to real estate vested in either of such boroughs shall not revert, or be in any way impaired, by reason of such consolidation. All rights of creditors and liens shall be preserved, and all debts, liabilities and duties of either of such boroughs, shall attach to such new borough and be enforced against it.

Section 227. Jurisdiction Over Consolidated Boroughs.—Any borough, formed by the consolidation of boroughs situate in different counties, shall be governed, for borough purposes, as one borough and, for county and institution district purposes, as a part of the county and institution district in which the territory is actually situated, in accordance with existing laws.

Section 228. Existing Governments Preserved Temporarily.—The boroughs so consolidated shall continue to be governed as before consolidation until the first Monday of January following the municipal election next succeeding, occurring at least ninety days after the agreement, or certified copy of the decree of court has been filed for recording, at which time the officers of the consolidated borough chosen in accordance with section 805 of this act at such municipal election shall enter upon their respective terms of office, and the borough government of the consolidated borough shall be duly organized under this act, and the former borough governments shall cease to exist.

(c) Creation of Boroughs from Cities of the Third Class

Section 231. Petition for Creation of Borough from a City of the Third Class.—The court of quarter sessions shall, upon petition of at least ten percent of the registered electors of any city of the third class, setting forth that the inhabitants of the city desire to change the charter of such city to a borough charter and be governed by the laws of the Commonwealth relating to boroughs and that such city has had the city form of government for a period of at least five years, order an election to be held on the next day appointed for the holding of a general, municipal or primary election, occurring at least ninety days after the presentation of such petition. At such election the electors shall vote for or against the change of the charter of the city to a borough charter, and the adoption of the borough form of government. The petition shall set forth the name of the proposed borough. The number of registered electors required to sign the petition shall be determined as of the date the petition is filed.

**Section 232. Filing Petition; Notice of Election; Return.**—Upon the presentation of any such petition, the court shall determine whether the petition is in due form and properly signed, and if the court so finds, it shall enter an appropriate order and direct that the petition shall be filed with the clerk of the court and that a copy of the petition and order of court shall be filed with the county board of elections. The county board of elections shall frame the proper question to be submitted to the electors at the election ordered by the court. Notice of such election shall be given in at least one newspaper of general circulation of the proper county once a week for four consecutive weeks of the time of such election and the purpose thereof. The publication of the notice shall be made on behalf of the petitioners and shall be in form as the court may approve.

The county board of elections shall make return of the vote cast on the question submitted to the clerk of the court of quarter sessions, which return shall be filed with the petition. If a majority of those voting on the question submitted were in favor of the change of the charter of the city to a borough charter, the court shall order that the record of the proceedings be recorded in the office for the recording of deeds of the county, which record shall constitute the charter of the borough under the name set forth in the petition. If a majority of those voting on the question were against the change of the city charter no further proceedings shall be had, and the same question shall not again be submitted for a period of five years following such election.

**Section 233. When Borough Government Effective.**—Upon the recording of the record of the proceedings as above provided, the city form of government shall continue in operation until the first Monday of January next succeeding the first municipal election, occurring at least ninety days after the recording of the record, at which time the borough government shall be organized by the officers elected at said municipal election in accordance with section 805 of this act.

**Section 234. Property; Assets; Liabilities; Ordinances; Wards; Election Districts and Certain Officers.**—Upon the formation of the borough government, all of the property and assets of the city shall become the property of the borough, and such change of government shall not in any way affect any liabilities incurred, rights accrued or vested, obligations, issued or contracted, or any suits or prosecutions pending or instituted to enforce any right or penalty accrued, or punish any offense committed prior to such change. All ordinances of the former city shall continue in force in the new borough until altered or repealed in the manner provided by law. The wards and election districts of the



city shall become the wards and election districts of the borough until altered or changed as may be provided by law. And in the election of councilmen from the several wards, two councilmen shall be elected from each ward, unless thereafter changed as provided by law. All constables, aldermen and election officers in office in the city, when the borough government is organized, shall remain in office until the expiration of their respective terms of office.

Section 235. Costs and Expenses.—Where proceedings are had to change the charter of a city to a borough, and the vote of electors is in favor of the change, the costs and expenses of the proceeding, including all costs of advertising, shall be paid by the city, otherwise such costs and expenses shall be paid by the petitioners.

### ARTICLE III

#### ANNULMENT OF CHARTERS AND CHANGE OF CORPORATE NAMES

Section 301. Petitions for Annulment of Charters or Change of Corporate Names.—The court of quarter sessions shall, upon petition of at least ten percent of the registered electors of any borough setting forth that the inhabitants of such borough desire to annul the charter of the borough or to change the corporate name of such borough, order an election to be held on the next day appointed for the holding of a general, municipal or primary election, occurring at least ninety days after the presentation of such petition, at which election the electors of the borough shall vote for or against the annulment of the charter or the change of name of the borough, as the case may be. In the case of an annulment of charter, such petition shall set forth that the petitioners desire that the territory embraced within such borough shall revert to and become a part of the township from which it was taken or that it shall be created a new township of the second class, in which case the petition shall also set forth the proposed name of the new township.

Section 302. Filing Petition; Notice of Election; Return.—Upon presentation of such petition for annulment or change of corporate name to the court, and the entry of the court order thereon, after determination by the court that the petition is in due form and properly signed, it shall be filed with the clerk, and a copy of the petition and order of court shall also be filed with the county board of elections, which shall frame the proper question to be submitted to the electors at the election ordered by the court. Notice of the election shall be given in at least one newspaper of general circulation in the borough once a week for four consecutive weeks of the time of such election and

the purpose thereof. The publication of the notice shall be made on behalf of the petitioners in form as the court may approve. The county board of elections shall make return of the vote cast on the question submitted to the clerk of the court of quarter sessions, which return shall be filed with the petition. If a majority of those voting on the question submitted were in favor of the annulment of the charter or the change of the corporate name, as the case may be, the court shall order that the record of the proceedings shall be recorded in the office of the recorder of deeds, otherwise no further proceedings shall be had.

Section 303. Territory to Revert to Township; Corporate Name Changed; Indebtedness.—Upon recording of the record as above provided, in case of an annulment of charter, the lands embraced within the limits of such borough, the charter of which is annulled, shall thereupon in accordance with the prayer in the petition, either revert to and become a part of the township from which it was taken, and be under and subject to its government and control or shall become a new township of the second class under the name set forth in the petition. In cases where a borough reverts to the township from which its territory was taken, the government of the borough shall cease and terminate on the first Monday of January next succeeding the election on the question of the annulment of the charter, and the property and assets of the borough, including all uncollected taxes and liens, shall be converted into cash by the township supervisors, and shall be applied only to the payment of the outstanding indebtedness of the borough, but any moneys not needed for such purposes shall revert to the township, and any borough indebtedness not paid as above provided shall be paid from the taxes assessed and collected from that portion of said township formerly included within the limits of such borough. In the case of a change of the corporate name, the corporate name of said borough shall from the date of the recording of the record of the proceeding be as set forth in said petition, but such change shall not in any way affect any liabilities incurred, rights accrued or vested, obligations issued or contracted, or any suits or prosecutions pending or instituted to enforce any right or penalty accrued or punish any offense committed, prior to such change.

All costs and expenses incident to the proceedings for the annulment of the charter or change of the name, as aforesaid, shall be paid by the petitioners. To secure the payment of costs and expenses, the court may require the petitioners to file a bond in such sum as it may fix.

Section 304. Officers Where a New Township is Created.—Where a new township of the second class is created by the annulment of the

charter of a borough, officers for such township shall be provided in the manner provided by the laws relating to townships of the second class for such cases and the new township government shall become effective on the first Monday of January next succeeding the municipal election, occurring at least ninety days after the recording of the proceedings, at which time the officers of the new townships shall be elected as provided by the laws relating to townships of the second class for such cases.

Section 305. Change of Corporate Name to Conform to General Usage or to Post Office Designation.—Where the corporate name of any borough shall differ from the name in general usage or from the post office designation by reason only of minor discrepancies in spelling, in capitalization or in the manner of compounding the elements of such name, the court of quarter sessions may change the name of such borough to conform to the name in general usage or to the post office designation upon petition. Such petition shall be presented by the council of the borough, pursuant to a resolution of the council, or by at least five percent of the registered electors of the borough. Upon the presentation of the petition, the court shall fix a day for hearing of which such notice shall be given as may be directed by the court. At such hearing, any inhabitant of the borough may remonstrate against the granting of the petition, and the court may grant or refuse the petition as to it appears just and proper. If the court grants the petition, the decree of the court shall be recorded in the office for the recording of deeds and the corporate name of the borough from the date of such recording shall be set forth in such petition, but such change shall not in any way affect any liabilities incurred, rights accrued or vested, obligations issued or contracted, or any suits or prosecutions pending or instituted to enforce any right or penalty accrued or to punish any offense committed prior to such change regardless of whether the old or the new name of the borough shall have been used therein.

#### ARTICLE IV

##### CHANGE OF BOROUGH LIMITS

###### (a) Annexation of Townships of First Class or Parts Thereof

Section 401. Petition For Annexation of a Township of the First Class or Parts Thereof.—Registered electors equal to at least ten percent of the registered electors in any township of the first class contiguous to a borough, or ten percent of the registered electors residing within any part of a township of the first class contiguous to a borough, may petition the council of such borough for the annexation of the township of the first class, or part thereof, as the case may be, to the contiguous borough, and for a referendum on the question of such an-

nexation. The number of registered electors required to sign a petition shall be determined as of the date the petition is filed. All petitions shall be accompanied by a plot or plots of the territory to be annexed, showing all streets and highways, municipal improvements and public buildings. All petitions for the annexation of a part of a township of the first class shall include a description of the part of the township sought to be annexed.

Section 402. Referendum in Township and Borough.—The council of the borough shall cause a question to be submitted at the first general, municipal or primary election, occurring at least sixty days after the petition has been filed with it, by certifying an ordinance duly adopted to the county board of elections in which any part of the township or borough is located, for the submission of a proper question on the ballot or on voting machines at such election in such township, and in the borough to which the annexation is to be made as provided by the Pennsylvania election code. Where a part of a township is involved, the question submitted shall give a brief description of the territory to be annexed to the borough.

Section 403. Result of Election.—If a majority of the persons voting on such question in the entire township and a majority of the persons voting on such question in the borough shall vote in favor of the annexation, then the township of the first class, or part thereof, as the case may be, shall on the first Monday of January next following be and become a part of the borough. If the majority of the votes cast on the question in either the entire township or in the borough was against annexation, then the annexation proceeding shall fail and the question of such annexation shall not again be voted upon for a period of two years from the date of such election.

Section 404. Wards.—Until changed in the manner provided by law, the township of the first class, or part thereof annexed to the borough, if not divided into wards, shall constitute a separate new ward of the enlarged borough, if such borough is at the time divided into wards. If the township, or part of the township, at the time of annexation was divided into wards, then each ward of the township, or part of the township, shall constitute a separate ward of the enlarged borough (if divided into wards) and shall be consecutively numbered or otherwise appropriately designated by the council of the borough: Provided, that in any case where a part of a township only is annexed to a borough divided into wards, the court, in the order annexing such part of a township to such borough, may include a provision that such annexed territory shall be attached to an existing ward or wards of such borough.

Section 405. Election Districts and Election Officers.—Until changed in the manner provided by law, all election districts in the former township of the first class or part thereof shall remain as constituted at the time of the annexation and shall become election districts of the enlarged borough. All election officers of such election districts in office at the time of the taking effect of the annexation shall continue in office until the expiration of their respective terms, unless sooner removed as provided by law.

Section 406. Government Where Lands Lie In Two or More Counties.—If the lands annexed to the borough are located in a county or counties different from that of the borough, they shall be governed for borough purposes as part of the borough to which annexed, and for county and institution district purposes as part of the county and institution district in which actually situated, in the manner provided by law in such cases.

(b) Annexation of a Township of the Second Class or Part Thereof  
by Petition to Court

(1) Where territory is in one county:

Section 411. Annexation by Court; Decree.—The court of quarter sessions, may, upon petition, change the limits of any borough by the annexation of adjacent territory located in a township of the second class.

Section 412. Notice of Application.—Personal notice of the intended application shall be given to the mayor and council of the borough, and to the supervisors of the township in which the petitioners reside. Notice of such application shall also be given in one newspaper of general circulation of the county, immediately before the presentation of the petition by publication once a week for four consecutive weeks.

Section 413. Signing and Contents of Petition.—Where the territory to be annexed is all or part of a second-class township, the petition shall be signed by a majority in number of all of the freeholders of the territory to be annexed. The petition shall set forth a description, of the territory to be annexed and be accompanied with a plot, showing the courses and distances of the boundaries of the borough before and after the proposed annexation.

Section 414. Decree of Court; Costs; Limitation of Subsequent Proceedings.—The court after hearing may make such order on the petition as to right and justice shall appertain. If the court shall confirm the petition, the said petition and decree shall be recorded in the recorder's office of the county, at the expense of the petitioners, who

shall pay all other expenses and costs in connection with said petition and decree. Thenceforth the territory so annexed shall be a part of the borough, and shall become a part of the contiguous ward or wards of the borough, or constitute a new ward or wards of the borough as the court in its order may prescribe. If the court shall not confirm the petition, no other proceeding for the annexation of the same territory, or any part thereof, shall be had within five years thereafter.

(2) Where territory is in two or more counties:

Section 416. *Petition For Annexation.*—The court of quarter sessions may, upon petition, annex to any adjacent borough, territory in a township or townships of the second class situated in a county or counties different from that of the borough.

Where the territory to be annexed is all or part of a second-class township, the petition shall be signed by a majority in number of all of the freeholders of the territory to be annexed, and shall be presented to the courts of quarter sessions of all the counties in which the territory to be annexed and the borough are situated.

Section 417. *Notice of Application.*—Notice of the intended application shall be given in one newspaper of general circulation in the territory to be annexed and in the borough immediately before the presentation of the petition to any of the courts by publication once a week for four consecutive weeks.

Section 418. *Appointment of Commissioners; View; Report.*—Upon presentation of the petition, the several courts shall each appoint one person as commissioner, and the commissioners so chosen shall select an additional one who shall be a surveyor or registered engineer.

The commissioners shall be severally sworn or affirmed, within sixty days from their appointment and selection, and shall view the territory sought to be annexed. They shall report to the several courts, as soon thereafter as possible. The report shall state that the commissioners were sworn or affirmed, and that they were all present at the view. If the commissioners favor the proposed annexation, they shall accompany their reports with a plot, showing the courses and distances of the boundaries of the territory proposed to be annexed and the quantity of land therein contained and the ward or wards of the borough of which such territory shall be a part or that it shall constitute a new ward or wards.

Section 419. *Rules On Petitioners.*—Any person interested may petition any of the courts for a rule on the petitioners to show cause why the report should not be approved. The rule shall be returnable within such time as the court may fix. If the rule is confirmed, the

persons signing the original petition shall pay the costs of the entire proceedings; if such rule is discharged, the costs shall be paid by those petitioning for its issue.

Section 420. Approval by Court; Compensation of Commissioner; Limitation of Subsequent Proceedings.—If each of the courts shall approve the report of the commissioners, the whole proceeding shall be entered on the record of each court, and the territory annexed shall be a part of the borough. Each commissioner shall receive such compensation for his services as the court shall allow to be paid by the original petitioners. If the commissioners shall not favor or if either court shall not approve the annexation, no other proceeding for the annexation of the same territory, or any part thereof, shall be had within five years thereof.

Section 421. Government of Territory.—Where territory is so annexed to a borough of an adjoining county, such territory so annexed, shall be governed, for borough purposes, as a part of the borough to which they are annexed, and for county and institution district purposes, as a part of the county and institution district in which actually situated, in the manner provided by law in such cases.

(c) Annexation of Lands in Townships of the Second Class  
by Petition to Council

Section 426. Annexation; Ordinance; Limitation of Subsequent Proceedings.—Any borough may, by ordinance, annex adjacent land situate in a township of the second class in the same or any adjoining county, upon petition, and may attach such annexed territory to an existing ward or wards. The petition shall be signed by a majority in number of all of the freeholders of the territory to be annexed. If an ordinance to make such annexation is defeated, no other proceeding for the annexation of the same territory, or any part thereof, shall be had within five years thereof.

Section 427. Procedure.—A certified copy of any ordinance, adopted together with a description of the land to be annexed and a plot showing the courses and distances of the boundaries of the borough before and after such proposed annexation, shall be filed in the court of quarter sessions of the county, or, in case the land proposed to be annexed is situate in an adjacent county, then in the courts of both counties. A notice of such filing shall also be filed in the office of the county board of elections of the proper county. Thereupon the territory proposed to be annexed shall be a part of the borough; except when any ordinance and plot are filed in the office of the clerk of the court of quarter sessions within two months of any general, municipal, or primary election, in

which case the property proposed to be annexed shall not become a part of the borough until the day succeeding such election.

Section 428. Government of Territory.—Where territory is annexed to a borough of an adjoining county, such territory so annexed, shall be governed, for borough purposes, as a part of the borough to which it is annexed, and, for county and institution district purposes, as part of the county or institution district in which actually situated, in the manner provided by law in such cases.

(d) Annexation of Adjacent Territory Owned by a Borough

Section 429. Annexation by Ordinance; Procedure.—(a) Any borough which, on the effective date of this act, owns territory in a township, which territory is contiguous to the borough, may annex such territory by ordinance, such ordinance to set forth a description of the territory to be annexed and the courses and distances of the boundaries of the territory. A copy of such ordinance shall be certified to the Department of Internal Affairs.

(b) Upon such annexation by ordinance, a plan of the territory annexed shall be filed by the borough council in the office of the county commissioners and with the clerk of the court of quarter sessions and, thereupon, the annexation shall become effective. The annexation proceedings authorized by this section are in addition to, and not in substitution of, proceedings otherwise provided by law for annexation of territory, and may be followed without reference to or compliance with any other such provisions.

(e) Detachment of Territory

Section 431. Petitions to Detach Territory.—The court of quarter sessions, upon petition, may change the limits of any borough by detaching territory therefrom and annexing the same to a contiguous township or borough in cases where the line between a borough and a township or another borough shall separate the lands of any person, or where the territory of any borough is divided by reason of natural or artificial causes, or where any part of a borough is so located that access to the remaining portion can be had only by passing through some other township or borough, or where any part of a borough is so located that the convenience of the inhabitants thereof would be served by the detachment of such part.

Section 432. Signing and Contents of Petition.—The petition shall be signed by a majority in number of the freeholders in the territory to be detached. The petition shall contain the names of the contiguous township or borough to which the territory is proposed to be annexed, and shall set forth a description of the territory to be detached, and



be accompanied with a plot showing the courses and distances of the boundaries of such township or borough before and after the annexation of the detached territory.

Section 433. Filing Petition; Notice; Decree.—Upon its presentation, the court shall order the petition filed and shall fix a time for hearing. Notice of the filing of the petition shall be given to the supervisors of the township and to the secretary of the borough and president of council of each borough affected, at least twenty days prior to the date of hearing. If, after hearing, the court shall determine in favor of the proposed detachment of territory, it shall state in its decree to what adjacent township or borough the territory so detached shall be annexed. The petition and decree shall be recorded in the office for the recording of deeds of the county and thenceforth the boundaries of the borough and of the adjacent township or borough shall be as decreed by the court. The costs of the proceedings, including the cost of the recording of the petition and decree, shall be paid by the petitioners.

(f) Adjustment of Indebtedness and Public Property

Section 441. Adjustment of Indebtedness and Public Property Where Part of Township Annexed.—Whenever a part of any township is annexed to any borough, the borough council and the governing body of the township shall make a just and proper adjustment of all the public property, both real and personal, owned by the township at the time of such annexation, including funds, as well as indebtedness, between the township and the borough.

In adjusting property and indebtedness, streets, sewer and utilities shall not be considered except to the extent that current and unpaid indebtedness was incurred for the construction and improvement thereof. In making such adjustment and apportionment, the township shall be entitled a division of the property and indebtedness in proportion that the assessed valuation of the taxable real estate in the annexed portion of the township bears to the assessed valuation of the taxable real estate in the entire township immediately prior to the annexation and the borough shall be entitled to the remainder of such property and indebtedness. Where indebtedness was incurred by the township for an improvement located wholly within the limits of the territory annexed to the borough, such indebtedness shall be assumed by the borough and where any part of such improvement is located wholly within the limits of such annexed territory, the part of such indebtedness representing the part of the improvement located within such annexed territory shall be assumed by the borough, and the adjustment and

apportionment of any remaining debt and public property of the township shall be made as hereinabove provided. Such adjustment and apportionment shall be reduced to writing, and shall be duly executed and acknowledged by the clerk or secretary of the borough and shall be filed with the clerk of the court of quarter sessions of the county or counties in which the borough and the township are located, and a copy thereof shall also be filed with the Department of Internal Affairs of the Commonwealth.

Section 442. Judicial Adjustment on Failure of Agreement.—In case the borough council and the governing body of the township cannot, within six months after an annexation becomes effective, arrive at a determination of the cost or value of certain improvements as required by the act of July 20, 1953 (P. L. 550), entitled "An act providing for and regulating the annexation of parts of a second class township to boroughs, cities and townships," or of the adjustment of indebtedness and public property as required by section 441 of this act, the borough council or the governing body of the township may appeal to the court of quarter sessions of the county in which the borough is located. The court shall then appoint three disinterested commissioners, all residents and taxpayers of the county, but none residing in or owners of real estate in the township or the borough. Such commissioners, after hearing, notice of which shall be given to the township and the borough as the court shall direct, shall make report to the court, stating the cost and value of improvements and/or making an apportionment and adjustment according to the provisions of this article, of all the property, as well as the indebtedness, if any, to and between the borough and the township. Such report shall state the amount, if any, that shall be due and payable from the borough, or from the township to the borough, as well as the amount of indebtedness, if any, that shall be assumed by the borough or the township, or both of them.

Section 443. Proceedings on Judicial Adjustment.—The commissioners shall give the borough and the township at least five days' notice of the filing of their report. Unless exceptions are filed to such report within thirty days after the date of filing, the report shall be confirmed by the court absolutely. Any sum awarded by such report to the township or to the borough shall be a legal and valid claim in its favor against the borough or township charged therewith. Any property, real or personal, given to the borough or to the township shall become its property. Any claim of indebtedness charged against the borough may be collected from it.

Section 444. Exceptions to Report.—In case exceptions are filed to the report of the commissioners, the court shall dispose of the same, taking testimony thereon if deemed advisable. The court shall enter its decree confirming the report of the commissioners, or modifying the same as to it seems just and proper. The decision of the court shall be final unless an appeal is taken to the Supreme or Superior Court as in other cases.

Section 445. Compensation and Expenses of Commissioners; Costs.—The commissioners shall be allowed such compensation and expenses for their services as the court shall fix. The costs of the proceedings, including the compensation and expenses of the commissioners, shall be apportioned by the court between the borough and the township as it deems proper.

Section 446. Where Borough Located In Two or More Counties.—In case the territory of a borough is located in two or more counties, the court of quarter sessions of the county in which the most populous part of the territory of the borough is located shall have exclusive jurisdiction over the proceedings to determine the cost or value of certain improvements in the township and to adjust and apportion the indebtedness between the township and the borough.

Section 447. Payment of Amounts Due; Taxation.—The borough or the township, as the case may be, shall have power to issue and deliver to the other municipality interest-bearing bonds in liquidation of the indebtedness ascertained to be its proportionate share payable, if such bonds are acceptable to the township or the borough, as the case may be, entitled to receive the same. The court may also make all needful orders for the collection and payment by the township or the borough, by special taxes to be collected in one year, or by annual installments, the amount needed to pay the share of any indebtedness apportioned to it.

Section 448. Collection of Taxes Levied Prior to Annexation.—All taxes assessed and levied against property in annexed territory prior to the effective date of the annexation shall be paid to the township, and the collection and enforcement thereof shall be as though the annexation had not taken place.

(g) When Territory is Detached

Section 451. Appointment of Auditor.—Whenever, the court shall decree the detachment of territory from a borough, and the boroughs and townships affected thereby cannot amicably agree as to the adjustment of indebtedness, if any, between themselves, the court of quarter sessions, upon petition of either the borough or township, shall appoint

an auditor, who shall give such notice of a hearing as the court shall direct to all parties in interest.

Section 452. Duties of Auditor.—The auditor shall hear all parties in interest, make necessary investigation, and report to the court the total valuation for taxation purposes of the borough and townships affected, the assessed valuation of the portion detached, the amount of indebtedness of the several boroughs and townships, and the value of all property transferred from the borough to a township or borough. The auditor shall also report a form of decree, making such adjustment of the indebtedness of the boroughs and townships affected as he shall deem equitable.

Section 453. Confirmation of Report; Costs.—The report and decree shall be confirmed nisi by the court, and shall become absolute unless exceptions be filed thereto. In case exceptions are filed within thirty days after the report is filed in court, the court shall dispose of the same taking testimony therein if it deems the same advisable. The court shall enter its decree confirming the report of the auditor or modifying the same as to it appears just and proper. The decision of the court shall be final. The costs and expenses of the proceedings shall be paid as the court shall direct.

## ARTICLE V BOROUGH BOUNDARIES

Section 501. Stream Boundaries.—Whenever any borough is bounded by the nearest margin of a navigable stream, and the opposite township, borough, or city as the case may be, is also bounded by the nearest margin of the same stream, the middle of such stream shall be the boundary between such borough and the opposite township, borough or city. Nothing contained in this section shall be construed to repeal any local or special law providing to the contrary.

Section 502. Establishment of Disputed Boundaries.—The court of quarter sessions may, upon presentation of a petition, (i) alter the lines of a borough and any adjoining township, borough or city so as to suit the convenience of the inhabitants thereof, (ii) cause the lines and boundaries of boroughs to be ascertained and established, and (iii) ascertain and establish disputed boundaries between two or more boroughs, between boroughs and cities, or between boroughs and townships. When any such petition is presented, the court may require the petitioners to file a bond in sufficient sum to secure the payment of all costs of the proceeding.

Section 503. Petition to Court; Commissioners; Report.—Upon application by petition, the court shall appoint as commissioners three

impartial persons, one of whom shall be a surveyor or registered engineer, to inquire into the prayer of the petition. After giving notice to parties interested, as directed by the court, the commissioners shall hold a hearing and view the lines and boundaries, and they or any two of them shall make a plot or draft of the lines and boundaries proposed to be altered, ascertained and established if the same cannot be fully designated by natural lines and boundaries. The commissioners, or any two of them, shall make report to the court together with their opinion of the same. Upon the filing of any such report, the same shall be confirmed nisi, and the court may, by its order, require such notice to be given by the petitioners to the parties interested as it deems proper.

Section 504. Exceptions and Procedure.—Exceptions to any such report may be filed by any person or political subdivision interested, within thirty days after the filing of the report, and the court may thereupon fix a day for the hearing of such exceptions, of which such notice shall be given as the court may direct. After hearing, the court shall have power to sustain such exceptions, or to dismiss them and confirm the report, or to refer the report back to the same or new commissioners with like authority to make another report on which like proceedings may be had. Where no exceptions are filed within thirty days after the filing of the report, the court shall confirm the same absolutely. When any report is confirmed absolutely the court shall enter a decree altering or ascertaining and establishing the lines and boundaries as shown in said report.

Section 505. Compensation and Expenses of Commissioners; Costs.—The compensation and expenses of commissioners appointed to alter or ascertain and establish borough boundaries shall be in an amount approved by the court. The court shall by its order provide how the costs and expenses of such proceedings, including the furnishing and placing of monuments, shall be paid, and may assess them against the petitioners, the borough, township or city interested, or any of them.

Section 506. Boundary Monuments.—Whenever any such borough line is altered or ascertained and established, the court shall cause the same to be appropriately marked. Following any change of borough limits pursuant to any procedure set forth in article IV hereof, the annexing municipality shall be responsible for making the boundary as newly established.

## ARTICLE VI BOROUGH WARDS

Section 601. Power of Court to Erect, Abolish and Change Wards and to Adjust, Alter and Establish Lines.—The court of quarter ses-

sions, upon petition, may divide boroughs into wards, erect new wards out of two or more adjoining wards or parts thereof, consolidate two or more wards into one ward, divide any ward already erected into two or more wards, alter the lines of any two or more adjoining wards or cause the lines or boundaries of wards to be ascertained or established, or abolish all wards. No borough shall be divided or redivided into more than thirteen wards.

No ward shall be created containing less than three hundred registered electors therein, and all wards which now or at any time hereafter shall contain less than three hundred fifty registered electors therein may, in the discretion of the court, be abolished and if so abolished, the territory thereof shall be distributed among the remaining wards in such manner as the court of quarter sessions shall direct. All other wards as heretofore established shall remain as heretofore, until altered or divided as provided in this article.

In boroughs wherein any ward shall be abolished as herein provided and the number of wards shall be reduced to less than five, then the councilman or councilmen in the ward or wards abolished shall continue in office for the term for which elected and shall become a councilman or councilmen at large from such borough.

If the latest official census of the United States shall disclose that in any borough the population of any ward exceeds by fifty percent or more or is fifty percent or more less than the average population of all the wards of such borough, the court of quarter sessions, upon application of the borough council or, in case of failure of the council so to apply, upon petition of any citizen of the borough, shall adjust the boundaries of any or all of the wards in such borough, for the purpose of more nearly equalizing ward populations throughout the said borough.

Section 602. Signing Petition; Appointment of Commissioners; Report.—The petition shall be presented by the council of the borough pursuant to a resolution of the council, or by at least five percent of the registered electors of the borough, or in case of a proposal affecting only a portion of the borough by at least five percent of the registered electors of the ward or wards which would be affected by such proposal, as the case may be. The court shall thereupon consider and determine the matter and may appoint three impartial persons, none of whom shall be residents or property owners in the borough, as commissioners to inquire into the propriety of granting the prayer in the petition. The commissioners, or any two of them, shall make a report to the court, within sixty days after their appointment and shall accompany it with

a plot, showing the boundaries of the proposed wards of the borough, or the wards before and after the proposed change, as the case may be, whenever the same cannot be fully designated by natural lines, and with information on the population and the number of registered electors in the borough and in all wards and proposed new wards with which such report is concerned.

Section 603. Confirmation of Report; Review.—Upon its presentation, the court shall confirm the report nisi, and shall direct that notice of the filing of the report shall be given by publication once in a newspaper of general circulation stating that exceptions may be filed to such report within thirty days after the same was filed. The court shall confirm the report absolutely if no exceptions are filed or if it dismisses the exceptions. The court may remand the report to the commissioners for a review, if in its opinion a better adjudication may thereby be secured.

Section 604. Compensation of Commissioners.—The commissioners shall each receive such compensation for their services as the court shall fix.

Section 605. Payment of Costs; Bond.—Such compensation and all costs and expenses incurred in such proceedings shall be paid by the borough or the petitioners, as directed by the court. To secure such reimbursement, the court may require the petitioners, other than the borough council, to file a bond with their petition.

Section 606. Terms of Officers.—Whenever the court shall divide any borough into wards, it shall appoint for each ward a judge and two inspectors of election to hold elections until such officers may be elected as provided by law. In all other cases, officers in office at the time any changes are made pursuant to the preceding sections of this article, shall remain in office until the expiration of the terms for which they have been elected. In case any vacancy shall occur, the same shall be filled by the council, until the first Monday of January next succeeding the election at which such officers are to be elected, as provided in article VIII of this act.

Section 607. Change of Names and Numbers.—Boroughs may, by ordinance, change the name of any ward to a number, or change the number of any ward to name. No such ordinance shall go into force until a certified copy thereof is filed with the clerk of the court of quarter sessions.

## ARTICLE VII

### ASSOCIATIONS AND ORGANIZATIONS

Section 701. State Association of Boroughs.—The boroughs of the

Commonwealth are authorized to organize a State Association of Boroughs for the purpose of advancing the interests of the boroughs. Any borough may join the said association by motion of council and payment of the annual dues. Council may designate one or more delegates from the elected or appointed officials of the borough to attend the annual meeting of the association, which shall be held in the Commonwealth in accordance with the procedure adopted by the association. In addition to any compensation allowed by law each delegate shall be allowed for his expenses incurred in attending the meeting an amount not exceeding thirty-five dollars (\$35) per day, together with ten cents (10¢) per mile in going to and returning from the meeting. The time spent in attending said meeting shall not be more than four days, including the time employed in traveling thereto and therefrom. Each borough, becoming a member of the association, shall pay such reasonable dues as may be fixed by the association.

The dues and other revenues received by the association shall be used to pay for services, publications and other expenses authorized or ratified by the association, or incurred in behalf of the association, by its officers and committees.

Section 702. County and Regional Associations of Boroughs.—The boroughs of any county or of two or more adjoining or nearby counties, may organize a county or regional association of boroughs, composed of elected and appointed borough officials in such county or counties, organized for the purpose of furthering the interests of the boroughs in the association and their inhabitants. Any borough may annually appropriate a sum of money, not exceeding seventy-five dollars (\$75) for the support of such association, and may also appropriate and expend borough moneys to pay the actual expenses of officials of the borough in attending meetings of the county or regional association of which such borough is a member. Any such county or regional association of boroughs shall have the option of admitting to membership representatives of political subdivisions other than boroughs within such county or counties but representatives of such other political subdivisions shall have no voice or vote in any matter that is or may be of concern solely to boroughs.

Section 703. Other Associations and Organizations.—Any borough, by motion of council, may join other associations and organizations concerned with municipal or governmental affairs; may pay dues to and appropriate moneys for the support of and participation in such associations and organizations; and may send delegates to meetings or conventions of such associations and organizations and pay the necessary expenses incident to their attendance at such meetings.



Any borough, by motion of council, may authorize any of its officers and/or employes to attend meetings of professional organizations and associations, or study or training sessions for persons holding the same or similar office or employment, and may pay all or any specified portion of the necessary expenses incident to their attendance at such meetings or sessions.

Every person attending any convention, meeting or study or training session referred to in this section shall submit to the council an itemized account of his expenses thereat, including traveling expenses or mileage, that council may have agreed to pay.

## ARTICLE VIII ELECTIONS OF OFFICERS

### (a) General Provisions Relating to Elected Officers

Section 801. Electors Only to be Eligible; Incompatibility.—Registered electors of the borough only shall be eligible to elective borough<sup>1</sup> offices. A school director shall not be eligible to an elective borough office. No individual shall at the same time hold more than one elective borough office.

Section 802. Time and Place of Elections.—Elections for borough officers shall be at the time and place designated by law for the holding of municipal elections.

Section 803. Certificates of Election.—Certificates of election of all borough officers shall be filed with the borough secretary and be preserved among the records of the borough for a period of six years.

Section 804. Term; Bonds.—Persons elected to borough offices shall serve for the term for which they were elected, except where a vacancy in office shall exist for any reason, in which case the vacancy shall be filled, for the remainder of the original term, in the manner provided by this act.

Whenever any elected official of a borough is required to give bond for the faithful performance of his duties, the borough may pay the premium for such bond.

Section 805. Election of Borough Officers When Boroughs Created, Etc.—Whenever a borough is incorporated under the provisions of sections 201 to 219 inclusive of this act, or whenever two or more boroughs are consolidated under the provisions of sections 221 to 228 of this act, or whenever a borough is created from a city of the third class under the provisions of sections 231 to 235 of this act, the officers of the borough, provided for in section 806 of this act, shall be elected at the appropriate municipal election as provided in said sections and

<sup>1</sup>“officers” in original.

such officers shall take office on the first Monday of January succeeding such election.

At any such election, if the borough is not divided into wards, of the seven councilmen to be elected, three or four councilmen, as the case may be, shall be elected for terms of two years each, and three or four councilmen, as the case may be, shall be elected for terms of four years each, to coincide with the number of councilmen elected at such election in existing boroughs under the provisions of section 811 of this act.

In the case of the consolidation of two or more boroughs into one borough, or the creation of a borough from a city of the third class, and where in either event two councilmen are to be elected from each ward, one councilman shall be elected from each ward for a term of two years and one councilman shall be elected from each ward for a term of four years.

In all boroughs coming within the provisions of this section, three auditors shall be elected, one for a term of two years, one for a term of four years, and one for a term of six years.

All other officers of the borough shall be elected at such election for terms of two or four years, as the case may be, to coincide with the terms of officers elected under this act at such election in the existing boroughs.

Section 806. Officers to be Elected.—It shall be lawful for the electors of the borough to elect:

(1) In boroughs not divided into wards, seven councilmen, one mayor, one assessor, except in those boroughs where, under the applicable county assessment law, the office of elected assessor in boroughs shall have been abolished; a tax collector and three auditors or one controller except in such boroughs where there shall be an appointed auditor in lieu of elected auditors or controller. In any borough with population, as determined by the latest official census, of less than one thousand, the total number of councilmen may be reduced from seven to five or to three upon petition to the court of quarter sessions, as provided in section 818 of this act.

(2) In boroughs divided into wards, at least one, and not more than two councilmen in each ward, except in boroughs where prior to the passage of this act three councilmen were elected in each ward. In such boroughs, the number of councilmen is fixed at three in each ward until such number is reduced in the manner provided by this act. Councilmen shall be residents of the ward from which they are elected, and chosen by the electors of the ward; also a mayor, a tax collector and three auditors or a controller, except in such boroughs where there shall be

an appointed auditor in lieu of elected auditors or controller, and an assessor, except in those boroughs where, under the applicable county assessment law, the office of elected assessor shall have been abolished who shall be chosen by the electors of the boroughs at large.

(b) Councilmen

Section 811. Election of Councilmen.—At the municipal election to be held in the year 1967, there shall be elected in each borough a sufficient number of councilmen to equal one-half of the entire number of which such council is legally composed, to serve for a term of four years from the first Monday of January next succeeding, and, where such entire number is seven, nine, or eleven, then sufficient to constitute three, four, or five, as the case may be; the aforesaid councilmen, to be elected in the year <sup>1</sup>1969, being successors to those elected in the year 1963, whose terms, as heretofore provided by law, expire on the first Monday of January, 1968. All councilmen whose terms expire on the first Monday of January, 1970 shall continue to hold their office until the first Monday of January, 1970, as now provided, and their successors shall be elected at the municipal election in the year 1969, to serve for a term of four years, from the first Monday of January next succeeding. If for any reason councilmen are not elected as hereinabove provided, councilmen whose terms <sup>2</sup>end on the same date shall cast lots to determine who shall serve for a two-year term and who shall serve for a four-year term. The secretary of the borough shall certify the results to the appropriate county board of elections. Biennially thereafter, at the municipal election, a sufficient number of councilmen shall be elected, for a term of four years from the first Monday of January next succeeding, to fill the places of those whose terms, under the provisions of this act, shall expire on the first Monday of January next following such election.

Section 812. Election of Councilmen Where New Wards Created.—Whenever the court of quarter sessions shall divide any borough into wards, erect new wards out of two or more wards or parts thereof, divide a ward already erected into two or more wards, or create a new ward out of annexed territory, and when the report, in such case, is confirmed by the court, it shall, at the same time, decree the election of an equal number of councilmen, in each of the wards, in such manner as not to interfere with the terms of those theretofore elected. Where a borough is first divided into wards, the court shall fix the number of councilmen in each ward at not more than two. In decreeing such election, when the entire number of council shall be composed of an

<sup>1</sup> "1967" in original.

<sup>2</sup> "and" in original.

even number, the decree shall be so made that one-half of the entire number shall thereafter be elected at each municipal election. When the entire number of council shall be an odd number, the court shall divide such council into two classes, and shall make its decrees so that one-half of the entire number of councilmen, less one, shall, as soon as possible, take their office in a year divisible by four, and the remaining number of councilmen shall take their office in an even-numbered year not divisible by four. The apportionment shall be so made by the court that there shall be equal or as nearly equal as possible, representation by wards in each class. Biennially thereafter, at each municipal election, a sufficient number of councilmen shall be elected, for the term of four years from the first Monday of January next succeeding, to fill the places of those whose terms shall expire on the first Monday of the January next following such election.

Section 813. Fixing Number of Councilmen When Wards Created.—Whenever upon the division of any borough into wards, or the creation of a new ward or wards, the number of councilmen cannot be equally divided among the wards of the boroughs, it shall be lawful for the court, in decreeing such division or creation, to increase the number of council to, and not exceeding, such number as will enable the court to make an equal apportionment of the same among the several wards of such borough. But where a borough is first divided into wards, the number of councilmen provided for a ward shall not exceed two.

Section 814. Increase in Number of Councilmen.—The court of quarter sessions, having fixed the number of councilmen, as provided in section 812 of this article, may, upon petition of at least five percent of the registered electors of the borough, increase the same to any number not exceeding two for each ward. The sufficiency of the number of signers to any such petition shall be ascertained as of the date when the petition is presented to court.

Section 815. Decrease of Number of Ward Councilmen.—Whenever the electors of any borough divided into wards are authorized, by this act, or by a decree of court, to elect two members of council from each ward, or whenever a borough at the time of the enactment of this act shall elect three councilmen from each ward, and the council of such borough, in either case, consists of more than nine members, at least five percent of the registered electors of such borough shall have power to petition the court of quarter sessions for a decrease in the number of members of council from each ward, but in no instance shall the council consist of less than seven members. The purpose of such decrease may be to achieve any or all of the following results: a council

which is less unwieldy in size; a council which is comparable in size to those in boroughs not divided into wards; a council consisting of an odd number of members instead of an even number; a reduction in borough expenditures; and, the expedition of the conduct of council meetings. Said petition shall clearly state whether it is the prayer of the petitioners that the number of members of such council to be elected in each ward shall be reduced from two to one, or from three to two or one, and shall further state the reasons why such reduction in number shall be desired. The sufficiency of the number of signers to any such petition shall be ascertained as of the date the petition is presented to court.

The court shall give notice of the filing of such petition by advertisement in the legal journal of the county, if one is published in the county, and in one newspaper of general circulation in the borough, and in such notice shall fix a day and time for hearing. After such hearing, the court may decrease the number of councilmen elected from each ward from two to one, or from three to two or one.

At each municipal election thereafter in such borough, where there are two members from each ward, the electors of each ward shall elect one councilman, to hold office for a term of four years from the first Monday of January next succeeding his election.

At each municipal election thereafter in such boroughs, where there is one member from each ward, the electors from each of the odd-numbered wards shall, at the first municipal election thereafter, elect one councilman for a term of four years, and the electors from each of the even-numbered wards shall elect one councilman for a term of two years. At each municipal election thereafter, the electors of the even-numbered wards, or odd-numbered wards as the case may be, shall each elect one councilman for a term of four years, to take the place of those whose terms are about to expire. All such councilmen shall take office on the first Monday of January following their election.

In any borough where, under the provisions of this section, the number of councilmen shall be reduced, the councilmen then in office shall remain in office until the end of their respective terms.

Section 816. Election of Councilmen Where Wards Abolished.—Whenever the court of quarter sessions shall abolish all wards in any borough and when the report in such case is confirmed by the court, it shall, at the same time, decree the election of seven councilmen at large for the borough in such manner as not to interfere with the terms of those ward councilmen theretofore elected. In decreeing such election, where there were theretofore:

(1) Seven councilmen, the decree shall be so made that, at the first municipal election thereafter the electors shall elect three or four councilmen, as the case may be, the number to be elected to be that which, when added to the number of councilmen already in office whose terms are not about to expire, shall bring the membership of the council to seven. Such newly elected councilmen shall serve for terms of four years from the first Monday of January next succeeding such first municipal election, except that, in any case where the election of four councilmen shall be required to bring the membership of council to its full complement of seven, and only three councilmen are elected at such municipal election in the other boroughs of the State not divided into wards, three councilmen shall be elected for four-year terms and one for a two-year term. Thereafter, at every succeeding municipal election, the electors shall elect three or four councilmen, as the case may be, each to serve for a term of four years from the first Monday of January following such municipal election.

(2) Eight or more councilmen, the decree shall be so made that, at the first municipal election thereafter the electors shall elect a sufficient number of councilmen that, when added to the number of councilmen already in office whose terms are not about to expire, will bring the membership of the council to seven. Such newly elected councilmen shall serve for terms of four years from the first Monday of January next succeeding such first municipal election. At the second municipal election after such decree, the electors shall elect a sufficient number of councilmen, that, when added to the number of councilmen elected at the previous municipal election, shall bring the membership of council to its full complement of seven, some of such councilmen elected at such second municipal election to serve for a four-year term following the first Monday of January next succeeding, the remainder to serve for a two-year term, the number in each case to be that required to bring the number of councilmen to be elected in such borough in succeeding municipal elections into conformity with the number elected in the other boroughs of the Commonwealth not divided into wards. In the third and all subsequent municipal elections following such decree of court, the electors shall elect three or four councilmen, as the case may be, each to serve for a term of four years from the first Monday of January following such municipal election.

In any such borough where, under the ward system of electing councilmen, the council shall have been so large that there shall be seven or more councilmen whose terms shall not expire on the first Monday of January following the first municipal election after such decree, no

councilmen shall be elected at such first municipal election, and the councilmen remaining in office shall constitute such borough council until the first Monday of January following the second municipal election following such decree. At such second municipal election, seven councilmen shall be elected in such borough, some to serve for a four-year term of office from the first Monday of January following such second municipal election, the remainder to serve for a two-year term, the number in each case to be such as to bring the number of councilmen to be elected in such borough in succeeding elections into conformity with the number elected in other boroughs of the Commonwealth not divided into wards. Thereafter, at the third and all subsequent municipal elections following such decree, the electors shall elect three or four councilmen, as the case may be, each to serve for a term of four years from the first Monday of January following such subsequent municipal election.

(3) Six or fewer councilmen, the decree shall be made so that at the first municipal election thereafter, the electors shall elect a sufficient number of councilmen that, when added to the number of councilmen already in office whose terms are not about to expire, will bring the membership of council to its full complement of seven. Of such newly elected councilmen, either three or four, as necessary to bring the number of councilmen to be elected in such borough in succeeding municipal elections into conformity with the number elected in other boroughs of the Commonwealth not divided into wards, shall be elected for four-year terms of office, beginning the first Monday of January following such first municipal election, and the balance shall be elected for two-year terms. Thereafter, at the second municipal election following such decree and at all subsequent municipal elections, the electors shall elect three or four councilmen, as the case may be, to serve for a term of four years from the first Monday of January following such subsequent municipal election.

In any case where a vacancy may occur, at any time following such decree, in the office of a councilman originally elected or appointed from a particular ward, the person appointed to fill such vacancy need not be a resident of the area formerly comprising such ward, but need only be a registered elector of the borough.

Section 817. Vacancies Created After a Primary Election.—Whenever a decree of court is made after a primary election and, as a result thereof, a vacancy is created in the office of councilman, it may be filled by nomination made by such committee as is authorized by the rules of the party to make nominations in the event of vacancies on the party ticket.

Section 818. Decrease in Number of Councilmen.—The court of

quarter sessions may, upon petition of at least five percent of the registered electors of any borough, which, according to the latest official census, had a population of not more than one thousand, reduce the total number of councilmen for such borough from seven to five or to three. The sufficiency of the number of signers to any such petition shall be ascertained as of the date when the petition is presented to court.

The court shall give notice of the filing of such petition by advertisement in the legal journal of the county, if one is published in the county, and in one newspaper of general circulation in the borough, and in such notice shall fix a day and time for hearing. After such hearing, the court may decrease the number of councilmen elected in such borough from seven to five or three, as requested in the petition.

At the municipal election following the decrease in the number of councilmen in such borough, from seven to five, if four councilmen would otherwise have been elected, there shall instead be elected three councilmen; if three councilmen would otherwise have been elected there shall instead be elected two councilmen. At the second municipal election following the decrease in the number of councilmen in such borough, if four councilmen would otherwise have been elected, there shall instead be elected three councilmen; if three councilmen would otherwise have been elected, there shall be elected two councilmen. At all following municipal elections, there shall be elected the proper number of councilmen to correspond to the number of councilmen whose terms are to expire the first Monday of the following January.

At the municipal election following the decrease in the number of councilmen in such borough from seven to three, if four councilmen would otherwise have been elected there shall instead be elected two councilmen; if three councilmen would otherwise have been elected there shall instead be elected one councilman. At the second municipal election following the decrease in the number of councilmen in such borough, if four councilmen would otherwise have been elected, there shall instead be elected two councilmen; if three councilmen would otherwise have been elected, there shall be elected one councilman. At all the following municipal elections, there shall be elected the proper number of councilmen to correspond to the number of councilmen whose terms are to expire the first Monday of the following January.

In any borough where, under the provisions of this section, the number of councilmen shall be reduced, the councilmen then in office shall remain in office until the end of their respective terms. If any such borough shall thereafter attain a population in excess of one thousand, according to the latest official census, the number of councilmen



shall automatically be increased from three or five to seven, following the reverse of the procedure set forth in the third or fourth paragraph of this section, as the case may be.

(c) Mayor

Section 821. Election of Mayor.—Electors of every borough shall, at the municipal election in the year 1969, and every four years thereafter, elect one person as mayor, who shall hold office for a term of four years from the first Monday of January next succeeding his election.

(d) Auditors

Section 831. Election of Auditors.—The qualified electors in boroughs electing auditors, and not accepting the provisions of this act providing for the office of controller, shall elect, at each municipal election, one auditor for a term of six years, to hold office from the first Monday of January next succeeding his election.

(e) Controller

Section 841. Election of Controller.—The qualified electors in every borough having a controller, and in every borough accepting the provisions of this act relating to the controller, shall, at the municipal election in the year 1969, and every four years thereafter, elect as borough controller one person who shall be a competent accountant and a registered elector of the borough, for at least four years prior to his election. The person so chosen shall serve for a term of four years from the first Monday of January next succeeding his election.

(f) Assessors

Section 851. Election of Assessors.—At the municipal election in the year 1967 and at the municipal election every four years thereafter, the qualified electors of every borough shall elect a properly qualified person for assessor in such borough. The provisions of this section shall not apply to those boroughs where, under the applicable county assessment law, the office of elected assessor in boroughs has been abolished. No justice of the peace shall at the same time hold the office of assessor.

(g) Tax Collector

Section 861. Election of Tax Collector.—The qualified electors of every borough shall, at the municipal election in the year 1969, and every four years thereafter, elect one properly qualified person as tax collector of the borough. No justice of the peace shall at the same time hold the office of tax collector.

ARTICLE IX  
VACANCIES IN OFFICE

Section 901. Filling Vacancies in Elective Borough Offices.—If any vacancy shall occur in the office of the mayor, member of council,

auditor, controller, or tax collector, by death, resignation, removal from the borough, or from a ward in the case of a ward office, or by failure to take the required oath or to give bond as provided by law or ordinance, or in any other manner whatsoever, the borough council shall fill such vacancy by appointing, by resolution, a registered elector of the borough, or of the ward in case of a ward office, to hold such office for the unexpired term of the office.

The person appointed shall give bond if required by law or ordinance.

In cases where the person elected to the office shall fail to give bond, if any, required or to take the required oath, the borough council, before making the appointment, shall declare the office vacant.

If the council of any borough shall refuse, fail or neglect, or be unable, for any reason whatsoever, to fill any vacancy within thirty days after the vacancy happens, as provided in this section, then the court of quarter sessions shall, upon petition of the mayor or council or five citizens of the borough, fill the vacancy in such office by the appointment of a qualified resident of the borough for the unexpired term of the office.

Section 902. Collection of Taxes Where Vacancy in Office of Tax Collector Not Filled.—Where a vacancy in the office of tax collector exists and no resident of the borough has, within thirty days, received the appointment to fill such vacancy, the county commissioners, the borough council and the board of school directors of the school district shall collect the tax for the county, the borough, and the school district, respectively, through their respective treasurers, or in the case of school districts at the option of the district through their secretaries, and in the case of boroughs, at the option of the borough council, through their secretaries or borough managers.

Section 903. Right of Council to Declare Seat of Councilmen Vacant for Failure to Qualify.—If any person, elected or appointed as a member of council, who has been notified of his election or appointment, shall refuse or neglect to qualify as such member of council within ten days next succeeding the beginning of his term of office, unless prevented by sickness or prevented by necessary absence from the borough, the borough council, acting without such person, may declare his office as member of council vacant, and may fill such vacancy as provided in section 901 of this act. For such actions a majority of the remaining members of the council shall constitute a quorum.

Section 904. Right of Council to Declare Seat of Councilman Vacant for Failure to Attend Meetings, Etc.—If any person, having qualified as a member of council, shall neglect or refuse to attend two successive

regular meetings unless detained by sickness, or prevented by necessary absence from the borough, or if in attendance at any meetings shall neglect or refuse to vote or by his withdrawal from council or otherwise refuse to act in his official capacity as a member of council, the borough council, acting without such person, may declare his office as a member of council vacant, and may fill such vacancy as provided in section 901 of this act. For such actions a majority of the remaining members of the council shall constitute a quorum.

No such office shall be declared vacant for failure to attend meetings of the council until the holder thereof shall have been given opportunity of hearing before the remaining members of the council, at which time he shall show cause why he shall not be removed. He shall be given at least ten days' written notice of the time and place of such hearing.

Section 905. Temporary Auditor.—If for any reason two or three vacancies exist in the office of borough auditors, the council may temporarily appoint and reasonably compensate a qualified person, who need not be an elector of the borough, who shall have all the powers and duties of the two or three auditors whose offices are vacated.

## ARTICLE X

### POWERS AND DUTIES OF ELECTED BOROUGH OFFICIALS

#### (a) Council

Section 1001. Organization of Council; Quorum; Compensation; Eligibility.—The borough council shall organize on the first Monday of January of each even-numbered year, by electing one of their number as president and one of their number as vice-president who shall hold such offices at the pleasure of the council. If the first Monday is a legal holiday, the meeting and organization shall take place the first day following. Any action taken by any borough council at any time between 12:01 o'clock ante meridian on January 1 of an even-numbered year and the organization of council in that year shall be subject to reconsideration by the new council at any time within ten days after such organization. The council may at the organization meeting elect such other officers as may be provided for by law or ordinance, or as may be deemed necessary for the conduct of affairs of the borough and may transact such other business as may come before the meeting. The president, and during his absence or incapacity the vice-president, shall preside over the meetings of council and perform such other duties as are prescribed by this act or by ordinance. A majority of the membership of council then in office shall constitute a quorum. The councilmen may receive compensation to be fixed by ordinance at any time and from time to time as follows: In boroughs whose population is seven hundred

fifty or less, a maximum of five dollars (\$5) a month; in boroughs whose population is more than seven hundred fifty and not more than fifteen hundred, a maximum of ten dollars (\$10) a month; in boroughs whose population is more than fifteen hundred and not more than twenty-five hundred, a maximum of fifteen dollars (\$15) a month; in boroughs whose population is more than twenty-five hundred and not more than five thousand, a maximum of twenty dollars (\$20) a month; in boroughs whose population is more than five thousand and not more than ten thousand, a maximum of fifty dollars (\$50) a month; and in boroughs whose population is more than ten thousand, a maximum of one hundred dollars (\$100) a month.

The population shall be determined by the latest available official census figures.

Section 1002. Oath of Councilmen.—Before entering upon the duties of their office, the councilmen shall take and subscribe an oath or affirmation to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform the duties of their office with fidelity, together with such loyalty oath as is prescribed and required by law. The oath or affirmation may be taken before any judge or justice of the peace of the county, or before the mayor of the borough when he has qualified, and shall be filed with the borough secretary and be preserved among the records of the borough for a period of six years.

Section 1003. When the Mayor May Preside Over Council and Vote; Attendance of Mayor at Council Meetings; Breaking Tie Votes.—The mayor shall preside over the organization of the council, until it is organized as provided in section 1001, and he shall be deemed a member of council at the organization meeting if his membership becomes necessary to constitute a quorum, but he shall not vote thereat unless his vote shall, for any reason whatsoever, be required to effect the organization of council, or to elect any officer who is required to be or may be elected at the organization meeting. In case of the absence of the mayor at the organization meeting, one of the members of council, chosen by the members present at the meeting, shall preside.

The mayor may attend any or all regular and special meetings of council and may take part in the discussions of the council on matters pertaining to borough affairs, subject to any restrictions applicable to councilmen contained in the rules of order or bylaws of the council. In all cases where, by reason of a tie or split vote, the council of any borough shall be unable to enact or pass any ordinance, resolution, or motion, or to declare or fill any vacancy in its membership, or in any

other borough office, or to take any action on any matter lawfully brought before it, the mayor, if in attendance at the meeting, may at his option cast the deciding vote, or request that the matter be tabled until a special meeting of council to be held within not less than five days or more than ten days at which time the matter shall be reconsidered by council and, if a tie or split vote still exists, it shall be the duty of the mayor at that time to cast the deciding vote. If such a tie or split vote shall occur at any meeting when the mayor is not in attendance the matter shall be tabled to a special meeting to be held within not less than five days or more than ten days as set by the president of council, and the mayor shall be given at least five days' notice of such meeting, at which meeting it shall be the duty of the mayor to cast the tie-breaking vote.

Section 1004. Failure of Council to Organize.—If the council of any borough shall fail to organize within ten days from the time prescribed in this article, the court of quarter sessions, upon the petition of at least ten registered electors of the borough verified by the affidavit of one of the petitioners, shall issue a rule upon the delinquent councilmen to show cause why their seats should not be declared vacant. The rule shall be returnable not less than five days from the time of its issue and, after hearing, the court may declare the seats of such councilmen, as are responsible for such failure to organize, vacant, and shall thereupon appoint others in their stead, who shall hold office for the respective unexpired terms.

Section 1005. Powers of Council.—The council of the borough shall have power:

(1) To create, by motion, ordinance or resolution, and appoint a treasurer, a secretary, a solicitor, an engineer, a street commissioner and such other officers as it deems necessary. The treasurer and the secretary shall not be members of council. A bank or bank and trust company may be appointed as treasurer. All officers and employes appointed by the council, with the exception of those who under the provisions of this, or any other act are under civil service or have a definite term of office, shall serve for an indefinite term at the pleasure of the council.

(2) To mitigate or remit fines and forfeitures in reasonable cases.

(3) By resolution, to make temporary loans on the credit of the borough in anticipation of taxes to be collected, and to issue certificates of indebtedness therefor. All such loans shall be repaid from the first moneys available from taxes in anticipation of which the same were made.

(4) To appoint and revoke the appointment of one or more depositories for borough funds and to fix and approve security to be furnished by

any such depository. Such security may be bonds with corporate or individual securities to be approved by council, or collateral security consisting of obligations of the United States or the Commonwealth of Pennsylvania, or any political subdivision thereof, deposited with the borough or with any bank or trust company within the Commonwealth of a market value of one hundred twenty percent of the amount of the deposit to be secured. Any deposit of collateral shall be under proper agreement and be accompanied by proper assignment or power of attorney for the transfer of the collateral. The borough treasurer shall deposit all borough funds in any depository so designated, and when so deposited, the borough treasurer shall be released and discharged from further liability on account of such deposit. Nothing herein contained shall be construed to require a depository to furnish bond or collateral security to cover the amount of any deposit to the extent that the same is insured with the Federal Deposit Insurance Corporation.

(5) To secure such indemnity bonds or policies of insurance as it may deem necessary to protect the borough from loss by reason of fire, flood, windstorm, burglary, larceny, negligence or dishonesty, insolvency of a depository, or otherwise, and to pay for such protection the usual or customary costs.

(6) To make investment (i) of borough sinking funds as authorized by the Municipal Borrowing Law, (ii) of moneys in the general fund or in special funds in United States Treasury bills, or to place such funds in savings accounts or share accounts of institutions insured by the Federal Deposit Insurance Corporation, or the Federal Savings and Loan Insurance Corporation to the extent that such accounts are so insured when in its judgment the interests of the borough will be enhanced thereby, and to dispose of such securities or to withdraw any funds in any such savings account or share account when the funds may be needed by the borough. Any such purchase, sale or withdrawal shall be made by the president and secretary of council by authority of a resolution adopted by the council.

(7) To provide by ordinance passed by a two-thirds vote of the entire number of councilmen elected, for the appointment of an independent auditor who shall be a certified public accountant, registered in Pennsylvania, a firm of certified public accountants so registered or a competent public accountant or a competent firm of public accountants. Where such an ordinance has been so adopted, an independent auditor shall be appointed, annually, by resolution before the close of a fiscal year, to make an independent examination of the accounting records of the borough for such fiscal year and such independent auditor shall also

perform the other duties and exercise the powers as conferred upon him by subdivision (k) of article XI of this act. When an independent auditor is appointed as herein provided, the office of elected borough auditor or controller, as the case may be, is thereby abolished although the borough auditors, or controller, then in office shall continue to hold their office during the term for which elected and the borough auditors or controller shall not audit, settle, or adjust the accounts audited by such independent auditor but shall perform the other duties of their office.

Whenever any borough has provided by ordinance for the audit of its accounts by an appointed auditor, the borough shall have the right at any time to repeal said ordinance, and thereupon the office of appointed auditor shall be abolished, as of the date set in such ordinance and said borough shall have the further right at the next municipal election following the repeal of said ordinance to elect three auditors, one for a term of two years, one for a term of four years, and one for a term of six years, from the first Monday of January succeeding such election, which auditors so elected shall succeed the appointed auditor and shall have and possess all the powers and perform all the duties provided in this act for elected auditors. If at any time after the effective date of any such ordinance abolishing the office of appointed auditor, there shall be a vacancy in the office of elected auditor, council shall fill such vacancies in the manner prescribed in section 901 of this act.

(8) To make, authorize and ratify expenditures for lawful purposes from funds available therefor or from funds borrowed within legal limits.

(9) To pay authorized expenses incurred by elected and appointed borough officers in connection with their duties or other borough business.

Section 1006. Duties of Council.—It shall be the duty of the borough council:

(1) To meet statedly at least once a month. Council may adjourn to a stated time for general business or for special businesses. If no quorum is present at a regular or adjourned meeting, a majority of those who do meet may agree upon another date for like business and may continue to so agree until the meeting is held. Special meetings may be called by the president of council or upon written request of at least one-third of the members thereof. Members shall have at least twenty-four hours' notice of such special meetings. The notice shall state whether it is for general or special purposes, and, if it is for special purposes, the notice shall contain a general statement of the nature of the business to be transacted. Presence at a meeting constitutes waiver of notice. Council

may adopt rules relating to the calling and holding of special meetings, which rules shall supersede the provisions of this section.

(2) To make and preserve records of its proceedings.

(3) To enact, revise, repeal and amend such bylaws, rules, regulations, ordinances and resolutions, not inconsistent with the laws of the Commonwealth, as it shall deem beneficial to the borough and to provide for the enforcement of the same. The legislative powers of boroughs including capital expenditures not payable out of current funds, shall be exercised by or be based on an ordinance. All other powers shall be exercised by vote of the majority of council present at a meeting, unless otherwise provided. Routine, ministerial or administrative purchases and powers may be made and exercised by officers or committees, if authority therefor was previously given, or if the action is subsequently ratified by council.

(4) Except where otherwise in this act provided, to publish every ordinance or resolution of a legislative character once in one newspaper of general circulation in the borough.

(5) To cause notices to be served, as required by law or ordinance, in a manner council may by motion or other action decide.

(6) To fix the compensation of all of the borough officers, appointees and employes.

(7) To fix the amount of security to be given by the treasurer, and of such other officers, appointees and employes as it may designate.

Section 1007. Passage, Approval and Veto of Ordinances.—Every ordinance and every resolution of legislative character except as herein otherwise provided, passed by the council, shall be presented to the mayor for his approval. If the mayor approves, he shall sign it; but, if he shall not so approve, he shall return it with his objections to the council at its next regular meeting occurring at least ten days after the meeting at which such ordinance was passed by the council, when the objections shall be entered upon the minutes and the council shall proceed to a reconsideration thereof either at the meeting at which the vetoed ordinance was returned or at any other regular, special or adjourned meeting held not later than ten days thereafter. If, after such reconsideration, two-thirds of all the members elected to said council, or a majority of council plus one, when the number composing such council is less than nine, shall vote to pass such ordinance or resolution, it shall become of as full force and effect as if it had received the approval of the mayor; but in such case the vote shall be determined by yeas and nays, and the names and votes of the members shall be entered on the minutes. If any such ordinance or resolution shall not be returned



by the mayor at the regular meeting of the council occurring at least ten days next succeeding its presentation to him, it shall likewise have as full force as if it had been approved. A veto of the annual tax ordinance of the borough, referred to in section 1301 of this act, may be overridden by a vote of two-thirds of all the members of council, and thereafter such ordinance shall become of as full force and effect as if it had received the approval of the mayor.

The enactment of an ordinance shall be the date when the mayor shall approve it or the date of passage by the council over the veto of the mayor, or in the case of any ordinance not returned by the mayor at the regular meeting of council, occurring at least ten days after the meeting at which such ordinance was passed by the council, the date of enactment shall be the date of such succeeding regular meeting of council.

Section 1008. Recording, Advertising and Proof of Ordinances; Codification of Ordinances.—(a) No ordinance, or resolution of a legislative character, in the nature of an ordinance, shall be considered in force until the same is recorded in the ordinance book of the borough and has been advertised as provided in this article. All ordinances, or resolutions of a legislative character in the nature of an ordinance, may be proved by the certificate of the borough secretary, under the corporate seal, and, when printed or published in book or pamphlet form and purporting to be published by the authority of the borough, shall be read and received as evidence in all courts and places without further proof. All borough ordinances shall, within one month after their enactment, be recorded by the borough secretary in a book provided for that purpose, which shall be at all times open to the inspection of citizens. The entry of the borough ordinance in the ordinance book by the secretary shall be sufficient, without the signature thereto of the president of council, mayor or other person.

Any and all borough ordinances or portions thereof, the text of which, prior to the effective date of this amendment, shall have been attached to the ordinance book, shall be considered in force just as if the ordinances or portions thereof had been recorded directly upon the pages of such ordinance book: Provided, That all other requirements of this act applicable to the enactment, approval, advertising and recording of such ordinances or portions thereof were complied with within the time limits prescribed by this act.

(b) Whenever any borough shall have caused to be prepared a consolidation, codification or revision of the general body of borough ordinances, or the ordinances on a particular subject, the borough council may adopt such consolidation, codification or revision as an ordinance of the

borough, in the same manner that is now prescribed by law for the adoption of borough ordinances, except as hereinafter provided.

Any such consolidation, codification or revision of borough ordinances to be enacted as a single ordinance shall be introduced in the borough council at least thirty days before its final enactment, and at least fifteen days before its final enactment, notice of the introduction of any consolidation, codification or revision, specifying its general nature and listing its table of contents, shall be given by advertisement in a newspaper of general circulation in said borough.

When any such consolidation, codification or revision has been enacted as an ordinance, it shall not be necessary to advertise the entire text thereof, but it shall be sufficient in any such case, to publish a notice stating that such consolidation, codification or revision, notice of the introduction of which had previously been given, was finally enacted.

The procedure set forth in this section for the consolidation, codification or revision of borough ordinances as a single ordinance may also be followed in enacting a complete group or body of ordinances, repealing or amending existing ordinances as may be necessary, in the course of preparing a consolidation, codification or revision of the borough ordinances, except that in such case the advertisement giving notice of the introduction shall list, in lieu of a table of contents, the titles only of each of the ordinances in such complete group or body of ordinances, and the notice following enactment shall simply state that such group or body of ordinances was passed finally.

Section 1009. Typewritten, Printed, Photostated and Microfilmed Records Valid; Recording or Transcribing Records.—All borough records, required to be recorded or transcribed, shall be deemed valid if typewritten, printed, photostated or microfilmed and where recording or transcribing in a specified book of record is required, such records may be recorded or transcribed directly upon the pages of such book of record or such records or copies thereof may be attached to such book of record by stapling or by glue or by any other adhesive substance or material, and all records heretofore recorded or transcribed in any manner authorized by this section are validated. When any record shall be recorded or transcribed after the effective date of this amendment by attaching such record or a copy thereof to the book of record as hereinabove provided, the borough seal shall be impressed upon each page to which such record is attached, each impression thereof covering both a portion of the attached record and a portion of the page of the book of record to which such record is attached.

Section 1010. Appeals from Ordinances.—Complaint as to the legality

of any ordinance or resolution may be made to the court of quarter sessions, upon entering into recognizance with sufficient security to prosecute the same with effect and for the payment of costs, by any person aggrieved, within thirty days after the enactment of any ordinance or the adoption of any resolution, and the determination and order of the court thereon shall be conclusive. In case of ordinances pertaining to change of boundaries or territorial limits of any borough, such complaint shall be as provided in section 411 of this act. In cases of ordinances effecting change of boundaries or territorial limits of any borough or laying out streets over private lands, the court shall have jurisdiction to review the propriety as well as the legality of the ordinance. No such appeal shall act as a supersedeas unless the court shall so order or unless specifically otherwise provided in this or any other applicable act.

Section 1011. Lost Ordinance Books to be Replaced; Recording Ordinances.—Whenever any ordinance book or books are lost, destroyed, or become unserviceable, the borough council may provide by ordinance for a new ordinance book or books into which shall be recorded by the secretary all of the ordinances contained in such lost, destroyed or unserviceable ordinance book or books. The secretary, in recording such ordinances, shall make complete copies thereof, including the date of enactment and approval and the names of the officers who signed the same, and, after notice given, as hereinafter provided, and corrections made, shall certify each ordinance as a correct copy of the original.

Section 1012. Ordinance Providing for Recording; Notice.—The ordinance providing for the recording of such ordinances shall be recorded in such book, immediately following the ordinances so recorded and it shall provide that the secretary of the borough, upon the completion of such recording, shall publish once, in one newspaper of general circulation in the borough, a notice stating that ordinances of the borough contained in lost, destroyed, or unserviceable ordinance book or books, and that the old books and records of borough ordinances and the new ordinance book are open to public inspection for the purpose of verification and correction for a period of thirty days from the date of the notice.

Section 1013. Certificate of Secretary.—The secretary of the borough, at the expiration of such notice, shall make all corrections, and shall then certify that all of the ordinances have been compared with the originals and that they are correct copies thereof. After the ordinances are recorded, notice thereof given, and the certificate of correction made, the ordinances so recorded shall take the place of the

original record and shall be the valid and legal ordinances of the borough for the period covered by such new ordinance book.

Section 1014. Hearings Before Council; Witnesses.—Borough councils may compel the attendance of witnesses and the production of books, papers, or other evidence, at any meeting of the council, or any committee thereof, and, for that purpose may issue subpoenas, signed by the president of council or the chairman of the committee, and cause the same to be served in any part of this Commonwealth. If any witness shall refuse to testify to any fact within his knowledge, or to produce any books or papers in his possession or control, required to be used as evidence in any such case, the secretary of the council shall report the facts relating to such refusal to the court of common pleas. If the court determines the evidence required of such witness to be legal and competent, it shall order such witness to testify or produce the evidence required.

Section 1015. Witness Fees and Mileage.—No person residing without the borough and subpoenaed as aforesaid, shall be required to respond to the same until mileage to and from the borough, at the rate of ten cents (10¢) a mile, and witness fees as required by law relating to witnesses, have been furnished.

Section 1016. Examination of Witnesses; Penalty.—Any person called as a witness, as provided in this article, may be examined under oath, administered by the president of council or chairman of the committee and, for the giving of false testimony, shall be liable to indictment and punishment for perjury.

(b) Mayor

Section 1021. Eligibility of Mayor.—No mayor shall hold any other borough office or appointment during the term for which he is elected, except as is permitted by section 1104 of this act. He shall be eligible to succeed himself. He shall not be a member of the council, nor shall he preside over or vote at any meeting of the council, except as provided in section 1003 of this act.

Section 1022. Incompatible Offices.—No member of Congress or any person holding any office or appointment of profit or trust under the Government of the United States, or any person holding the office of justice of the peace shall at the same time be capable of holding the office of mayor.

Section 1023. Oath of Mayor.—The mayor, before exercising the duties of his office, shall take and subscribe an oath or affirmation, to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform the duties of his office with fidelity and

also any loyalty oath required by any other act. The oath or affirmation may be taken before any judge or justice of the peace of the county, and shall be filed with the borough secretary, and be preserved among the records of the borough for a period of six years.

Section 1024. Salary of Mayor; Fixed by Ordinance.—If the mayor is to be paid by salary, such salary shall be fixed by ordinance, to be paid from the borough treasury in quarterly, monthly or semi-monthly installments on warrants authorized by the council. The salary or compensation of a mayor shall not be increased or decreased oftener than once in two years.

Section 1025. Salary of Mayor Limited.—The salary of the mayor shall not exceed, per annum, one hundred dollars (\$100) per thousand for the first ten thousand population or fraction thereof, the population to be determined by the latest official census figures. In any borough with population in excess of ten thousand, the borough council may, by ordinance, fix the salary of the mayor at any sum not exceeding two thousand dollars (\$2000), and in any borough with population in excess of twenty thousand, the borough council may by ordinance fix the salary of the mayor at any sum not exceeding three thousand dollars (\$3000).

Section 1026. Salaried Mayor Not to Receive Fees.—Any salary paid pursuant to an ordinance shall be in lieu of all costs and fees allowed a mayor. Costs and fees shall be taxed and collected by the mayor and turned into the borough treasury. Any mayor, upon assuming office for any elective or appointive term and at any time no sooner than two years thereafter, shall be authorized to elect to be paid by the fees and costs pertaining to his office or by the salary fixed by ordinance for his office, and such mayor shall thereupon receive as his compensation either the fees and costs, or the fixed salary, as elected by him.

Section 1027. Mayor to Collect Costs and Fees.—In all cases where the mayor exercises judicial authority by the hearing of cases, he shall collect the same costs and fees as are charged by a justice of the peace for like services, and, in all other cases, he may collect such costs and fees as are allowed by law to a justice of the peace for services of a similar character. He shall procure a docket, in book or loose-leaf form, wherein he shall enter all cases and charges, which docket shall be open to public inspection at reasonable times.

Section 1028. General Powers of Mayor.—The mayor shall have power:

- (1) To administer oaths and affirmations in matters pertaining to borough affairs.
- (2) To exercise the powers and jurisdiction of justices of the peace

in the enforcement of all ordinances of the borough, and the collection of fines and penalties imposed thereunder; and to sentence any person violating any such ordinance to detention in the lockup, county jail, or workhouse as hereinafter provided.

(3) To exercise the powers and jurisdiction of justices of the peace, within the borough for the suppression of riots, tumults, and disorderly meetings, and in all criminal cases for the punishment of vagrants and disorderly persons.

Section 1029. Duties of Mayor.—It shall be the duty of the mayor:

(1) To preserve order in the borough, to enforce the ordinances and regulations, to remove nuisances, to exact a faithful performance of the duties of the officers appointed, and to perform such other duties as shall be vested in his office by law or ordinance.

(2) To sign such papers, contracts, obligations and documents as may be required by law.

(3) To keep correct accounts of all fees, fines and costs received by him, to render to the council at least once a month an itemized statement of all such moneys so received since the last such statement, with the date at which and the purpose for which and the names of the persons from whom the same was received, and to pay all such moneys into the borough treasury, except such costs and fees as he may be authorized to retain in lieu of salary; to report to the council from time to time on the state of the borough and to make recommendations to the council on matters of borough concern. The borough shall furnish the mayor with such dockets, books and forms as are necessary for the conduct of his office. Such dockets, books and forms shall be and remain the property of the borough and shall be surrendered to his successor in office.

Section 1030. When President or Vice-President of Council to Act as Mayor.—Whenever the mayor is absent or incapacitated, the duties of his office shall be discharged by the president of council, or in the absence or incapacity of the president of council, by the vice-president of council. While discharging the duties of mayor, the president or vice-president of council shall be entitled to the same salary or fees as the mayor would receive, and, during the time such salary is paid to the president or vice-president of council as acting mayor, the mayor shall not be paid compensation. The president or vice-president of council, when acting as mayor, shall have no power to veto any proposed ordinance or to break a tie, but shall have power to vote as councilman.

(c) Auditors

Section 1041. Auditors to Meet Yearly, and Audit Accounts; Uni-

form Forms.—(a) The auditors of the borough shall meet on the first Tuesday of January of each year, and shall organize by the election of a chairman and a secretary.

(b) The auditors shall audit, adjust, and settle the accounts of the tax collectors, the justice of the peace, and all officers of the borough, and may also audit, adjust and settle the accounts of any person, corporation, association, organization, committee or commission receiving or expending borough funds; and shall prepare a report thereof, which shall contain an audit of the accounts of the last fiscal year, and shall also show a complete statement of the financial condition of the borough, giving in detail the actual indebtedness, the amount of the funded debt, the amount of the floating debt, the valuation of taxable property therein, the assets of the borough with the character and value thereof, and the date of maturity of the respective forms of funded debt thereof. Such report shall be prepared within ninety days after the close of the fiscal year.

(c) The amount of any balance or shortage, or of any expenditure of a kind, or made in a manner, prohibited or not authorized by statute, which causes a financial loss to the borough, shall be a surcharge against any officer against whom such balance or shortage shall appear, or who by vote, act, or neglect, has permitted or approved such expenditure, but no elected or appointed official of a borough shall be surcharged for any act, error or omission in excess of the actual financial loss sustained by the borough, and any surcharge shall take into consideration as its basis the results of such act, error or omission and the results had the procedure been strictly according to law. The provisions hereof limiting the amount of any surcharge shall not apply to cases involving fraud or collusion on the part of officers, nor to any penalty enuring to the benefit or payable to the Commonwealth.

(d) After such report has been prepared and executed by the auditors, it shall be the duty of the auditors to file a copy of the report with the secretary of the borough, with the clerk of the court of quarter sessions of the county and with the Department of Internal Affairs. Such reports shall be filed by the auditors of the borough not later than ninety days after the close of the fiscal year. Any auditor refusing or wilfully neglecting to file such report shall, upon conviction in a summary proceeding, be sentenced to pay a fine of five dollars (\$5) for each day's delay beyond the last day for filing such report and costs, but the total fine which may be imposed and collected for any such offense shall not exceed two hundred dollars (\$200). If the failure to file such report within the period specified is due to the failure of the auditors to prepare the statement

upon which said report is to be based, said fine shall be imposed upon all of the auditors.

(e) In any matter involving any financial transaction, any official knowingly and wilfully acting contrary to law, shall be guilty of a misdemeanor, and on conviction thereof, may be sentenced to pay a fine not exceeding one hundred dollars (\$100), and his office may be forthwith declared vacant as may seem meet and just to the court passing sentence.

(f) The uniform form for the annual auditors' report and the annual financial statement, hereinafter required to be made, shall be prepared by a committee as provided in article XIII of this act.

(g) The auditors shall also audit and report to the borough council, upon the accounts of every officer of the borough, upon the death, resignation, removal or expiration of the term of such officer.

Section 1042. Orders and Vouchers to be Marked "Audited".—All orders, vouchers and certificates of indebtedness, which have been paid, shall, on their presentation to the auditors, be cancelled by writing or stamping the word "audited" on the face thereof.

Section 1043. Completion of Auditors' Report; Publication of Financial Statement.—The auditors shall complete such audit, adjustment and settlement, as soon as possible. The auditors shall within ten days thereafter publish, by advertisement in at least one newspaper of general circulation in the borough, a concise financial statement setting forth the balance in the treasury at the beginning of the fiscal year, all revenues received during the fiscal year by major classifications, all expenditures made during the fiscal year by major functions, and the current resources and liabilities of the borough at the end of the fiscal year, the gross liability and net debt of the borough, the amount of the assessed valuation of the borough, the assets of the borough with the character and value thereof, the date of the last maturity of the respective forms of funded debt, and the assets in each sinking fund. Such publication shall be deemed compliance with the provisions of the Municipal Borrowing Law, which requires the corporate authorities of borough to publish an annual statement of indebtedness.

Section 1044. Appeals from Audit.—It shall be lawful for the borough, or any taxpayer thereof, on its behalf, or any officer whose account is settled or audited, to appeal from the settlement or audit, as shown in the auditors' report, to the court of common pleas of the county, not later than forty days from the date of filing of the auditors' report with the clerk of the court of quarter sessions.

Section 1045. Taxpayers Appealing to Enter Bond.—No appeal by a taxpayer or officer shall be allowed, unless, at the time of taking such



appeal, the appellant shall enter into bond in the sum of one thousand dollars (\$1000) with sufficient surety, to prosecute the same with effect and to pay all costs accruing thereon, in case, if the appellant is a taxpayer, he shall fail to obtain a final decision more favorable to the borough than that awarded by the auditors, or, in case, if the appellant is an accounting officer, he shall fail to obtain a final decision more favorable to the officer than that awarded by the auditors. Unless such bond is filed as hereinbefore provided, the court of common pleas, upon application, shall set aside the appeal.

**Section 1046. Taxpayers May Intervene in Appeals.**—Whenever an appeal has been taken from the report of the auditors by the borough, or by any person charged in such report with any sum of money, any taxpayer of the borough may intervene in such appeal, and either prosecute the same on its behalf, or defend it against the appeal of the person so charged. No taxpayer shall intervene, unless he shall file in the court of common pleas a bond, in the sum of one thousand dollars (\$1000), with one or more sufficient sureties, conditioned to indemnify the borough against all costs accruing by reason of such intervention.

**Section 1047 Procedure on Appeals.**—Any person interested may order the appeal upon the argument list, and evidence may be taken before any person authorized to administer oaths, upon rule for that purpose served upon the opposite party. In any proceeding upon an appeal from a report of auditors, the accounts of the office or officers, or the person, corporation, association, organization, committee or commission in question may be investigated de novo, and the burden shall be upon each officer, person, corporation, association, organization, committee or commission, whose accounts are involved in the appeal, of establishing his right to credits claimed by him or it, but the opposing party in such appeal may use any facts, figures, or findings of the report of audit as prima facie evidence against any officer or other entity.

When more than one appeal from a report of such auditors shall have been taken, whether by the borough or an officer or officers thereof, or by a taxpayer, or any or all of them, the court shall, on its own motion, or upon motion of any party interested, direct the several appeals to be disposed of in a single proceeding.

**Section 1048. Framed Issues.**—Whenever any matter of fact is in dispute, the court of common pleas is authorized to frame an issue for the trial thereof.

**Section 1049. Findings of Fact and Law; Judgment.**—After hearing, the court shall file its findings of fact and law and enter judgment in

accordance therewith, and the judgment so entered may be enforced, by any appropriate proceedings, by the party prevailing.

Section 1050. Exceptions and Appeals.—Exceptions to the ruling of the court, and appeals therefrom to the Superior or Supreme Court shall be permitted as in other cases.

Section 1051. Balances Due to be Entered as Judgments.—Any balance, in any report of the auditors, against any officer of the borough, shall constitute a surcharge against such officer, as fully as if expressly stated in said report to be a surcharge, and the amount of any balance, and of any express surcharge, shall, if no appeal is taken, or after an appeal has been finally determined, be entered by the prothonotary as a judgment, against such officer and in favor of the borough. The clerk of the court of quarter sessions shall certify the amount of every balance or surcharge, contained in any such report, from which no appeal has been taken within time herein provided, to the court of common pleas, for entry thereof by the prothonotary as a judgment. Any taxpayer of the borough may enforce the collection thereof, for the benefit of the borough, by action or execution, upon filing in the court of common pleas a bond, in the sum of one thousand dollars (\$1000) with one or more sureties, conditioned to indemnify the borough from all costs which may accrue in the proceedings undertaken by such taxpayer, subject, however, to all rights of appeal from the report of auditors granted by this act. If any person or persons have been, or shall be, surcharged for an illegal purchase, and no fraud or collusion is shown and the surcharge is paid to the borough, then the article purchased shall become the property of the person or persons surcharged.

Section 1052. Attorney to Auditors.—The borough auditors may employ an attorney whenever the same is deemed advisable by a majority of the auditors.

The compensation of such attorney shall be fixed by the auditors, and shall not exceed the sum payable to one auditor for the making of the annual audit, unless a larger compensation shall be allowed by council, or shall be specially allowed by a court in connection with any proceeding before such court, and shall be payable by the borough out of the general fund of the borough.

Section 1053. Compensation of Auditors.—Each auditor shall receive no less than five dollars (\$5) or more than ten dollars (\$10), as council may determine, per day for each day necessarily employed in the discharge of his duties, to be paid by the borough. A day shall consist of not less than five hours in the aggregate.

Section 1054. Penalty for Failure to Comply with Law.—In case of

any neglect or refusal to comply with the provisions of the preceding sections of this article, any auditor so neglecting or refusing shall upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than one hundred dollars (\$100), and in default of the payment of the fine and costs, shall be imprisoned for not more <sup>1</sup> than ten days.

Section 1055. Auditors May Compel Attendance of Witnesses.—The auditors of any borough, or a majority of them, shall have power to issue subpoenas to obtain the attendance of the officers whose accounts they are required to adjust, their executors, and administrators, and of any persons whom it may be necessary to examine as witnesses, and to compel their attendance. If any person shall refuse or neglect to appear or testify, the auditors shall petition the court of common pleas of the county to issue a subpoena to such person and to require him to appear and to testify before the court. The court shall issue such subpoena if it deems the testimony relevant to the issue.

Section 1056. Auditors May Administer Oaths; Penalty.—The auditors of any borough, or a majority of them, shall have power to administer oaths and affirmations to all persons brought or appearing before them, whether accountants, witnesses, or otherwise; and all persons guilty of swearing or affirming falsely on such examination shall be liable to indictment and punishment for perjury.

Section 1057. Persons Refusing to Testify to be Committed.—If any person, appearing before such auditors for examination, shall refuse to take such oath or affirmation, or, after having been sworn or affirmed, shall refuse to make answer to such questions as shall be put to him by the auditors touching the accounts or the official conduct of such person or any corporation, association, organization, committee or commission with which such person shall be connected, then the auditors may petition the court to issue its subpoena as hereinbefore provided.

Section 1058. Pay of Witnesses.—Witnesses, other than officers of the borough, attending before the auditors, and persons or officers serving subpoenas, shall be paid, out of the borough treasury upon authorization signed by a majority of the auditors and orders drawn on the borough treasury, the same fees as are payable for rendering similar services in civil proceedings before a justice of the peace and the amount thereof shall be made a part of the charge against any officer who shall be charged by the auditors with any balance: Provided, That any such costs shall have been incurred in establishing said balance. Upon collection of any such costs from any officer, they shall be repaid into the borough treasury.

<sup>1</sup> "than" not in original.

**Section 1059. Auditors to Settle Accounts Where Witnesses Do Not Appear.**—If any person in possession of books, vouchers, or papers, relative to public accounts before auditors, shall refuse to produce the same, or, if any officer whose accounts are to be settled and adjusted by such auditors shall refuse to attend or submit to examination as is hereinbefore directed, the auditors or a majority of them may proceed, by the examination of witnesses and other evidence, to ascertain and settle as near as may be, the amount of public money received by such officer and its application to public purposes or otherwise.

(d) Controller

**Section 1061. Oath and Bond of Controller.**—The borough controller shall, before entering upon the duties of his office, take the required oath or affirmation to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform the duties of his office with fidelity and any loyalty oath required by any other act. He shall give bond to the borough with a surety company to be approved by the council, in such sum as it may by ordinance direct, conditioned for the faithful discharge of his duties. The amount of said bond shall be sufficient to adequately protect the borough from any illegal or unfaithful action by the controller. The cost of such bond shall be paid by the borough.

**Section 1062. Salary of Controller.**—The borough council shall fix the annual salary of the controller, and may not increase or decrease such salary oftener than once in two years.

**Section 1063. General Powers and Duties of Controller.**—The borough controller, shall superintend the fiscal affairs of the borough. He shall examine, audit, and settle all accounts whatsoever in which the borough is concerned either as debtor or creditor, where provision for the settlement thereof is made by law; and, where no such provision or an insufficient provision has been made, he shall examine such accounts and report to the borough council the facts relating thereto with his opinion thereon.

In the examination, audit, and settlement of accounts, the controller shall have all of the powers and perform all of the duties vested in and imposed on the auditors by this act. He shall make and file an annual report of his audit, and make and publish the annual financial report in the same form and manner and at the same time as in this act required of the auditors of the borough.

The borough controller shall have supervision and control of the accounts of all departments, bureaus, and officers of the borough, authorized to collect, receive, or disburse the public moneys, or who are charged

with the management or custody thereof. He shall audit their respective accounts, and may at any time require from any of them a statement in writing of any moneys or property of the borough in their possession, or under their control, showing the amount of cash on hand and the amount deposited in banks and banking institutions together with the names of such institutions. He shall have power to examine every such account of a borough officer in any bank or banking institution to verify the accuracy of the statement of such borough, department, bureau or officer and it shall be the duty of every such department, bureau or officer, and it shall be the duty of every such bank and banking institution, its officers and agents, to furnish full information to the controller in relation to such account. No banker or banking institution, its officers or agents, shall be subject to prosecution under other laws of this Commonwealth for disclosing any such information with respect to any such account. He shall, immediately upon the discovery of any default, irregularity, or delinquency, report the same to the borough council. He shall also audit and report upon the accounts of any such officer upon the death, resignation, removal, or expiration of the term of the said officer.

**Section 1064. Controller May Require Attendance of Witnesses; Penalty.**—In the making of any audit or settlement, and in the authentication of any account or claim or demand against the borough, the controller shall have the same power and authority to obtain the attendance before him of parties and witnesses, and the production of books and papers, and to administer oaths and affirmations, as are given by law to the borough auditors. All persons guilty of swearing or affirming falsely before him shall be liable to indictment and punishment for perjury.

**Section 1065. Controller to Countersign Warrants.**—The borough controller shall countersign all warrants upon the borough treasurer, the form thereof to be prescribed by council, but no warrant shall be countersigned unless there is money in the treasury to pay the same. Whenever a warrant on the treasurer shall be presented to the controller to be countersigned, the person presenting the same shall, if the controller requires, produce evidence:

(1) That the amount expressed in the warrant is due to the person in whose favor it is drawn.

(2) That the supplies or service, for payment of which the warrant is drawn, have been furnished or performed according to law and the terms of the contract.

**Section 1066. Controller to Prevent Appropriation <sup>1</sup> Overdrafts.**—

<sup>1</sup> "Over Drafts" in original.

The borough controller shall not permit any appropriation made by the council to be overdrawn. Whenever an appropriation is exhausted, the object of which is not complete, he shall immediately report the fact to the council, and accompany such report with a statement of the moneys which have been drawn on such appropriation and the particular purpose for which they are drawn.

Section 1067. Amount of Contracts to be Charged Against Appropriations.—Every contract involving appropriation of money shall designate the item of appropriation on which it is founded, and the estimated amount of the expenditure thereunder shall be charged against such item, and so certified by the borough controller on the contract, before it shall take effect as a contract, and the payment required by such contract shall be made from the fund appropriated therefor. If the controller shall certify any contract in excess of the appropriation made therefor, the borough shall not be liable for such excess, but the controller and his sureties shall be liable for the same, which may be recovered in an action at law by the contracting party aggrieved. It shall be the duty of the controller to certify contracts for the payment of which sufficient appropriations have been made.

Section 1068. Controller's Recommendations on Borough Finances.—The borough controller shall, as often as he may deem expedient or the council shall direct, suggest plans to the council for the management and improvement of the borough finances.

Section 1069. Books to be Kept by Controller.—The borough controller shall keep a regular set of books, in which shall be opened and kept as many accounts, under appropriate titles, as may be necessary to show separately and distinctly all the estates and property, whatsoever, real and personal, vested in the borough, all trusts in the care of the same, all debts due and owing the borough, all receipts and expenditures of the various departments of the borough government, and all appropriations made by council and the sums under the same, respectively.

Section 1070. Appeals from Controller's Report.—Appeals may be taken from the settlement and audit of the controller as shown in the controller's report to the court of common pleas of the county, by the same persons, in the same manner, within the same time, subject to the same conditions and procedure, and with like effect in every respect, as in this act provided in the cases of appeals from the settlement and audit of the auditors as shown in their report.

Section 1071. Acceptance by Ordinance.—The foregoing provisions of subdivision (d) of this article shall not become operative or effective in any borough not having a controller, until the borough shall, by

ordinance, accept the provisions of subdivision (d) of this article. When any borough accepts the provisions of subdivision (d) of this article, the court of quarter sessions, upon petition of council, shall appoint a controller to hold office until the first Monday of January, next succeeding the next municipal election at which a controller may be elected under the provisions of this act.

In all boroughs accepting the provisions of subdivision (d) of this article, the borough auditors then in office, or the appointed auditor serving as such, shall continue to hold their office until the first day of January succeeding the election of a borough controller, after which date the office of borough auditor shall be abolished.

A borough may discontinue the office of controller and either reestablish the office of elected auditors, or the position of appointed auditor, by repealing the ordinance under which the office of controller was created. In any such case, the controller in office at the time of such repeal shall continue in such office until the end of his term.

(e) Assessors

Section 1081. Powers of Assessors.—The assessors shall have all the powers, perform all the duties, be subject to all the obligations, and receive the same compensation as is now provided by law.

(f) Tax Collector

Section 1086. Powers and Duties of Tax Collector.—The tax collector shall be the collector of all State, county, borough, school, institution district and other taxes, levied within the borough by the authorities empowered to levy taxes, but he shall not collect any tax levied and imposed under the act of June 25, 1947 (P. L. 1145) unless the ordinance imposing such tax shall provide that he shall be the collector of the said tax. He shall, in addition to the powers, authority, duties and responsibilities provided for by this act, have all the powers, perform all the duties, and be subject to all the obligations and responsibilities, for the collection of such taxes, as are now vested in, conferred upon, or imposed upon tax collectors by law.

ARTICLE XI

POWERS, DUTIES AND RIGHTS OF  
APPOINTED OFFICERS AND EMPLOYES

(a) General Provisions

Section 1101. Compensation; Hours and Days of Work; Outside Employment.—Appointed officers and employes of the borough shall receive such compensation for their services as the council shall prescribe, and council may also establish the hours and days of work and may

restrict the outside employment of borough employes or any class or category thereof.

Section 1102. Accounts.—All officers and employes appointed by the borough council shall, whenever directed, render their accounts to the council for settlement.

Section 1103. Bonds.—Whenever an appointed officer or employe of any borough, is required by law or by action of council to give bond, for the faithful performance of his duties, the borough may pay the premium thereon. All bonds required to be given by borough officials or employes shall be with a surety company authorized by law to act as surety.

Section 1104. Appointments; Incompatible Offices.—Unless there is incompatibility in fact, any elective or appointive officer of the borough shall be eligible to serve on any board, commission, bureau or other agency created by or for the borough, or any borough office created or authorized by statute and may accept appointments thereunder, but no mayor or councilman shall receive compensation therefor. Where there is no incompatibility in fact, and subject to the foregoing provisions as to compensation, appointees of council may hold two or more appointive borough offices, but no mayor or member of council may serve as borough manager or as secretary or treasurer. No person holding the office of justice of the peace may at the same time hold the office of borough treasurer. The offices of secretary and treasurer may be held by the same person when so authorized by ordinance. Nothing herein contained shall affect the eligibility of any borough official to hold any other public office or receive compensation therefor. All appointments to be made by the council or the corporate authorities shall be made by a majority of the members of council attending the meeting at which the appointment is made, unless a different vote is required by statute.

Section 1105. Compensation to Aged Employes.—By ordinance a borough may provide for compensation to appointees and employes of not less than ten years of satisfactory service, and who are not less than sixty years of age, a proportion of the compensation last paid to them but not in excess of fifty percent thereof, including benefits received under the social security act, if any, as fixed in said ordinance or amendment thereto. The expenditures herein authorized shall be paid out of the general tax levy for the current expenditures of the year, and not by any special tax therefor. Nothing herein shall preclude any appointee or employe of the borough from joining in any pension system or municipal retirement system that the borough may adopt. The true intent and purpose hereof is to permit boroughs, without exceeding the present



general tax limitation, to pay to servants in their employ who are too old to advantageously join any pensioning or retirement system, a reasonable annuity in lieu of joining a pensioning or retirement system.

(b) Treasurer

Section 1106. Bond and Duties.—The borough treasurer shall, before entering upon the duties of his office, give bond, conditioned for the faithful performance of his duties. He shall keep a just account of all receipts and disbursements, and shall annually submit his account to the borough auditors or controller; he shall pay over all moneys remaining in his hands and deliver all books, papers, accounts, and other things belonging to the borough, to his successor. All moneys received by any officer, or other person, for the use of the borough shall be forthwith paid to the borough treasurer. He shall deposit all moneys received by him in a bank or banking institution in the name of the borough. All expenditures shall be paid out of funds in the treasury only when authorized by the treasurer, upon an order signed by the president of council and the borough secretary and also by the borough controller, if any. Such order shall not be executed unless there is money in the treasury available therefor.

Section 1107. Assistant Treasurer.—Any borough council may, by resolution, appoint an assistant treasurer, who shall not be a member of the council. The assistant treasurer shall assist the treasurer in the performance of his duties, and, in case of absence or disability of the treasurer, shall perform the duties and may exercise the powers of the treasurer.

(c) Secretary

Section 1111. Duties.—The secretary shall attend all meetings of the borough council and shall keep full minutes of its proceedings; he shall transcribe the bylaws, rules, regulations and ordinances adopted into a book kept for that purpose; he shall preserve the records and documents of the borough, and shall have custody of the corporate seal. He shall certify copies of any book, paper, record, bylaw, rule, regulation, resolution, ordinance or proceeding of the borough, under the seal thereof which copies, when so certified, shall be admissible in evidence in any court of the Commonwealth. He shall attest the execution of all instruments, record all ordinances and attest the same by his signature. He shall file of record proof of service of all notices required by law, and his certificate thereof shall be good evidence of such notice. The borough shall furnish the secretary with such dockets, books, forms and files as are necessary for the conduct of his office, such dockets, books, forms and files to be and remain the property of the borough. He shall deliver to

his successor the seal and all books, papers and other records and things belonging to the borough.

Section 1112. Assistant Secretary.—Every borough council may, by resolution, appoint an assistant secretary who shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary. The assistant secretary may be appointed from the membership of the borough council, but shall not be any other officer thereof.

Section 1113. Records Open to Inspection.—The fiscal records and documents and the minute book and other records and documents of every borough shall be open to the inspection of any taxpayer <sup>1</sup> thereto, at any reasonable time.

(d) Solicitor

Section 1116. Solicitor to Have Control of Legal Matters.—The legal matters of the borough shall be under the control of the borough solicitor, and no department or officer of the borough, except as herein otherwise provided, shall employ an additional counsel without the assent or ratification of the council. In the absence of the solicitor, the law firm of which he is a member or associate may perform any of the duties or functions of the solicitor.

Section 1117. Duties of Solicitor.—The borough solicitor, when directed or requested so to do by council or the mayor, shall prepare or approve such bonds, obligations, contracts, leases, conveyances, ordinances and assurances to which the borough or any department thereof may be a party; he shall commence and prosecute all actions brought by the borough for or on account of any of the estates, rights, trusts, privileges, claims, or demands, as well as defend all actions or suits against the borough, or any officer thereof, wherein or whereby any of the estates, rights, privileges, trusts, ordinances, or accounts, of the borough, or any department thereof, may be brought in question before any court in the Commonwealth; and shall do every professional act incident to the office which he may be authorized or required to do by the council or the mayor. He shall, whenever required, furnish the council, or committees thereof, the mayor, or the head of department, with his opinion in writing upon any question of law which may be submitted by any of them in their official capacities.

Section 1118. Assistant Solicitor.—Every borough council may, by resolution, appoint an assistant solicitor who shall, in the absence or disability of the solicitor, perform the duties and exercise the powers of the solicitor.

<sup>1</sup> "therefor" in original.

## (e) Police

Section 1121. Appointment, Suspension, Reduction, Discharge, Powers; Mayor to Have Control.—Borough council may, subject to the civil service provisions of this act, if they be in effect at the time, appoint and remove, or suspend, or reduce in rank, one or more suitable persons, citizens of the United States of America, as borough policemen, who shall be ex officio constables of the borough, and shall and may, within the borough or upon property owned or controlled by the borough or by a municipal authority of the borough whether such property is within or outside the limits of the borough, without warrant and upon view, arrest, and commit for hearing any and all persons guilty of breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, or who may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or for violating any ordinance of the borough for the violation of which a fine or penalty is imposed, and notwithstanding any statute pertaining to the same or similar offenses. Any person so arrested shall be received for confinement by the keepers of the jails, lockups, or station houses within the county.

The borough council may designate one of said policemen as chief of police. The mayor of the borough shall have full charge and control of the chief of police and the police force, and he shall direct the time during which, the place where and the manner in which, the chief of police and the police force shall perform their duties, except that council shall fix and determine the total weekly hours of employment that shall apply to the policemen.

Policemen shall have authority to serve and execute all criminal process for the violation of borough ordinances which may be issued by the mayor, and shall charge the same fees and costs as constables of the borough, but such fees and costs shall be collected by the mayor and by him paid into the borough treasury.

The borough may, by ordinance establish a police department consisting of chief, captain, lieutenant, sergeants, or any other classification desired by the council, and council may, subject to the civil service provisions of this act, if they be in effect at the time, designate the individuals assigned to each office, but the mayor shall continue to direct the manner in which the persons assigned to the office shall perform their duties. The mayor may, however, delegate to the chief of police or other officers supervision over and instruction to subordinate officers in the manner of performing their duties. The mayor may appoint special policemen during an emergency in which the safety and welfare of the

borough and the public is endangered and auxiliary policemen may be appointed as provided by general law.

The borough council may assign the chief of police or any member of the police force to undergo a course of training at any training school for policemen established and made available by the State or Federal government, and may provide for the payment by the borough of his expenses while in attendance in such school.

In any case in which a borough has heretofore appointed policemen or established a police department by action of council but not by or pursuant to an ordinance regularly enacted, such action shall be deemed to have been a valid exercise of the legislative power of the borough for all purposes the same as though an ordinance had been enacted, and all policemen appointed thereunder shall occupy the same status and shall have the same rights and privileges as in the case of policemen appointed under authority of an ordinance.

Section 1122. Police Serving Under Cooperative Agreement or Contract.—Whenever any borough shall have entered into a cooperative agreement or contract with any near or adjacent city, borough, or township for the furnishing or receiving of police protection, as authorized by clause (35) of section 1202 of this act, such policemen, individually, shall be appointed and accepted as policemen of the borough receiving such police service by resolution of the council of the said borough. Policemen so appointed shall, however, in so far as civil service and pensions are concerned, be deemed to be appointees and employes only of the municipality or township furnishing their service and making the original appointment thereof.

Section 1123. Police Badge.—The borough policemen shall, when on duty, wear a shield or badge with the word "Police."

Section 1124. Suspension by Mayor.—In addition to the powers of council to suspend policemen, the mayor may, for cause and without pay, suspend any policemen until the succeeding regular meeting of the council, at which time or thereafter the council may, subject to the civil service provisions of this act, if they be in effect at the time, suspend, discharge, reduce in rank or reinstate with pay, such policemen. In any case where the council has reinstated a policeman, after having been suspended by the mayor, the mayor shall not thereafter suspend such policeman for reasons arising from the same act for which the first suspension was made, or for reasons that the council, in reinstating such policeman, shall have determined not to be grounds for suspension.

Section 1125. Compensation.—The borough police and special police-

men appointed by the mayor shall receive such compensation as shall be fixed by the borough council.

Section 1126. Office of Police and Constable Not Incompatible; Exception.—Borough policemen residing in the borough may at the same time, unless prevented from doing so by the operation of the civil service provisions of this act, hold and exercise the office of constable in the borough or any ward thereof, and may demand and receive all costs, fees and emoluments pertaining to such office.

Section 1127. Special School Police.—Upon request of the board of school directors of the school district in which a borough is located, the borough council may appoint special school police who shall have the duty of controlling and directing traffic at or near schools and who shall be in suitable and distinctive uniform and shall display a badge or other sign of authority. Such police shall be vested with all the power of local police officers and while on duty shall be under and subject to the direction of the mayor. They shall serve at the pleasure of the borough council and shall not come within the civil service provisions of this act and shall not be entitled to participate in any police pension plan or plans now in effect or hereafter effective. The compensation of the school police, if any, shall be fixed by the borough council and shall be jointly paid by the borough council and the board of school directors, in a ratio to be determined by the borough council and board of school directors. If the borough council and board of school directors are unable to determine the ratio of compensation of the police to be paid by the council and the board, each shall pay one-half of the compensation of such police. Auxiliary policemen, appointed as prescribed by general law, may be designated to serve as special school police.

(f) Police Pension Fund in Boroughs Having a Police Force  
of Less Than Three Members

Section 1131. Police Pension Fund.—Where a police force of less than three members is being maintained, the borough may, unless there is a private organization or association constituting and managing an existing pension fund for the members of the police force in such borough, by ordinance, provide for the purchase of annuity contracts for the payment of pensions, or establish a police pension fund into which each member of the police force shall pay an equal and proportionate monthly charge to be withheld from the pay of such member. All pension funds established under the provisions of this section shall be under the direction of the borough council, or such committee as it may designate, and shall be applied under such regulations as the council may by ordinance prescribe for the benefit of such members of the

police force as shall receive honorable discharge therefrom by reason of age or disability and the families of such as may be injured or killed in the service. Any allowances made to those who are retired by reason of disability or age shall be in conformity with a uniform scale.

Section 1132. Private Police Pension Funds; Optional Transfers.—(a) Where there is a private organization or association constituting and managing an existing pension fund for the members of the police force in any borough, such borough shall establish a police pension for the purpose of paying pensions to the members of its police force, if the membership of such organization or association, by a two-thirds vote, elects to transfer its funds with all its assets and liabilities into a borough pension fund, as required to be established by this act.

(b) Whenever such a private organization or association managing an existing police pension fund for the members of the police force in any borough elects, by a two-thirds vote, to transfer its funds into a borough pension fund, as required to be established by this act, all the assets and liabilities of such existing fund, shall be transferred. Such transfer may be made by the transfer of securities. After such transfer, the borough police pension fund shall assume the liability of continuing the payment of pensions to members of the police force retired prior to such transfer, in accordance with the laws and regulations under which such members were retired.

Section 1133. Service Required Before Retirement.—The ordinance establishing the police pension fund shall prescribe a minimum period of total service, and/or a minimum age after which members of the force may be retired from active duty. Borough policemen so retired shall be subject to service as police reserve, until unfitted for such service by reason of age or disability, when they may be finally discharged.

Section 1134. Pensions Not to be Charged on Other Funds.—Payments made on account of police pensions shall be a charge on no fund in the treasury of the borough, or under its control, other than the police pension fund.

Section 1135. Gifts to Pension Fund.—Borough may take, by gift, grant, devise, or bequest, any money or property real, personal, or mixed, in trust for the benefit of such police pension fund. The care, management, investment and disposal of such trust funds or property shall be vested in such offices as the borough shall by ordinance direct, and shall be governed by such officers, subject to any directions not inconsistent therewith as the donors of such funds and property may prescribe.

Section 1136. Rights of Members.—No person participating in such police pension fund and becoming entitled to receive a benefit therefrom,

shall be deprived of his right to an equal and proportionate share therein, upon the basis upon which he first became entitled thereto.

Section 1137. Annuity Contracts in Lieu of Establishing a Police Pension Fund.—Boroughs may provide annuity contracts for the purpose of paying pension or annuities to the members of the police force who receive honorable discharge therefrom by reason of age or disability and the families of such as may be injured or killed in service.

(g) Borough Manager

Section 1141. Borough Manager May be Created by Ordinance; Election.—The council of any borough may, at its discretion, at any time, create by ordinance the office of borough manager and may in like manner abolish the same. While said office exists, the council shall, from time to time, and whenever there is a vacancy, elect, by a vote of a majority of all the members, one person to fill said office, subject to removal by the council at any time by a vote of the majority of all the members.

Section 1142. Powers and Duties; Bond.—The powers and duties of the borough manager shall be regulated by ordinance. The council, by ordinance, may delegate, subject to recall, any of the nonlegislative and nonjudicial powers and duties of the council, the planning commission and the shade tree commission, to the borough manager. With approval of borough council, the mayor may delegate to the borough manager any of his nonlegislative and nonjudicial powers and duties.

Section 1143. Other Offices Not Incompatible.—The offices of borough manager, street commissioner, secretary, treasurer and chief of police, shall not be incompatible, and any two or more or all of the said offices may be held by one person. Neither the mayor nor any member of the borough council shall be eligible to hold the office of borough manager.

(h) Borough Planning Commission

Section 1151. Creation of Borough Planning Commission; Appointment of Members; Powers; No Compensation.—Any borough may at any time create by ordinance a borough planning commission consisting of five persons to be appointed by council. In the first instance one member of said commission shall be appointed for one year, one member for two years, one member for three years, one member for four years, and one member for five years, and, annually thereafter, a member of said commission shall be appointed for a term of five years. An appointment to fill a vacancy shall be only for the unexpired portion of the term. All members of the said commission shall reside within the borough. The commission may make and alter rules and regulations for its own organization and procedure, consistent with the ordinances of the borough and

the laws of the Commonwealth. The members of the commission shall serve without compensation, and the commission make annually to the council a report of its transactions. The commission may, with approval of the borough council, employ engineers and other persons, whose salaries and wages, and other necessary expenses of the commission, where approved by council, shall be paid in the same manner as other borough expenditures. The borough may contract and pay for professional planning services.

Section 1152. Commission to Receive Copies of Ordinances; Action Thereon.—The borough secretary shall, upon introduction or as soon as practicable thereafter, furnish to the borough planning commission for its consideration a copy of all proposed ordinances and all amendments thereto, relating to the location of any public building of the borough, and to the location, extension, widening, narrowing, enlargement, ornamentation and parking of any street, boulevard, parkway, park, playground, or other public ground, and to the relocation, vacation, curtailment, changes of use, or any other alteration of the borough plan with relation to any of the same, and to the location of any bridge, tunnel and subway, or any surface, underground, or elevated railway. The said commission may, at its discretion return any of such ordinances to the borough secretary written ten days after receipt thereof, with its comments, suggestions and/or criticisms.

Section 1153. Maps; Recommendations.—The borough planning commission may make, or cause to be made, and lay before council, and, at its discretion cause to be published, maps of the borough or any portion thereof, including adjacent territory extending immediately beyond the borough limits, showing the streets and highways, and other natural and artificial features, and also locations proposed by it for any new public buildings, civic center, street, parkway, park, playground, or any other public ground or public improvement, or any widening, extension or relocation of the same, or for the location or preservation of ancient landmarks and other property of historical or antiquarian interest, or any change in the borough plan by it deemed advisable; and it may make recommendations to council, from time to time, concerning any such matters and things aforesaid, for action by council thereon, and, in so doing, have regard for the present conditions and future needs and growths of the borough, and the distribution and relative location of all the principal and other streets and railways, waterways and all other means of public travel and business communications, as well as the distribution and relative location of all public buildings, public grounds, and open spaces devoted to public use.



Section 1154. Recommendations to Private Persons, Etc.—The borough planning commission may make recommendations to any public authorities or any corporations or individuals in the borough with reference to the location of any building, structure, or work to be erected or constructed by them.

Section 1155. Plans of Improvements to be Submitted Before Recording; Approval.—All plans, plots, or replots of land laid out in building lots, and the streets or other portions of the same, intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, and located within the borough limits, shall be submitted to the borough planning commission, and approved by it, before they shall be recorded. It shall be unlawful to receive or record any such plan in any public office, unless the same shall bear thereon, by endorsement or otherwise, the approval of the borough planning commission. The disapproval of any such plan by the borough planning commission shall be deemed a refusal of the proposed dedication shown thereon. The approval of the commission shall be deemed an acceptance of the proposed dedication, but shall not impose any duty upon the borough concerning the maintenance or improvement of any such dedicated parts, until the proper authorities of the borough shall have made actual appropriations of the same by entry, use, or improvement. No sewer, water, or gas main or pipe, or other improvement, shall be voted or made, within the borough, for the use of any such purchasers or owners, nor shall any permit for connection with, or other use of, any such improvement existing, or for any other reason made, be given to any such purchasers or owners, until such plan is so approved.

Section 1156. Reference of Proposals to Planning Commission.—The council may, at its discretion, from time to time, submit to the planning commission any question or proposal relating to any of the matters or things referred to in section 1152 hereof, or any other matter or thing relating to the growth or development of the borough, including any plans for the development of any specific sections of the borough, and it shall be the duty of the planning commission, in due course, to make a report with respect to any such questions or proposal, with its recommendations thereon.

(i) Mine and Quarry Inspection and Surface Support

Section 1161. Ordinance Creating.—Any borough may, by ordinance, provide for and regulate mine and quarry inspection and surface support.

Section 1162. Engineer and Other Personnel.—In any such borough an engineer, to be appointed by the council, and such assistants, clerks and employes as the council may provide, to receive such compensation

as may be prescribed by council, may be appointed to supervise and administer the work of mine and quarry inspection and surface support.

Section 1163. Inspection.—Any such engineer, or assistant or other employes may enter, inspect, examine and survey any mine, colliery or quarry within the limits of the borough, at all reasonable times, either by day or night, but not so as to impede or obstruct the workings of such colliery or quarry; and may be accompanied by such other persons as may be necessary for the purpose of making an examination or survey. The owner, operator, or superintendent of such mine, colliery or quarry, shall furnish the means necessary for such entry, inspection, examination, survey and exit.

Section 1164. Maps and Drawings.—The owner, operator, or superintendent of every mine, colliery or quarry, within three months after the passage of an ordinance by any borough regulating mine or quarry inspection and surface support, shall make or cause to be made and furnish to the borough such map, plans and/or drawings of the workings, excavations and surface support as the council may require. In the case of coal mines and <sup>1</sup>collieries, the map or plan shall exhibit the workings or excavations in every seam of coal on a separate sheet, and the tunnels and passages connecting with such workings or excavations. It shall show in degrees the general inclination of the strata, with any material deflection therein in the workings or excavations, and shall also show the tidal elevations of the bottom of every shaft, slope, tunnel and gangway, and of any other point in the mine or on the surface where such elevation shall be deemed necessary by the bureau. The map or plan shall show the number of the last survey on the gangways or the most advanced workings.

Section 1165. Extensions to be Placed on Maps.—Every owner, operator, or superintendent, of a mine, colliery or quarry, shall place or cause to be placed upon the pertinent map, at least once in every three months, all the extensions made in any mine or quarry, within the limits of such borough during the three preceding months, except those made within thirty days immediately preceding the time of placing such extensions upon the said map or drawing.

Section 1166. Certain Surface Supports Not to be Removed.—It shall be unlawful for any person, copartnership, association, or corporation to dig, mine, remove, or carry away the coal, rock, earth, or other minerals or materials forming the natural support of the surface beneath the highways, streets and public places of any borough to such an extent and in such a manner as thereby to remove the necessary sup-

<sup>1</sup>“collieries” in original.

port of the surface, without having first placed or constructed an artificial permanent support sufficient to uphold and preserve the stability of the surfaces of such highways, streets, and public places.

Section 1167. Penalty.—Any person being the general manager, superintendent, or person in charge of the work of any corporation, copartnership, or association, violating any of the provisions of this subdivision, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced, for such offense, to pay a fine not exceeding one thousand dollars (\$1000) or to undergo imprisonment in the county jail for a period not exceeding ninety days, or both. All fines imposed under this section shall be paid into the treasury of the borough.

Section 1168. Enactment of Ordinances.—Borough councils may enact such ordinances as may be necessary for the enforcement of the provisions of this subdivision.

(j) Civil Service for Police and Firemen

Section 1171. Appointments of Police and Firemen.—This subdivision (j) of this article shall not apply to any borough having a police force of less than three members or to volunteer fire departments or companies employing their own operators, or to boroughs having less than three salaried operators of fire apparatus. This subdivision (j) of this article is subject as heretofore to the power of council to determine compensation. Hereafter each and every appointment to and promotion in the police force or as fire apparatus operators paid directly by the borough in every borough shall be made only according to qualifications and fitness, to be ascertained by examinations which shall be competitive as hereinafter provided.

No person shall hereafter be suspended, removed or reduced in rank as a paid employe in any police force or as a paid operator of fire apparatus of any borough, except in accordance with the provisions of this subdivision. However, nothing in this subdivision (j) shall apply to retirement nor shall anything herein prevent any borough from adopting a compulsory retirement age for its employes or for any class or classes thereof and from retiring all such employes automatically when they reach such age.

Section 1172. Civil Service Commission Created; Appointments; Vacancies; Oath; Compensation.—There is hereby created in each borough, where a police force or paid fire apparatus operators as hereinbefore provided are being maintained, a civil service commission hereinafter referred to as the commission. The commission shall consist of three commissioners who shall be qualified electors of the borough and shall be appointed by the borough council initially to serve for the terms of two,

four and six years, and as terms thereafter expire shall be appointed for terms of six years.

Any vacancy occurring in any commission for any reason whatsoever shall be filled by the borough council for the unexpired term within the period of thirty days after such vacancy occurs.

Each member of the commission created by this subdivision, before entering upon the discharge of the duties of his office, shall take an oath or affirmation to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform his official duties with fidelity, together with such loyalty oath as is prescribed and required by law. The civil service commissioners shall receive no compensation.

Section 1173. Offices Incompatible with Civil Service Commissioner.—No commissioner shall at the same time hold an elective or appointed office under the United States Government, the Commonwealth of Pennsylvania or any political subdivision of the Commonwealth, except that one member of the commission may be a member of the council of the borough and one may be a member of the teaching profession.

Section 1174. Organization of Commission; Quorum.—The commission first appointed shall organize within ten days of its appointment and shall elect one of its members as the chairman and one as the secretary. The commission shall thereafter meet and organize on the first Monday of February of each even-numbered year. The secretary of the commission shall give each commissioner twenty-four hours' notice in writing of each and every meeting of the commission. Two members of the commission shall constitute a quorum and no action of the commission shall be valid unless it shall have the concurrence of at least two members.

Section 1175. Clerks and Supplies, Etc.—The borough shall furnish to the commission, on its requisition, such clerical assistance as may be necessary for the work of the commission. The borough shall provide a suitable and convenient room for the use of the commission. The commission shall order from the borough the necessary stationery, postage, printing and supplies, and the elected and appointed officials of every such borough shall aid the commission in all proper ways in carrying out the provisions of this subdivision relating to civil service.

Section 1176. Rules and Regulations.—The commission shall have power to prescribe, amend and enforce rules and regulations for carrying into effect the provisions of this subdivision and shall be governed thereby. Before any such rules and regulations are in force the same shall be first approved by the council of the borough. When such rules and regu-

lations have been so approved, they shall not be annulled, amended, or added to, without the approval of the said council. All rules and regulations and modifications thereof shall be made available by the boroughs for public distribution or inspection.

**Section 1177. Minutes and Records.**—The commission shall keep minutes of its proceedings and records of examinations and other official actions. All recommendations of applicants for appointment received by the commission shall be kept and preserved for a period of five years, and all such records and all written causes of removal filed with the commission, except as otherwise provided in section 1191 of this act, shall be open to public inspection and subject to reasonable regulation.

**Section 1178. Investigations.**—The commission shall have power to make investigations concerning all matters touching the administration and enforcement of this subdivision and rules and regulations adopted thereunder. The chairman of the commission is hereby given power to administer oaths and affirmations in connection with such investigations.

**Section 1179. Subpoenas.**—The commission shall have power to issue subpoenas over the signature of the chairman, to require the attendance of witnesses and the production of records and papers pertaining to any investigation or inquiry. The fees of such witnesses for attendance and travel shall be the same as for witnesses appearing in the courts and shall be paid from appropriations for the incidental expenses of the commission.

All officers in public service and employes shall attend and testify when required to do so by the commission.

If any person shall refuse or neglect to obey any subpoena issued by the commission, he shall upon conviction thereof in a summary proceeding, be sentenced to pay a fine not to exceed one hundred dollars (\$100), and in default of the payment of such fine and costs, shall be imprisoned not to exceed thirty days.

If any person shall refuse or neglect to obey any subpoena issued by the commission, it may apply by petition to the court of common pleas of the county for its subpoena, requiring the attendance of such persons before the commission or the court there to testify and to produce any records and papers necessary, and in default thereof, shall be held in contempt of court.

**Section 1180. Annual Report.**—The commission shall make an annual report to the council containing a brief summary of its work during the year, which shall be available for public inspection.

**Section 1181. General Provisions Relating to Examinations.**—The commission shall make rules and regulations, to be approved as provided

in section 1176 hereof, providing for the examination of applicants for positions in the police force and as paid operators of fire apparatus and for promotions, which rules and regulations shall prescribe the minimum qualifications of all applicants to be examined and the passing grades. All examinations for positions or promotions shall be practical in character and shall relate to such matters and include such inquiries as will fairly test the merit and fitness of the persons examined to discharge the duties of the employment sought by them. All examinations shall be open to all applicants who have the minimum qualifications required by the rules and regulations. Each applicant shall be subject to the regulations adopted by the commission, and shall be required to submit to a physical examination as provided in section 1189 of this act.

Public notice of the time and place of every examination, together with the information as to the kind of position or place to be filled, shall be given by publication once in a newspaper of general circulation in the borough, at least two weeks prior to each examination, and a copy of the notice shall be prominently posted in the office of the commission or other public place.

The commission shall post in its office the eligible list, containing the names and grades of those who have passed the examination. Persons, male or female, who served in the military or naval service of the United States during any war in which the United States has been, is now, or shall hereafter be, engaged and who have honorable discharges from such service, who have successfully passed the examination, shall be given the additional credits and preference in appointment and promotion provided for by law.

Section 1182. Application for Examination.—Each person desiring to apply for examination shall file with the commission a formal application in which the applicant shall state under oath or affirmation (i) his full name and residence or post office address, (ii) his citizenship, place and date of birth, (iii) his condition of health and physical capacity for public service, (iv) his business or employment and his residence for the past five years, and (v) such other information as may be required by the commission's rules and regulations, showing the applicant's qualifications for the position for which he is being examined.

Section 1183. Rejection of Applicant ; Hearing.—The commission may refuse to examine, or, if examined, may refuse to certify after examination as eligible, any applicant who is found to lack any of the minimum qualifications for examination prescribed in the rules and regulations adopted for the position or employment for which he has applied, or who is physically disabled and unfit for the performance of the duties

of the position to which he seeks employment, or who is addicted to the habitual use of intoxicating liquors or narcotic drugs, or who has been guilty of any crime involving moral turpitude, or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct of office, or who is affiliated with any group whose policies or activities are subversive to the form of government set forth in the constitutions and laws of the United States and Pennsylvania.

If any applicant or other person feels himself aggrieved by the action of the commission, in refusing to examine him or to certify him as eligible after examination, the commission shall, at the request of such person, within ten days, appoint a time and place where he may appear personally and by counsel. Whereupon the commission shall then review its refusal to make such examination or certification and take such testimony as may be offered. The decision of the commission shall be final.

Section 1184. Manner of Filling Appointments.—Every position or employment in the police force or as paid operators of fire apparatus, except that of chief of police or chief of the fire department, or equivalent, shall be filled only in the following manner: the council shall notify the commission of any vacancy which is to be filled and shall request the certification of a list of eligibles. The commission shall certify for each existing vacancy from the eligible list, the names of three persons thereon, or a lesser number where three are not available, who have received the highest average. The council shall thereupon, with sole reference to the merits and fitness of the candidates, make an appointment from the three names certified, unless they make objections to the commission as to one or more of the persons so certified for any of the reasons stated in section 1183 of this act. Should such objections be sustained by the commission, as provided in said section, the commission shall thereupon strike the name of such person from the eligible list and certify the next highest name for each name stricken off. As each subsequent vacancy occurs in the same or another position precisely the same procedure shall be followed.

In the case of a vacancy in the office of chief of police or chief of the fire department, or equivalent official, the appointive power may nominate a person to the commission. It shall thereupon become the duty of the commission to subject such person to a non-competitive examination, and if such person shall be certified by the commission as qualified, he may then be appointed to such position, and thereafter shall be subject to all the provisions of this subdivision.

Section 1185. Age, Applicant's Residence.—No person shall be eligible to apply for examination unless he is at least twenty-one years of age at the date of application. An applicant need not be a resident of the borough. The council of the borough may authorize the commission, by rule or regulation, to require policemen and firemen to become residents of the borough after appointment to such positions.

Section 1186. Probationary Period.—All original appointments to any position in the police force or as paid operators of fire apparatus shall be for a probationary period of not less than six months, and not more than one year, but during the probationary period an appointee may be dismissed only for a cause specified in section 1183 of this act. If at the close of a probationary period the conduct of fitness of the probationer has not been satisfactory to the council, the probationer shall be notified in <sup>1</sup> writing that he will not receive a permanent appointment. Thereupon, his appointment shall cease; otherwise his retention shall be equivalent to a permanent appointment.

Section 1187. Provisional Appointments.—Whenever there are urgent reasons for the filling of a vacancy in any position in the police force and there are no names on the eligible list for such appointment, the council may nominate a person to the commission for noncompetitive examination, and if such nominee shall be certified by the commission as qualified after such noncompetitive examination, he may be appointed provisionally to fill such vacancy. It shall thereupon become the duty of the commissioner within three weeks to hold a competitive examination and certify a list of eligibles and a regular appointment shall then be made from the name or names submitted by the commission: Provided, That nothing herein contained shall prevent the appointment, without examination, of persons, temporarily as police officers in cases of riot or other emergency or as operators of fire apparatus in emergency cases.

Section 1188. Promotions.—Promotions shall be based on merit to be ascertained by examinations to be prescribed by the commission. All questions relative to promotions shall be practical in character and such as will fairly test the merit and fitness of persons seeking promotion.

The council shall have power to determine in each instance whether an increase in salary shall constitute a promotion.

Section 1189. Physical Examination.—All applicants for examination shall undergo a physical examination which shall be conducted under the supervision of a physician appointed by the commission. No person shall be eligible for appointment until such physician certifies that the applicant is free from any bodily or mental defect, deformity or disease

<sup>1</sup> "writitng" in original.



that might <sup>1</sup>incapacitate him for the discharge of the duties of the position desired.

Section 1190. Removals.—No person employed in any police or fire force of any borough shall be suspended, removed or reduced in rank except for the following reasons :

(1) Physical or mental disability affecting his ability to continue in service, in which cases the person shall receive an honorable discharge from service.

(2) Neglect or violation of any official duty.

(3) Violation of any law which provided that such violation constitutes a misdemeanor or felony.

(4) Inefficiency, neglect, intemperance, immorality, disobedience of orders, or conduct unbecoming an officer.

(5) Intoxication while on duty.

(6) Engaging or participating in conducting of any political or election campaign otherwise than to exercise his own right of suffrage.

A person so employed shall not be removed for religious, racial or political reasons. A written statement of any charges made against any person so employed shall be furnished to such person within five days after the same are filed.

If for reasons of economy or other reasons it shall be deemed necessary by any borough to reduce the number of paid employes of the police or fire force, then such borough shall apply the following procedure: (i) if there are any employes eligible for retirement under the terms of any retirement or pension law, then such reduction in numbers shall be made by retirement of such employes, starting with the oldest employee and following in order of age respectively, (ii) if the number of paid employes in the police force eligible to retirement is insufficient to effect the necessary reduction in numbers, or if there are no persons eligible for retirement, or if no retirement or pension fund exists, then the reduction shall be effected by furloughing the man or men, including probationers, last appointed to the respective force. Such removal shall be accomplished by furloughing in numerical order commencing with the man last appointed until such reduction shall have been accomplished. In the event the said police force shall again be increased the employes furloughed shall be reinstated in the order of their seniority in the service.

Section 1191. Hearings on Dismissals and Reductions.—If the person suspended, removed or reduced in rank shall demand a hearing by the commission, the demand shall be made to the commission. Such person

<sup>1</sup> "incapacite" in original.

may make written answers to any charges filed against him not later than the day fixed for hearing. The <sup>1</sup>commission shall grant him a hearing which shall be held within a period of ten days from the filing of charges in writing, unless continued by the commission for cause at the request of the council or the accused. At any such hearing, the person against whom the charges are made may be present in person and by counsel. The council may suspend any such person, without pay, pending the determination of the charges against him, but in the event the commission fails to uphold the charges, then the person sought to be suspended, removed or demoted shall be reinstated with full pay for the period during which he was suspended, removed or demoted, and no charges shall be officially recorded against his record. A stenographic record of all testimony taken at such hearings shall be filed with, and preserved by, the commission, which record shall be sealed and not be available for public inspection in the event the charges are dismissed.

All parties concerned shall have immediate right of appeal <sup>2</sup> to the court of common pleas of the county, and the case shall there be determined as the court deems proper. No order of suspension made by the commission shall be for a longer period than one year. Such appeal shall be taken within sixty days from the date of entry by the commission of its final order and shall be by petition. Upon such appeal being taken and docketed, the court of common pleas shall fix a day for a hearing and shall proceed to hear the appeal on the original record and such additional proof or testimony as the parties concerned may desire to offer in evidence. The decision of the court affirming or revising the decision of the commission shall be final, and the employe shall be suspended, discharged, demoted or reinstated in accordance with the order of court.

The council and the person sought to be suspended, removed or demoted shall at all times have the right to employ counsel before the commission and upon appeal to the court of common pleas, and shall have the further right of appealing to the Superior or Supreme Court in the manner provided by law.

Section 1192. *Employes Exempted.*—All appointments in the police or fire forces of boroughs, including the chief of police or equivalent official, prior to the creation of a commission, shall continue to hold their positions and shall not be required to take any examination under the provisions of this subdivision, except such as may be required for

<sup>1</sup> "cvmmission" in original.

<sup>2</sup> "of" in original.

promotion: Provided, That this section shall not be construed to apply to persons employed temporarily in emergency cases.

**Section 1193. Discrimination on Account of Political or Religious Affiliations.**—No question in any form of application for examination or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall inquiry be made concerning such opinion or affiliations and all disclosures thereof shall be discountenanced.

No discrimination shall be exercised, threatened or promised by any person against or in favor of any applicant or employe because of political or religious opinions or affiliations or race, and no offer or promise or reward, favor or benefit, directly or indirectly, shall be made to or received by any person for any act done or duty omitted or to be done under this subdivision of this article.

**Section 1194. Penalty.**—Any councilman who, by his vote, causes to be appointed any person to the police force or as a fire apparatus operator contrary to the provisions of this subdivision, or any councilman or member of the commission who wilfully refuses to comply with, or conform to, the provisions of subdivision (j) of this article, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding one hundred dollars (\$100), or suffer imprisonment not exceeding three months, or both.

**Section 1195. Police Force and Fire Apparatus Operators Defined.**—Police force as used in subdivision (j) of this article shall mean a police force organized and operating as prescribed by law, the members of which devote their normal working hours to police duty or duty in connection with the bureau, agencies and services connected with police protection work, and who are paid a stated salary or compensation for such work by the borough. Police force as used in this subdivision shall not include:

- (1) Any special police appointed by the mayor to act in emergencies,
- (2) Any person appointed solely for parking meter enforcement duties,
- (3) Any special school police,
- (4) Any extra police serving from time to time or on an hourly or daily basis, or,
- (5) Any auxiliary policeman appointed under the act of January 14, 1952 (P. L. 2016).

Fire apparatus operators as used in this subdivision (j) of this article shall mean any person who <sup>1</sup>operates fire apparatus and devotes his normal working hours to operating any piece of fire apparatus or other

<sup>1</sup>“opeartes” in original.

services connected with fire protection work, and who is paid a stated salary or compensation for such work done by the borough.

(k) Independent Auditor

Section 1196. General Powers and Duties of Independent Auditor.—

(a) The independent auditor shall annually examine, audit and settle all accounts whatsoever in which the borough is concerned and the audit shall consist of an examination in accordance with generally accepted auditing standards and shall include such tests of the accounting records and such other auditing procedures as he considers necessary in the circumstances.

(b) The independent auditor shall audit the accounting records of the borough for the fiscal year and shall prepare a report on the examination which shall set forth:

(1) The scope of his examination,

(2) His opinion of the fairness of the presentation of the financial statement of the borough which shall show a complete statement of the financial condition of the borough, giving in detail the actual indebtedness, the amount of the funded debt, the amount of the floating debt thereof, the valuation of taxable property therein, the assets of the borough with the character and value thereof, and the date of maturity of the respective forms of funded debt thereof, and

(3) The amount of any balance or shortage or any expenditure of any kind, or made in a manner, prohibited or not authorized by a statute which came to his attention during the course of his examination and which, in his opinion, causes a financial loss to the borough which loss is material in relation to the receipts and disbursements of the borough, and such amount shall be a surcharge against any officer against whom such balance or shortage shall appear.

(c) The amount of any balance or shortage, or of any expenditure of a kind, or made in a manner, prohibited or not authorized by statute, which causes a financial loss to the borough, shall be a surcharge against any officer against whom such balance or shortage shall appear, or who by vote, act, or neglect, has permitted or approved such expenditure, but no elected or appointed official of a borough shall be surcharged for any act, error or omission in excess of the actual financial loss sustained by the borough, and any surcharge shall take into consideration as its basis the results of such act, error or omission and the results had the procedure been strictly according to law. The provisions hereof limiting the amount of any surcharge shall not apply to cases involving fraud or collusion on the part of officers, nor to any penalty enuring to the benefit or payable to the Commonwealth.

(d) In any matter involving any financial transaction, any official knowingly and wilfully acting contrary to law, or, knowingly and wilfully failing to act as required by law, is guilty of a <sup>1</sup> misdemeanor, and on conviction thereof, may be sentenced to a fine not exceeding one hundred dollars (\$100), and his office may be forthwith declared vacant as may seem meet and just to the court passing sentence.

(e) It shall be the duty of the <sup>2</sup> independent auditor:

(1) To file a copy of the report with the secretary of the borough and the clerk of the court of quarter sessions of the county and the Department of Internal Affairs not later than the fifteenth day of April, and

(2) To publish within ten days thereafter, by advertisement in at least one newspaper of general circulation published in the borough, or if no such newspaper is published in the borough, then in such a newspaper circulating in the borough, a concise financial statement setting forth the balance in the treasury at the beginning of the fiscal year, all revenues received during the fiscal year by major classifications, all expenditures made during the fiscal year by major functions, and the current resources and liabilities of the borough at the end of the fiscal year, the gross liability and net debt of the borough, the amount of the assessed valuation of the borough, the assets of the borough with the character and value thereof, the date of the last maturity of the respective forms of funded debt, and the assets in each sinking fund. The independent auditor shall make his report on the uniform form prepared pursuant to article XIII of this act. Such publication shall be deemed compliance with the provisions of the act of June 25, 1941 (P. L. 159), known as the "Municipal Borrowing Law," which requires the corporate authorities of boroughs to publish an annual statement of indebtedness.

(f) The compensation of the independent auditor shall be determined by council and paid out of borough funds.

Section 1197. Appeals From Report of Independent Auditor.—Appeals may be taken from the settlement and audit of the independent auditor as shown in the independent auditor's report to the court of common pleas of the county, by the same persons, in the same manner, within the same time, subject to the same conditions and procedure, and with like effect in every respect, as in this act <sup>3</sup> provided in the cases of appeals from the settlement and audit of elected auditors.

Section 1198. Balances Due to be Entered as Judgments.—Any

<sup>1</sup> "misdemeaor" in original.

<sup>2</sup> "indepedent" in original.

<sup>3</sup> "provived" in original.

balance, in any report of the independent auditor, against any officer of the borough, shall constitute a surcharge against such officer, as fully as if expressly stated in said report to be a surcharge, and the amount of any such balance, and of any express surcharge, shall, if no appeal is taken, or after an appeal has been finally determined, be entered by the prothonotary as a judgment, against such officer and in favor of the borough, the clerk of the court of quarter sessions shall certify the amount of every balance or surcharge, contained in any such report, from which no appeal has been taken within time herein provided, to the court of common pleas, for entry thereof by the prothonotary as a judgment. Any taxpayer of the borough may enforce the collection thereof, for the benefit of the borough, by action or execution, upon filing in the court of common pleas a bond, in the sum of five hundred dollars (\$500) with one or more sureties, conditioned to indemnify the borough from all costs which may accrue in the proceedings undertaken by such taxpayer, subject, however, to all rights of appeal from the report of independent auditors granted by this act. If any person or persons have been, or shall be, surcharged for an illegal purchase, and no fraud or collusion is shown and the surcharge is paid to the borough, then the articles purchased shall become the property of the person or persons surcharged.

Section 1199. Employment of Attorney, Compelling Attendance of Witnesses, Administration of Oath, Penalties and Settlement of Accounts.—(a) The independent auditor, with the consent of the borough council, may employ an attorney whenever the same is deemed advisable by him and the compensation of such attorney shall be determined by the borough council and shall be payable by the borough out of the general funds of the borough.

(b) The independent auditor of each borough shall have power to issue subpoenas to obtain the attendance of the officers whose accounts he is required to adjust, their executors and administrators, and of any persons whom it may be necessary to examine as witnesses, and to compel their attendance. If any person shall refuse or neglect to appear or testify, the independent auditor shall petition the court of common pleas of the county to issue <sup>1</sup> a subpoena to such person and to require him to appear and to testify before the court. The court shall issue such subpoena if it deems the testimony relevant to the issue.

(c) The independent auditor shall have power to administer oaths and affirmations to all persons brought or appearing before him, whether accountants, witnesses, or otherwise. All persons guilty of swearing or

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<sup>1</sup> "as" in original.

affirming falsely on such examination shall be liable to the pains and penalties of perjury.

(d) If any person, appearing before such independent auditor for examination, shall refuse to take such oath or affirmation, or, after having been sworn or affirmed, shall refuse to make answer to such questions as shall be put to him by the independent auditor touching the accounts or the official conduct of such public officers or any of them, then the independent auditor may petition the court to issue its subpoena as hereinbefore provided.

(e) Witnesses, other than officers of the borough, attending before the independent auditor and persons or officers serving subpoenas shall be paid out of the borough treasury, upon orders drawn on the borough treasury, pursuant to authorization by the independent auditor, the same fees as are payable for rendering similar services in civil proceedings before a justice of the peace, and the amount thereof shall be made a part of the charge against any officer who shall be charged by the independent auditor with any balance: Provided, that any such costs shall have been incurred in establishing said balance. Upon collection of any such costs from any officer, they shall be repaid into the borough treasury.

(f) If any person in possession of books, vouchers, or papers, relative to public accounts before independent auditor, shall refuse to produce the same or, if any officer whose accounts are to be settled and adjusted by such independent auditor refuses to attend or submit to examination as is hereinbefore directed, the independent auditor may proceed, by the examination of witnesses and other evidence, to ascertain and settle as near as may be, the amount of public money received by such officer and its application to public purposes or otherwise.

## ARTICLE XII CORPORATE POWERS

Section 1201. General Powers.—A borough may:

- (1) Have succession perpetually by its corporate name.
- (2) Sue and be sued, and complain and defend in the courts of the Commonwealth.
- (3) Make and use a common seal, and alter the same at pleasure.
- (4) Purchase, acquire by gift, or otherwise, hold, lease, let and convey, by sale or lease, such real and personal property as shall be deemed to be to the best interest of the borough: Provided, That no real estate owned by the borough shall be sold for a consideration in excess of five hundred dollars (\$500), except to the highest bidder after due notice by advertisement for bids in one newspaper of general circulation in the bor-

ough. Such advertisement shall be published once not less than ten days prior to the date fixed for the opening of bids, and such date for opening bids shall be announced in such advertisement. The acceptance of bids shall be made only by public announcement at a regular or special meeting of council. All bids shall be accepted on the condition that payment of the purchase price in full shall be made within sixty days of the acceptance of bids.

Except as otherwise hereinafter provided in the case of personal property of an estimated sale value of less than two hundred dollars (\$200), no borough personal property shall be disposed of, by sale or otherwise, except upon approval of council, by ordinance or resolution. In cases where council shall approve a sale of such property, it shall estimate the sale value of the entire lot to be disposed of. If council shall estimate the sale value to be two hundred dollars (\$200) or more, the entire lot shall be advertised for sale once, in at least one newspaper of general circulation in the borough, not less than ten days prior to the date fixed for the opening of bids, and such date of opening of bids shall be announced in such advertisement, and sale of the property so advertised shall be made to the best responsible bidder. Council shall have authority, by resolution, to adopt a procedure for the sale of surplus personal property of an estimated sale value of less than two hundred dollars (\$200) and the approval of council shall not be required for any individual sale that shall be made in conformity to such procedure.

The provisions of this clause shall not be mandatory where borough property is to be traded in or exchanged for new borough property.

The provisions of this clause requiring advertising for bids and sale to the highest bidder shall not apply where borough real or personal property is to be sold to a municipal authority pursuant to the Municipality Authorities Act of 1945, is to be sold to a non-profit corporation engaged in community industrial development or where real property is to be sold to a person for his exclusive use in an industrial development program.

(5) To invest in or purchase bonds of any municipal authority or parking authority created solely by the borough, for the purpose either of investment or of possible retirement of such bonds and acquisition of authority projects at an earlier date than originally contemplated, using for the purpose either surplus funds of the borough or money appropriated in the annual budget for the purpose.

Section 1202. Specific Powers.—The powers of the borough shall be vested in the corporate authorities. Among the specific powers of the borough shall be the following, and in the exercise of any of such



powers involving the enactment of any ordinance or the making of any regulation, restriction or prohibition, the borough may provide for the enforcement thereof and may prescribe penalties for the violation thereof or for the failure to conform thereto:

(1) Fees for service of officers. To prescribe reasonable fees for the services of their officers and to enforce the payment of the same.

(2) Regulation of charges in the operation of its utilities, parking meters, parking lots or its other facilities and services to the public. In the operation of its utilities, parking meters, parking lots, and other facilities and services, to make and regulate charges therefor for general borough purposes in relief of taxes on real estate.

(3) Fines and forfeitures. To impose fines and penalties, incurring partial or total forfeiture, or to remit the same.

(4) Nuisances. To prohibit and remove any obstruction or nuisance in the streets of the borough.

(5) Nuisances and dangerous structures. To prohibit and remove any nuisance, including but not limited to accumulations of garbage and rubbish and the storage of abandoned or junked automobiles and to prohibit and remove any dangerous structure on public or private grounds, or to require the removal of any such nuisance or dangerous structure by the owner or occupier of such grounds, in default of which the borough may cause the same to be done, and collect the cost thereof, together with a penalty of ten percent of such cost, in the manner provided by law for the collection of municipal claims, or by action of assumpsit, or may seek relief by bill in equity.

(6) Health and cleanliness regulations. To make such regulations as may be necessary for the health, safety, morals, general welfare and cleanliness and the beauty, convenience, comfort and safety of the borough.

(7) Burial of deceased persons. To prohibit, within the borough limits, or within any described territory within such limits, the burial or interment of deceased persons.

(8) Regulation of vaults, cesspools and drains. To make regulations respecting vaults, cesspools and drains.

(9) Manure and compost regulations. To make regulations relative to the accumulation of manure, compost and the like.

(10) Accumulations of garbage and other refuse material. To prohibit accumulations of garbage or other refuse material upon private property and to provide for the removal of prohibited accumulations of garbage or other refuse material.

(11) Removal of garbage and other refuse material. To make regula-

tions for the care and removal of garbage and other refuse material, including the imposition and collection of reasonable fees and charges therefor.

(12) Hogs. To prohibit the keeping of hogs within the borough, or within any part of the borough.

(13) Dogs, cats and other pets. To destroy dogs found at large contrary to laws of the Commonwealth; to prohibit or regulate, by ordinance, the running at large of dogs, cats and/or other pets, and, in the enforcement of such regulations, to direct the killing of dogs, cats and/or other pets, or their seizure and detention, prescribing reasonable charges for their seizure and detention, and to provide for their sale for the benefit of the borough, in default of the redemption thereof by their owners.

(14) Livestock, fowls and certain other animals. To prohibit and regulate the running at large of livestock and fowls and any other animals not covered in clause (13) hereof, and to authorize their seizure and detention, prescribing reasonable charges therefor, and to provide for their sale for the benefit of the borough, in default of the redemption thereof by their owners.

(15) Pigeons. To authorize or provide for the destruction or killing of unowned pigeons within the geographical limits of the borough by any humane means.

(16) Smoke regulations. To regulate the emission of smoke from chimneys, smokestacks and other sources. This clause shall not apply to locomotive smokestacks.

(17) Street and sewer regulations; obstructions. To regulate the streets, sewers, public squares, common grounds, sidewalks, curbs, gutters, culverts and drains, and the heights, grades, widths, slopes and construction thereof; and to prohibit the erection or construction of any building or other obstruction to the convenient use of the same.

(18) Riding or driving on sidewalks. To prohibit or regulate the riding or driving of animals, or the passage of any vehicle, over, along and across sidewalks.

(19) Stands for cabs and other vehicles for hire. To establish stands for cabs and other vehicles for hire, to establish charges therefor, and to enforce the observance and use thereof.

(20) Disorderly conduct; disturbance of the peace; ordinances. To adopt ordinances defining disorderly conduct and/or disturbing the peace within the limits of the borough, and to provide for the imposition of penalties for such conduct in such amounts, without limitation except as in this act provided, as council shall establish, and notwithstanding

any statutes of the Commonwealth upon <sup>1</sup> disorderly conduct and/or disturbing the peace and the penalties therefor.

(21) Fire regulations; fire prevention codes by reference. To make regulations, within the borough, or within such limits thereof as may be deemed proper, relative to the cause and management of fires and the prevention thereof. To enact and enforce suitable fire prevention codes, and to provide for the enforcement thereof by a suitable fine, and by instituting appropriate actions or proceedings, at law or in equity, to effect the purposes of this provision and ordinances thereunder. Such fire prevention code shall not be advertised by publication of the full text thereof, and, in place of such complete advertisement, an informative notice of intention to consider such proposed fire prevention code, and a brief summary, setting forth the principal provisions of such proposed fire prevention code in such reasonable detail as will give adequate notice of its contents and a reference to the place or places within the borough where copies of such proposed fire prevention code may be examined or obtained shall be published in the manner and within the time limit provided by this act for publication of notice of other proposed ordinances.

The fire prevention code may be adopted by reference to a standard fire prevention code, or to parts thereof, determined by council, or the provisions of the code may be supplied by reference to a typed or printed fire prevention code, prepared under the direction of or accepted by the council, or the provisions may consist of a standard code, or parts thereof, and also further provisions typed or printed as aforesaid. Copies of the fire prevention code thus adopted by reference shall be made available to any interested party at the cost thereof, or may be furnished or loaned without charge. Such fire prevention code need not be recorded in or attached to the ordinance book, but it shall be deemed to have been legally recorded if the ordinance by which such fire prevention code was adopted by reference shall have been recorded, with an accompanying notation stating where the full text of the fire prevention code shall have been filed.

(22) Prohibition of fire producing devices in certain retail stores. To prohibit the smoking or carrying of lighted cigarettes, cigars, pipes or matches, and the use of matches or fire-producing devices, in retail stores arranged to accommodate one hundred persons or more or which employ ten or more persons. Any ordinance enacted under this clause shall not prohibit smoking in any restaurant, rest room, beauty parlor, executive office or any room designated for smoking in such store.

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<sup>1</sup> "disordely" in original.

(23) Dangerous and inflammable articles, substances and materials. To prohibit the manufacture, sale or storage of inflammable or otherwise dangerous articles, substances or materials; to prescribe the quantities of any such articles, substances or materials that may be kept in any location and/or building; and to prescribe such other safeguards as may be necessary.

(24) Building, housing and plumbing regulations. To enact and enforce ordinances relating to buildings and housing, their construction, alteration, extension, repair and maintenance and all facilities and services in or about such buildings or housing, to require that, before any work of construction, alteration, extension, or repair of any building is begun, approval of the plans and specifications therefor be secured; to provide for the inspection of such work of construction, alteration, extension and repair, including the appointment of one or more building inspectors and/or housing inspectors; to prescribe limits wherein none but buildings of noncombustible material and fireproof roofs shall be erected, or substantially reconstructed, or moved thereinto; to provide for enforcement of such regulations by a reasonable fine, and by instituting appropriate actions or proceedings at law, or in equity, to effect the purposes of this provision and ordinances enacted thereunder. Any building or housing or part thereof erected, altered, extended, reconstructed or removed, contrary to any of the provisions of any ordinance passed for any of the purposes specified in this clause is declared to be a public nuisance and abatable as such.

Any such ordinance may be adopted by <sup>1</sup> reference to a standard building code or housing code, or to parts thereof, determined by council, or the provisions of the ordinance may be supplied by reference to a typed or printed building code, or housing code, prepared under the direction of or accepted by council, or the provisions may consist of a standard building code or housing code, or parts thereof, and also further provisions typed or printed as aforesaid. Such building code or housing code shall not be advertised by publication of the full text thereof, and, in place of such complete advertisement, an informative notice of intention to consider such proposed building code or housing code, and a brief summary, setting forth the principal provisions of such proposed building code or housing code in such reasonable detail as will give adequate notice of its contents and a reference to the place or places within the borough where copies of such proposed building code or housing code may be examined or obtained shall be published in the manner and within the time limit provided by this act for publication

<sup>1</sup> "refernce" in original.

of notice of other proposed ordinances. Copies of the building code or housing code thus adopted by reference shall be made available to any interested party at the cost thereof, or may be furnished or loaned without charge. Such building code or housing code need not be recorded in or attached to the ordinance book, but it shall be deemed to have been legally recorded if the ordinance by which such building code or housing code was adopted by reference shall have been recorded, with an accompanying notation stating where the full text of such building code or housing code shall have been filed. The procedure set forth relating to the adoption of the building code or housing code, by reference, may likewise be adopted in amending, supplementing or repealing any of the provisions of the building code or housing code.

To enact suitable ordinances relating to plumbing, in the same manner and to the same effect as herein provided for building and housing codes. The building code, the housing code and the plumbing code may be combined or separately enacted.

Any housing ordinance previously enacted by a borough which provides for the purposes authorized by this clause is hereby validated.

(25) Numbering buildings. To require and regulate the numbering of buildings.

(26) Building lines. To establish and maintain uniform building lines upon any or all streets of the borough.

(27) Party wall and fence regulations. To make regulations respecting partition fences and the foundations and party walls of buildings.

(28) Noxious and offensive businesses. To prohibit, within the borough, the carrying on of any manufacture, art, trade, or business which may be noxious or offensive to the inhabitants.

(29) Junk yards. To prohibit, regulate and license the establishment and maintenance of junk yards, salvage yards and other places used and maintained for the collection, storage and disposal of used or second-hand goods and materials.

(30) Regulating and prohibiting amusements. To regulate, license, fix the time of opening and closing, or prohibit theatrical exhibitions, amusements and dances, at which an admission or other fee is charged, and other exhibitions; to regulate, license and fix the time of opening and closing of pool-rooms, billiard-rooms, shooting galleries, skating rinks and bowling alleys.

(31) Markets, market houses, peddling and milk inspection. To regulate markets and peddling, whether for individual use or for resale, and to provide for the inspection of milk; and to purchase and own ground for and to erect, establish and maintain market houses and

market places, for which latter purposes, parts of any streets or sidewalks may be temporarily <sup>1</sup> used; to contract with any person or persons, or association of persons, companies, or corporations, for the erection, maintenance and regulation of market houses and market places, on such terms and conditions, and in such manner, as the council may prescribe; to provide and enforce suitable regulations respecting said market houses and market places and to provide for the payment of the cost or expense thereof, either in whole or in part, out of the funds of the borough; and to levy and collect a suitable license fee from every person who may be authorized by council to occupy any portion of said market houses or market places, or any portion of the streets or sidewalks for temporary market purposes.

(32) Creation of special funds; investments. To set aside in a separate fund any moneys received out of or from the sale, lease, or other disposition of any borough property or received from any source other than taxation, unless such money was received or acquired for a particular purpose. Such fund shall be controlled, invested and administered, and the income arising therefrom expended, in such manner as may be <sup>2</sup> determined by action of the council pursuant to the ordinance creating the fund. Such ordinance may provide that only the income from such fund may be used or expended, and that neither principal, not any part thereof, may be used or expended unless upon authorization of a majority vote of the qualified electors of the borough. All ordinances heretofore enacted and ordained by any borough, creating and establishing such a separate fund as is authorized by this clause, shall be deemed and taken as valid and effectual for all purposes: Provided, That all other requirements of law concerning the enactment of the same have been complied with.

(33) Creation of capital reserve fund for anticipated capital expenditures. To create and maintain a separate capital reserve fund for anticipated legal capital expenditures. The money in the fund shall be used, from time to time, for the construction, purchase or replacement of or addition to municipal buildings, equipment, machinery, motor vehicles or other capital assets of the borough and for no other purpose.

Council may appropriate moneys from the general borough funds to be paid into the capital reserve fund or place in the fund any moneys received from the sale, lease or other disposition of any borough property or from any other source, unless received or acquired for a particular

<sup>1</sup> "use" in original.

<sup>2</sup> "determined" in original.

purpose. The fund shall be controlled, invested, reinvested and administered and the moneys expended for any of the purposes for which the fund is created in such manner as may be determined by council. The money in the fund, when invested, shall be invested in securities designated by law as legal investments for sinking funds of municipalities.

This clause shall not be construed to limit the powers of the borough to the use of moneys in the capital reserve fund in making lawful capital expenditures.

(34) Joint municipal agreements. To enter into agreements with other political subdivisions, in <sup>1</sup> accordance with existing laws, in making joint purchases of materials, supplies or equipment and in performing governmental powers, duties and functions and in carrying into effect provisions of law relating to said subjects which are common to such political subdivisions.

(35) Joint contracts for police and fire protection. To enter into contracts with the proper authorities of near or <sup>2</sup> adjacent cities, boroughs, or townships, either for mutual aid or assistance in police and fire protection, or for the furnishing to or, receiving from, such cities, boroughs, or townships, aid and assistance in police and fire protection, and to make appropriations therefor: Provided, That in connection with such contracts, it shall not be necessary to advertise for bids or receive bonds as required for other contracts under existing law. When any such contract has been entered into the police, firemen or fire police of the employing city, borough or township shall have all the powers and authority conferred by law on city, borough or township police, firemen, or fire police in the territory of the city, borough or township which has contracted to secure such service.

(36) Insurance on property. To make contracts of insurance, with any mutual or other fire insurance company, association or exchange, duly authorized by law to transact insurance business in the Commonwealth of Pennsylvania, on any building or property owned by the borough.

(37) Other insurance. To appropriate such amount as may be necessary to secure insurance or compensation for volunteer firemen of companies duly recognized by the borough, by motion or resolution, killed or injured while going to, returning from, or attending fires, or while performing their duties as special fire police. To make contracts of insurance with any insurance company, association or exchange, authorized to transact business in the Commonwealth, insuring borough employes, or any class, or classes thereof, or their dependents, under

<sup>1</sup> "accordance" in original.

<sup>2</sup> "ajacent" in original.

a policy or policies of insurance covering life, health, hospitalization, medical and surgical service and/or accident insurance, and to contract with any such company, granting annuities or pensions, for the pensioning of borough employes, or any class, or classes thereof, and to agree to pay part or all of the premiums or charges for carrying such contracts, and to appropriate moneys from the borough treasury for such purposes. To make contracts with any insurance company, association or exchange, authorized to transact business in this Commonwealth, insuring any public liability of the borough, and to appropriate moneys from the borough treasury for such purpose.

(38) Contract with railways. To enter into contract with any person or company, operating a street passenger railway, surface, elevated, or underground, or furnishing motor transportation, or leasing and operating the franchise and property of such person or company, within the limits of the borough, regulating the franchises, powers, duties and liabilities of such persons or companies, and the respective rights of the contracting parties. Such contracts may, inter alia, provide for payments by the persons or companies to the borough, in lieu of the performance of certain duties, or the payment of license fees or charges imposed in favor of such borough, or by the charters of any such companies, or by any general law, or ordinances; for the appointment by the borough of a certain number of persons to act as director of any such company, in conjunction with the directors elected by the stockholders of such company; and may further provide for the ultimate acquisition by the borough, upon terms mutually satisfactory, of the leaseholds, property and franchises of the contracting persons or companies.

Subject to the approval of the Public Utility Commission, and in order to secure the removal of any street railway tracks, or to prevent the laying of any tracks authorized to be laid, or to change the route of any street railway on any street to enter into a contract with a street railway or motor power company, owning, leasing, or operating such tracks, for a period not to exceed fifty years, for such considerations and upon such conditions as may be agreed upon.

Such contract may include a covenant providing that, during the continuance thereof, municipal consent shall not be granted to any other company to use, for street railway or passenger transportation purposes, any streets covered by such contract. Such covenant may be enforced by bill in equity against the borough. The contract may also provide for the laying or relaying of tracks, upon such terms and upon such conditions as may be agreed upon.



(39) Water supply. To provide a supply of water and to make regulations for the protection of the pipes, reservoirs and other constructions or apparatus; to prevent the waste of water so supplied, and to regulate the drilling of wells within the borough.

(40) Community buildings. To purchase and own ground for, and to erect, establish, or purchase a building, to be used for community purposes, and to maintain the same; to provide for the payment of the cost thereof, and the expense of such maintenance either in whole or in part out of the funds of the borough.

(41) Lockup. To provide a lockup for the temporary detention of persons.

(42) Flags. To display the flag of the United States of America, of the Commonwealth of Pennsylvania, or of any county, city, borough or other municipality in the State, on the public buildings and in public places of the borough.

(43) Comfort stations. To use land owned by the borough and to acquire or lease land or land and buildings within the borough limits, for the purposes of construction or of providing comfort and waiting stations and drinking fountains and to maintain such public facilities; to contribute to the maintenance of any such public facilities which may be located in or upon property not owned or leased by the borough. The damages accruing to abutting properties, by reason of any such improvements constructed or provided by the borough, shall be ascertained and collected in the manner provided in the laws governing eminent domain.

(44) Watering troughs. To erect and maintain watering troughs.

(45) Garbage and refuse disposal facilities. To erect, operate and maintain garbage plants, either within or without the limits of the borough, or to provide other means for the collection, destruction, or removal of garbage and other refuse material, and to provide for the payment of the cost or expense thereof, either in whole or in part, out of the funds of the borough.

(46) Parking lots. To acquire by lease, purchase or eminent domain any land which the corporate authorities may deem necessary or desirable for the purpose of establishing and maintaining parking lots, and to regulate the use thereof, and to regulate parking and provide parking accommodations so as to promote the convenience and protection of the public. The right to regulate the use of the lots shall include the right to impose fines and fees for violation of any law or ordinance regulating parking.

(47) Inclined planes. To acquire by purchase, lease, or otherwise, any existing inclined plane passenger and vehicular traffic transportation

facilities, and to maintain and operate the same in the transportation of passengers and vehicles for hire, and for the accommodation of the public, and in like manner to acquire or to establish bus feeder lines, and to maintain and operate the same in connection with such inclined plane passenger and vehicular traffic transportation facilities.

(48) Historical property. To acquire by purchase, or by gift, and to repair, supervise, operate and maintain ancient landmarks, and other property of historical or antiquarian interest.

(49) Provisions against hazards of war. To build or establish bomb shelters or assist in so doing to provide against all hazards of war and their consequences; and for all such purposes, to have the power of eminent domain, to cooperate with any other unit and agency of government, Federal, State or local, in every lawful way, for purposes of defense against the hazards of war.

(50) Street lighting. To provide street lights and to make regulations for the protection thereof; and, upon the petition of a majority of abutting property owners of the section affected, to provide for the ornamental illumination of any section of the borough and to collect the cost of the installation of such illumination from the owners of property fronting the streets upon which the same is installed by the foot-front rule.

(51) Towing equipment. To purchase vehicles and other equipment necessary for the towing of motor vehicles, tractors, and other vehicles from roads, streets, and public property of the borough and to impose fees therefor whenever such towing equipment is used for the lawful removal of motor vehicles and other vehicles from highways, roads, streets, and public property of the borough and/or to authorize or contract with one or more commercial towers as the official towers for the borough for the lawful removal of motor vehicles, tractors and other vehicles from highways, roads, streets and public property of the borough and to impose fees in the same manner as hereby authorized when the towing is performed with borough vehicles and equipment.

(52) Fire, rescue and life saving apparatus and houses. To purchase, or contribute to the purchase of fire engines and fire apparatus, boats, rescue and life saving equipment and supplies for the use of the borough, and to appropriate money to fire companies, rescue units and for the construction, repair and maintenance of fire company and rescue units houses, including the acquisition of land for such purposes.

(53) Eminent domain for national guard purposes. To take, by right of eminent domain, for the purpose of appropriating to themselves for the use of the National Guard of Pennsylvania, such public lands, easements, and public property, as may be in their possession or control

and used or held by them for any other purpose. Such right, however, shall not be exercised as to any street or wharf.

(54) Lands for armory purposes. To acquire, by purchase or by gift or by the right of eminent domain, any land for the use of the National Guard of Pennsylvania; to convey such lands so acquired to the Commonwealth of Pennsylvania in order to assist the Armory Board in the erection of armories. The power conferred by this clause shall not be exercised to take any church property, graveyard, cemetery, or any dwelling-house or the curtilage of the same in the actual occupancy of the owner.

(55) Appropriation of money, et cetera, to assist in erection of armories. To appropriate money or convey land, either independently or in conjunction with any county, city, town, borough, or other municipal division of the Commonwealth of Pennsylvania for the purpose of assisting the Armory Board of the Commonwealth in the erection of armories for the use of the national guard; and to furnish water, sewer service, light, or fuel, free of cost, to the Commonwealth for use in any armory of the national guard; and to do all things necessary to accomplish the purpose of this clause.

(56) Support of national guard units. To appropriate annually a sum not exceeding seven hundred and fifty dollars (\$750) for the support and maintenance, discipline and training of any dismounted company or similar unit of the national guard, and a sum not to exceed fifteen hundred dollars (\$1500) for the support and maintenance of any mounted or motorized troop or similar unit of the national guard. Where such units are organized as a battalion, regiment or similar organization, the total amount due may be paid to the commanding officer of the battalion, regiment or similar organization. Any moneys so appropriated shall be paid by warrant drawn to the order of the commanding officer of such company, battalion, regiment or similar organization, only when it shall be certified to the borough, by the Adjutant General of the State, that the said company or companies have satisfactorily passed the annual inspection provided by law. The moneys so appropriated shall be used and expended solely and exclusively for the support and maintenance, discipline and training of the said company, battalion, regiment, or similar organization; and the commanding officer shall account, by proper vouchers to the said borough each year, for the expenditure of the money so appropriated, and no appropriation shall be made for any subsequent year until the expenditure of the previous year is duly and satisfactorily accounted for.

The accounts of such expenditures shall be subject to the inspection

of the Department of Military Affairs, and shall be audited by the Auditor General in the manner provided by law for the audit of accounts of State moneys.

(57) Appropriations to organizations of veterans and American Gold Star Mothers. To appropriate annually a sum not exceeding five hundred dollars (\$500) to be divided in such amounts as council deems proper to organizations composed of veterans of any war in which the United States was engaged or the American Gold Star Mothers' Organization, to aid in defraying the expenses of Memorial Day, Veterans' Day or any similar day hereafter provided for by State or Federal law. Such payments shall be made to defray actual expenses only. Before any payment is made the organization <sup>1</sup>receiving the same shall submit verified accounts of its expenditures.

(58) Payment of rent for veterans' organizations. By a two-thirds vote of the council, to appropriate annually a sum not exceeding five hundred dollars (\$500) to be divided in such amounts as council deems proper to incorporated organizations of American veterans of any war in which the United States was engaged, to be used in the payment of the rent of any building or room or rooms in which such camps or post have their regular meetings.

(59) Rooms for veterans' and sons of veterans' organizations. Upon application therefor, to furnish to each organization composed of American veterans of any war in which the United States was engaged and sons of such veterans, a room or rooms in any public building of such borough, sufficient for the meeting of each of such organizations at least once each month; and in the case of municipally owned utilities, to furnish service without charge to such rooms, and also to buildings occupied by organizations of veterans of any war in which the United States was engaged.

(60) Care and erection of memorials. To take charge of, care for, maintain and keep in good order and repair, at the expense of the borough, any soldiers monument, gun, or carriage, or similar memorial situated in the borough, and not in the charge or care of any person, body, or organization, and not put up or placed by the Government of the United States, the Commonwealth of Pennsylvania, or the commissioners of the county, or by the direction or authority of any other State of the Union, and to receive from any person or organization any moneys or funds which can be used for the maintenance of such memorials, and to expend the same; and to erect or contribute to the erection of, memorials in honor of those who served in any war in which the United

<sup>1</sup>"rceiving" in original.

States was engaged, at a cost or in a sum not to exceed one thousand dollars (\$1000), and thereafter to properly and adequately maintain the same.

(61) Appropriations for burial ground maintenance. To appropriate annually, out of the general funds of the borough, a sum not exceeding three thousand dollars (\$3000) for the care, upkeep, maintenance and beautifying of cemeteries, burial grounds and private roads therein or leading thereto, lying wholly or partly within the boundary limits of such borough, or in the territory immediately adjacent to the borough.

(62) Municipal music. To appropriate money, not in excess of the sum of one thousand dollars (\$1000), annually, for the expense of municipal music.

(63) Purchase and planting of trees. To accept, purchase and plant, or contribute to the purchasing and planting of shade trees along the streets and sidewalks of the borough.

(64) Hospital appropriations. To appropriate moneys for the support of any incorporated hospital which is engaged in charitable work and extends treatment and medical attention to residents of such borough, but no such appropriation shall exceed in any year the cost of free service extended to residents of the borough which is in excess of any amount paid by the Commonwealth towards such free service.

(65) Community nurse services. To appropriate money annually for the expense of community nurse services to any nonprofit associations or corporations which provide community nursing services for the control of communicable disease, the immunization of children, the operation of child health centers (Well-Baby Clinics), instructive visits to mothers of new babies, beginning in the prenatal period, and family health guidance, including nutrition, detection and correction of defects all of which relate to the responsibilities of local boards of health.

(66) Community ambulance service. To appropriate money annually towards a nonprofit community ambulance service.

(67) Appropriation for civic purposes. To appropriate, in any year out of the general funds of the borough, a sum not exceeding seven hundred fifty dollars (\$750) for the observance of holidays or centennials or other anniversaries or for borough celebrations or other civic projects or programs.

(68) Appropriations for handling, storage and distribution of surplus foods. To appropriate from borough funds moneys for the handling, storage and distribution of surplus foods obtained through either a local, State or Federal agency. All appropriations of moneys heretofore made by any borough for the handling, storage and distribution of surplus

foods obtained through either a local, State or Federal agency are hereby validated.

(69) Appropriations for industrial promotions. To make appropriations to an industrial development agency.

(70) Appropriations to tourist promotion agencies. To appropriate annually, such amount of money but not in excess of ten cents (10¢) for each resident of the borough, as determined by the last census, which may be deemed necessary, to any "tourist promotion agency," as defined in the Act of April 28, 1961 (P. L. 111), known as the "Tourist Promotion Law," to assist such agencies in carrying out tourist promotional activities.

(71) Appropriating money to assist political subdivisions and municipality authorities for airports. To appropriate moneys to assist any city, borough, town, township or other political subdivision or municipality airport authority to acquire, establish, operate and maintain any and all air navigation facilities lying either within or without the limits of such borough.

(72) Non-Debt revenue bonds. To issue non-debt revenue bonds pursuant to provisions of the Act of June 25, 1941 (P. L. 159), known as the "Municipal Borrowing Law," and its amendments, to provide sufficient moneys for and toward the acquisition, construction, reconstruction, extension or improvement of municipal facilities, including water systems or facilities, sewers, sewer systems and sewage disposal systems or facilities, systems for the treatment or disposal of garbage and refuse, gas plants or gas distribution systems for its own municipal purposes, electric light or power plants or power distribution systems, aeronautical facilities including but not limited to airports, terminals and hangars and park and recreational facilities and parking lots and facilities to be secured solely by the pledge of the whole or part of the rent, toll or charge for the use or services of such facilities.

Included in the cost of the issue may be any costs and expenses incident to construction and financing the facilities and selling and distributing the bonds.

(73) Rewards for apprehension of certain criminals. To offer rewards for the arrest and conviction of persons guilty of capital or other crimes within the borough.

(74) General powers. To make and adopt all such ordinances, by-laws, rules and regulations not inconsistent with or restrained by the Constitution and laws of this Commonwealth, as may be expedient or necessary for the proper management, care and control of the borough and its finances, and the maintenance of peace, good government, safety

and welfare of the borough and its trade, commerce and manufactures.

### ARTICLE XIII

#### TAXATION AND FINANCE

Section 1301. Fiscal Year.—The fiscal year of every borough shall coincide with the calendar year, beginning January 1 and ending December 31.

Section 1302. Tax Levy.—The council of the borough shall have power, by ordinance, to levy and collect annually, a tax, not exceeding twenty-five mills for general borough purposes and in addition thereto any of the following taxes:

(1) To pay interest and sinking fund charges on the indebtedness of the borough, sufficient millage for the purpose;

(2) To provide for pensions, retirement or the purchase of annuity contracts for borough employes, not exceeding one-half mill;

(3) To defray the cost and expenses of caring for shade trees as provided in section 2729 of this act, and the expense of publishing the notice referred to in such section, not exceeding one-tenth mill;

(4) For lighting and illuminating the streets, highways and other public places with electric light, gas light or other illuminant, not exceeding eight mills;

(5) For gas, water and electric light, not exceeding eight mills, such additional millage permitted only following a favorable referendum on the matter held in accordance with the act of April 16, 1875 (P. L. 55), as amended;

(6) For the purchase of fire engines, fire apparatus and fire hose for the use of the borough, or for assisting any fire company in the borough in the purchase, renewal or repair of any of its fire engines, fire apparatus or fire hose, or for the purchase of land upon which to erect a fire house, or for the erection and maintenance of a fire house or fire houses, not exceeding three mills, such additional millage permitted only following a favorable referendum on the matter held in accordance with the provisions of the act of April 18, 1923 (P. L. 70), No. 46, as amended;

(7) For building a fire house, lockup and/or municipal building, not exceeding two mills, such additional millage permitted only following a favorable referendum on the matter held in accordance with the act of May 4, 1927 (P. L. 673);

(8) To establish and/or maintain a local library or to maintain or aid in the maintenance of a local library established by deed, gift or testamentary provision, for the use of the residents of the borough, not exceeding three mills, such additional millage permitted only following a favorable referendum on the matter held in accordance with the act of June 14, 1961 (P. L. 324).

The said taxes shall be levied on the dollar on the valuation assessed for county purposes, as now is or may be provided by law. All real property, offices, professions and persons, made taxable by the laws of this Commonwealth for county rates and levies, may, in the discretion of council, be taxed after the same manner for such purposes. No action on the part of the borough authorities fixing the tax rate for any year at a mill rate need include a statement expressing the rate of taxation in dollars and cents on each one hundred dollars (\$100) of assessed valuation of taxable property.

Nothing herein contained shall prevent the application of moneys received from taxes levied for general purposes to the purposes of paying interest and sinking fund charges on indebtedness.

The proceeds of all taxes for which additional millage is hereby authorized shall be kept in a separate fund and used only for the purposes hereby provided therefor: Provided, That the additional taxes authorized by referendum shall continue to be levied annually for so long a period as provided in the question submitted in such referendum, and, in the case of any such taxes for which the question voted upon shall not have stated the duration of such tax, until such tax shall be abolished by vote of the electors in a subsequent referendum.

Section 1303. Special Levy to Pay Debts.—In addition to the levies provided for in the preceding section, when it shall be shown to the court of quarter sessions of the county that the corporate authorities refuse or neglect to levy a sufficient tax to pay the debts due by the borough, the court may, after ascertaining the amount of such indebtedness of the borough, direct a writ of mandamus to the proper officers of such borough to collect by special taxation an amount sufficient to pay the same in one or more annual instalments, as may be adjudged reasonable by said court, during such years as may be required for the payment of the same.

Section 1304. Special Road Fund Tax.—Any borough shall be empowered, within its general power to levy taxes, to collect annually a tax upon all property taxable for borough purposes not to exceed five mills on the dollar in any one year, for the purpose of creating and maintaining a special fund, to be used by its borough in making permanent street improvements, and to pay contract prices for paving and other permanent street improvements, prior to the collection of the cost and expense or any part thereof from the property owners adjoining or abutting thereon by the borough under existing laws.

When the cost and expense, or any part thereof, of the construction



of any permanent street improvement, which has been made under existing laws, and which has been aided in its construction from the said special fund hereby provided for, shall have been assessed and collected from the owners of the property adjoining or abutting upon such improvement, it shall be applied to the credit of the said special fund, to the extent of the withdrawal therefrom for such purpose.

Section 1305. Date Tax Duplicate to Issue.—The corporate authorities of the borough shall, within thirty days after adoption of the budget or within thirty days after receipt of the assessment roll from the county, whichever is later, issue their duplicate of taxes assessed to the collector of taxes of the borough.

Section 1306. Additions and Revisions to Duplicates.—Whenever in any borough, there is any construction of a building or buildings after the borough council has prepared a duplicate of the assessment of borough taxes and the building is not included in the tax duplicate of the borough, the authority responsible for assessments in the borough shall, upon the request of the borough council, direct the assessor in the borough to inspect and reassess, subject to the right of appeal and adjustment provided by the act of assembly under which assessments are made, all taxable property in the borough to which major improvements have been made after the original duplicates were prepared, and to give notice of such reassessments within ten days to the authority responsible for assessments, the borough and the property owner: Provided, That in the case of new construction of single and multiple dwellings for residential purposes, no increased valuation or assessment shall be made when new construction of single and multiple dwellings for residential purposes occurs until there has been a conveyance to a bona fide purchaser, or the premises have been occupied, whichever is the earlier to occur. In no event shall such postponement of increased valuation or assessment extend beyond the date on which the next annual tax duplicate is completed. In the period between the preparation of a duplicate of the assessment of borough taxes and the completion of the next annual tax duplicate, reassessment of newly constructed multiple dwellings which have been conveyed to bona fide purchasers or which have been occupied, may be made not oftener than twice, at times designated by the authority responsible for assessments in the borough. The assessment of any multiple dwelling because of occupancy shall be upon such proportion which the occupied portion of the multiple dwelling bears to the entire multiple dwelling at the time of the reassessment. The property shall then be added to the duplicate and shall be taxable for borough purposes at the reassessed valuation for that

proportionate part of the fiscal year of the borough remaining after the property was improved. Any improvement made during the month shall be computed as having been made on the first of the month. A certified copy of the additions or revisions to the duplicate shall be furnished by the borough council to the borough tax collector, together with their warrant for collection of the same, and within ten days thereafter, the borough tax collector shall notify the owner of the property of the taxes due the borough.

**Section 1307. Preparation of Budget.**—Beginning at least thirty days prior to the adoption of the budget a proposed budget or annual estimate of revenues and expenditures for the ensuing year shall be prepared in a manner designated by the council. The budget shall be prepared on a uniform form prepared and furnished as hereinafter provided. The proposed budget shall be kept on file with the borough secretary and by him be made available for public inspection for a period of ten days.

**Section 1308. Notice of Proposed Budget; Penalty.**—Notice that the proposed budget is available for inspection shall be published by the borough secretary in a newspaper of general circulation in the borough, except in boroughs where the estimated budget receipts are less than five thousand dollars (\$5000), where in lieu of such newspaper publications, notice may be conspicuously posted during the ten day period, in a place readily viewable by the public at the office of the borough secretary and with such further notice as shall be prescribed by council. Failure to give the notice herein required shall <sup>1</sup> not invalidate the budget adopted or the tax ordinance. Any borough secretary who shall fail or refuse to give the notice that the proposed budget is available for inspection, as herein required, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine not exceeding one hundred dollars (\$100) and costs of prosecution.

**Section 1309. Revision and Completion of Budget.** After the expiration of the said ten days, council shall make such revision in the budget as shall be deemed advisable. The budget shall be as comprehensive and exact as the information available will admit. In addition to expenditures proposed for the current fiscal year, council may include as proposed expenditures a sum sufficient to pay any existing indebtedness and to pay the ordinary operating expenses for the subsequent year until the taxes of the subsequent year are received therefor, and may also include a sum to provide in whole or in part for any deferred maintenance, depreciation and replacements. Within the tax levy and debt limitations,

<sup>1</sup> "no" in original.

council may also include, in whole or in part, expenditures for capital investments and purchases. Expenditures of a legislative character shall be made, authorized or ratified by ordinance. Other expenditures allowed by law may be made or ratified by motion in council. Such expenditures, whether by ordinance or motion, shall then be considered as appropriations affecting the budget. Any balance of revenues over expenditures may be expended in any subsequent year for any lawful purpose.

Section 1310. Adoption of Budget; Tax Ordinance.—Upon completion of the budget, containing the estimated receipts and expenditures, and its adoption by motion in council, which shall not be later than December thirty-first, it shall be the duty of the council to adopt an ordinance levying the taxes referred to in this act for the fiscal year for approval of the mayor or passage over his veto.

Copy of the budget, together with the tax ordinance, shall be filed with the Department of Internal Affairs by the secretary of the borough, within fifteen days after the adoption of the tax ordinance.

Section 1311. Amending Budget; Notice.—During the month of January next following any municipal election the council of any borough may amend the budget and the levy and tax rate to conform with its amended budget. A period of ten days' public inspection at the office of the borough secretary of the proposed amended budget after notice by the borough secretary to that effect is published once in a newspaper as provided in section 109 of this act, shall intervene between the proposed amended budget and the adoption thereof. Any amended budget must be adopted by council on or before the fifteenth day of February.

Within fifteen days after the adoption of an amended budget the borough secretary shall file a copy thereof in the office of the Department of Internal Affairs.

Section 1312. Modification of Budget; Supplemental Appropriations and Transfers.—The council in its reasonable discretion may, in any year, by motion, modify the budget after its final adoption. New appropriations, supplementary appropriations and transfers from one appropriation to another may be made during the fiscal year, either before or after the expenditure is authorized or ratified after the expenditure is made, provided it is within the current year's revenues, or the money therefor promptly made available through borrowing as allowed by law.

Section 1313. Payment from Borough Funds.—All payments made by the council of any borough from the borough funds shall be made by proper borough orders, drawn upon the treasurer; no borough order shall be authorized by council or signed by the president or secretary of any council unless there are sufficient funds in the treasury of the

borough to pay the same, and no orders shall be made payable at any time in the future or draw interest. A separate borough order shall be drawn for each account or payment.

Section 1314. Uniform Budget and Financial Report; Forms.—The uniform forms for the annual budget, the annual auditors' report and the annual financial statement required to be made by the auditors or the controller shall be prepared by a committee consisting of four representatives from the Pennsylvania State Association of Boroughs, and the Secretary of Internal Affairs, or his agent.

Such representatives of boroughs shall be appointed by the president of the organization. Such representatives shall be chosen from among the finance officers or other officers of the borough who have knowledge of their fiscal procedures. As far as possible, they shall be chosen to represent boroughs in the various population groups. The president of the organization shall supply to the Department of Internal Affairs the names and addresses of such representatives immediately upon their appointment.

Such representatives shall serve without compensation, but shall be reimbursed by the Commonwealth for all necessary expenses incurred in attending meetings of the committee. The committee shall meet at the call of Secretary of Internal Affairs, or his agent, who shall serve as chairman of the committee.

In preparing such uniform forms, the committee shall give careful consideration to the fiscal needs and procedures of boroughs of the various population groups, producing separate forms if necessary, to the end that such forms shall not be inconsistent with the general administrative practices of boroughs of various types and sizes.

It shall be the duty of the Secretary of Internal Affairs, or his agent, to see to it that the forms required by this article are prepared in cooperation with such committee. In the event that the committee should for any reason fail to furnish such cooperation, the Secretary of Internal Affairs, or his agent, shall prepare the forms. After their preparation, he shall issue such forms and distribute them annually, as needed to the proper officers of each borough.

Section 1315. Capital Improvements to Certain Public Service Facilities.—(a) For the purpose of financing the cost and expense or its share of the cost and expense of capital improvements by altering, improving or enlarging (i) its sewer, sewer system or sewage treatment works, either singly or jointly, with other municipalities or townships, or both, or (ii) its water works, either singly or jointly, with other municipalities or townships, or both, or (iii) its electric light or power

plant or power distribution system, or (iv) its gas plant or gas distribution system for its own municipal purposes, including the purchase and installation of machinery and equipment, any borough owning any such plant or facility <sup>1</sup> may issue non-debt revenue bonds as provided in clause (72) of section 1202 of this act.

(b) Any borough issuing non-debt revenue bonds under the authority of this section shall adjust and, where necessary, increase the rates of rentals or charges pledged as security for the bonds, in order to provide sufficient revenue which shall be set aside as reserve funds to cover depreciation of the properties involved, and for future improvements to the plant or facility involved, as well as for the payment of the interest on the bonds and the principal at the time of maturity.

#### ARTICLE XIV CONTRACTS

Section 1401. Power to Make Contracts.—Each borough may make contracts for lawful purposes and for the purposes of carrying into execution the provisions of this act and laws of the Commonwealth.

Section 1402. Regulation of Contracts.—(a) All contracts or purchases in excess of one thousand dollars (\$1,000), except those hereinafter mentioned, shall not be made except with and from the lowest responsible bidder after due notice in one newspaper of general circulation in the borough, at least three times at intervals of not less than three days where daily newspapers of general circulation are available for such publication, in case of weekly newspapers, such notice once a week for two successive weeks. The first advertisement shall be published not less than ten days prior to the date fixed for the opening of bids. The amount of the contract shall in all cases, whether of straight sale price, conditional sale, bailment lease, or otherwise, be the entire amount which the borough pays to the successful bidder or his assigns in order to obtain the services or property, or both, and shall not be construed to mean only the amount which is paid to acquire title or to receive any other particular benefit or benefits of the whole bargain. In awarding bids, council shall have the right to take into consideration such other factors as the availability, cost and quality of service.

(b) The acceptance of bids shall only be made by public announcement at the meeting at which bids are received, or at a subsequent meeting, the time and place of which shall be publicly announced when bids are received. If for any reason one or both of the above meetings shall not be held, the same business may be transacted at any subsequent

<sup>1</sup> "many" in original.

meeting if at least five days' notice thereof shall be published in the newspaper aforesaid. Council may request that a certified check, in an amount to be determined, by it, shall accompany every bid and, when requested, no bid shall be considered unless so accompanied.

(c) The successful bidder when advertising <sup>1</sup> as required herein may, at the discretion of council, be required to furnish a bond with suitable reasonable requirements guaranteeing the work to be done with sufficient surety in the amount of fifty percent of the amount of the liability under the contract within twenty days after the contract has been awarded, unless council shall prescribe a shorter period of not less than ten days, and upon failure to furnish such bond within such time the previous award shall be void. Deliveries, accomplishment and guarantees may be required in all cases of expenditures.

(d) The contracts or purchases made by council, involving an expenditure of over one thousand dollars (\$1000), which shall not require advertising or bidding as hereinbefore provided, are as follows:

(1) Those for maintenance, repairs or replacements for water, electric light or public works of the borough, provided they do not constitute new additions, extensions or enlargements of existing facilities and equipment, but a bond may be required by council, as in other cases of work done;

(2) Those made for improvements, repairs and maintenance of any kind, made or provided by any borough, through its own employes; provided this shall not apply to construction materials used in a street improvement;

(3) Those where particular types, models or pieces of new equipment, articles, apparatus, appliances, vehicles or parts thereof are desired by council, which are patented and manufactured or copyrighted products;

(4) Those involving any policies of insurance or surety company bonds; those made for public utility service under tariffs on file with the <sup>2</sup> Pennsylvania Public Utility Commission; those made with another political subdivision, or a county, the Commonwealth of Pennsylvania, the Federal Government, any agency of the Commonwealth or the Federal Government, or any municipal authority, including the sale, leasing or loan of any supplies or materials by the Commonwealth or the Federal Government or their agencies. The price thereof shall not be in excess of that fixed by the Commonwealth, the Federal Government, or their agencies;

<sup>1</sup> "is" in original.

<sup>2</sup> "Pennsylvania" in original.

(5) Those involving personal or professional services.

Section 1403. Evasion of Advertising Requirements.—No member or members of council shall evade the provisions of section 1402 hereof as to advertising for bids, by purchasing or contracting for services and personal properties piecemeal for the purpose of obtaining prices under one thousand dollars (\$1000) upon transactions, which transactions should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than one thousand dollars (\$1000). This provision is intended to make unlawful the evading of advertising requirements by making a series of purchases or contracts, each for less than the advertising requirement price, or by making several simultaneous purchases or contracts, each below said price, when, in either case, the transactions involved should have been made as one transaction for one price. Any members of council who so vote in violation of this provision and who know that the transaction upon which they so vote is or ought to be a part of a larger transaction and that it is being divided in order to evade the requirements as to advertising for bids, shall be jointly and severally subject to surcharge for ten percent of the full amount of the contract or purchase. Whenever it shall appear that a member of council may have voted in violation of this section but the purchase or contract on which he so voted was not approved by council, this section shall be inapplicable.

Section 1404. Penalty for Personal Interest in Contracts or Purchases.—Except as otherwise provided in this act, no borough official either elected or appointed, who knows or who by the exercise of reasonable diligence could know, shall be interested to any appreciable degree either directly or indirectly in any purchase made or contract entered into or expenditure of money made by the borough or relating to the business of the borough, involving the expenditure by the borough of more than one thousand dollars (\$1000) in any calendar year, but this limitation shall not apply to cases where such officer or appointee of the borough is an employe of the person, firm or corporation to which the money is to be paid in a capacity with no possible influence on the transaction, and in which he cannot be possibly benefited thereby either financially or otherwise. But in the case of a councilman or mayor, if he knows that he is within the exception just mentioned he shall so inform council and shall refrain from voting on the expenditure or any ordinance relating thereto, and shall in no manner participate therein. Any official or appointee who shall knowingly violate the provisions of this section shall be subject to surcharge to the extent of the damage shown to be thereby sustained by the borough and to ouster from office,

and shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000), or not exceeding one hundred eighty days' imprisonment, or both.

Section 1405. **Separate Bids for Plumbing, Heating, Ventilating and Electrical work.**—In the preparation for the erection, construction and alteration of any public building, when the entire cost of such work shall exceed one thousand dollars (\$1000), the architect, engineer, or other person preparing such specifications may, if so requested by the borough council, prepare separate specifications for the plumbing, heating, ventilating and electrical work. The person or persons authorized to enter into contracts for the erection, construction or alteration of such public buildings may, if such separate specifications shall have been proposed, receive separate bids upon each of the said branches of work and shall thereupon award the contract for the same to the lowest responsible bidder for each of said branches.

Section 1406. **Bonds for the Protection of Labor and Materialmen.**—It shall be the duty of every borough to require any person, copartnership, association, or corporation, entering into a contract with such borough for the construction, erection, installation, completion, alteration, repair of, or addition to, any public work or improvement of any kind whatsoever, where the amount of such contract is in excess of one thousand dollars (\$1000), before commencing work under such contract, to execute and deliver to such borough, in addition to any other bond which may now or hereafter be required by law to be given in connection with such contract, an additional bond for the use of any and every person, copartnership, association, or corporation interested, in a sum not less than fifty percent and not more than one hundred percent of the contract price, as such borough may prescribe, having as surety thereon one or more surety companies legally authorized to do business in this Commonwealth, conditioned for the prompt payment of all material furnished and labor supplied or performed in the prosecution of the work, whether or not the said material or labor enter into and become component parts of the work or improvement contemplated. Such additional bond shall be deposited with and held by the borough for the use of any party interested therein. Every such additional bond shall provide that every person, copartnership, association, or corporation, who, whether as subcontractor or otherwise, has furnished material or supplied or performed labor in the prosecution of the work as above provided, and who has not been paid therefor, may sue in assumpsit on said additional bond, in the name of the borough, for his, their or its use



and prosecute the same to final judgment for such sum or sums as may be justly due him, them, or it and have execution thereof; provided, the borough shall not be liable for the payment of any costs or expense of any suit.

**Section 1407. Minimum Wage Specifications in Contracts.**—The specifications upon which contracts are entered into by any borough for the construction, alteration or repair of any public work or improvement may, at the option of the borough council, contain the minimum wage or wages which may be paid by the contractor or his subcontractors for the work performed by laborers and mechanics employed on such public work or improvement, and such laborers and mechanics shall in such cases be paid not less than such minimum wage or wages.

Every contract for the construction, alteration or repair of any public work or improvement, founded on specifications containing any such stipulation for minimum wage or wages, shall stipulate a penalty of an amount equal to twice the difference between the minimum wage contained in said specifications and the wage actually paid to each laborer or mechanic for each day during which he shall have been employed at a wage less than that prescribed in said specifications.

Every officer or person designated as an inspector of or having supervision over the work to be performed under any such contract, in order to aid in enforcing the fulfillment thereof, shall, upon observation or investigation, report to the borough council or agency which let the contract, all violations of minimum wage stipulations, together with the name of each laborer or mechanic who has been paid a wage less than prescribed by the specifications, and the day or days of such violation.

All such penalties shall be withheld and deducted for the use of the borough from any moneys due the contractor by the officer or person whose duty it shall be to authorize the payment of moneys due such contractor, whether the violation of the minimum stipulation of the specifications was by the contractor or by any of his subcontractors. If any such contractor or subcontractor subsequently pays to all laborers and mechanics the balance of the amounts stipulated in such contract, the borough shall pay to the contractor the amounts so withheld as penalties.

**Section 1408. Discrimination Between Employees.**—Every contract for, or on behalf of any borough, for the construction, alteration, or repair of any public building or public work, may contain provisions by which the contractor agrees:

(1) That, in the hiring of employes for the performance of work under such contract or any subcontract hereunder, no contractor, subcontractor,

or any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed or color discriminate against any person who is qualified and available to perform the work to which the employment relates;

(2) That no contractor, subcontractor, or any person on his behalf shall, in any manner, discriminate against or intimidate any employe hired for the performance of work under his contract on account of race, creed or color;

(3) That there may be deducted, from the amount payable to the contractor under such contract, a penalty of five dollars (\$5) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract; and

(4) That such contract may be cancelled or terminated by the borough and all money due, or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this part of the contract.

Section 1409. Publication of Contract Notices in Trade Journals.—Any borough whose duty it is by law to advertise for bids for public works, contracts, supplies or equipment, may, at its discretion, legally authorize the publication of such advertising, in addition to the newspapers specified by law, also in any publication or journal devoted to the dissemination of information about construction work published and circulated among contractors, manufacturers and dealers.

Section 1410. Acceptance by Contractor of Workmen's Compensation Act.—All contracts executed by any borough, or any officer thereof, which involves the construction or doing of any work involving the employment of labor, shall contain a provision that the contractor shall accept, insofar as the work covered by any such contract is concerned, the provisions of the Workmen's Compensation Act of 1915 and the supplements and amendments thereto, and that the said contractor will insure his liability thereunder, or file with the borough with which the contract is made a certificate of exemption from insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry.

Any contract executed in violation of this section shall be null and void.

Section 1411. Architects and Engineers Employed Prohibited From Bidding on Public Works; Penalty.—It shall be unlawful for any architect or engineer, in the employ of any borough, and engaged in the preparation of plans, specifications or estimates, to bid on any public work at any letting of such work by the borough, except that any such architect or engineer who shall have prepared preliminary plans only

shall not be prohibited from bidding on the final contract for such work.

It shall be unlawful for the officers of any borough charged with the duty of letting any public work, to award a contract to any such architect or engineer, in the employ of the borough to be in anywise interested in any contract for public work for the borough or to receive any remuneration or gratuity from any person interested in such contract.

Any person violating any of the provisions of this section shall forfeit his office, and shall be guilty of a misdemeanor, and on conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to undergo imprisonment for not more than six months, or both.

## ARTICLE XV

### EMINENT DOMAIN; ASSESSMENT OF DAMAGES AND BENEFITS; DAMAGES FOR INJURY TO PROPERTY

#### (a) General Provisions Relating to Eminent Domain

Section 1501. Exercise of Eminent Domain.—In the laying out, opening, widening, extending, vacating, grading, or changing the grades or lines of streets; the construction of bridges, and the piers and abutments therefor; the construction of slopes, embankments, and sewers; the erection and extension of waterworks, wharves, and docks, public buildings, public works, filtration plants, sewerage systems, sewage treatment works, garbage disposal plants, gas plants, electric light plants and libraries; the establishing of parks, playgrounds and recreation places; the changing of watercourses; and for all other purposes authorized by this act, a borough may enter upon, appropriate, injure, or destroy, private lands, property or material, according to the proceedings set forth in the law governing eminent domain.

Section 1502. Restrictions as to Certain Property.—In addition to the restrictions made by other provisions of this act in particular cases, no borough shall exercise the right of eminent domain as against land now occupied by any building which was used during the Colonial or Revolutionary period as a place of assembly by the Council of the Colony of Pennsylvania, the Supreme Executive Council of the Commonwealth of Pennsylvania, or the Congress of the United States; or as against the land occupied by any fort, redoubt, or blockhouse erected during the Colonial or Revolutionary period, or any building used as headquarters by the Commander-in-Chief of the Continental Army; or as against the site of any building, fort, redoubt, blockhouse, or headquarters, which are preserved for their historic associations and not for private profit. The Colonial and Revolutionary period shall be taken as ended on September 3, 1783.

#### (b) Procedure for the Assessment of Benefits by Viewers

Section 1521. *Petition for Viewers; Time of Meeting.*—Except as otherwise provided in this act, in case the compensation for benefits accruing from the erection and construction of public improvements has not been agreed upon, the court of common pleas, or any law judge thereof in vacation, on application thereto by petition by the borough or any person interested, shall appoint three viewers, from the board of viewers of the county, and appoint a time, not less than twenty nor more than thirty days thereafter, when the viewers shall meet at the place of the improvement and view the same and the premises affected thereby.

Section 1522. *When Viewers May Be Appointed.*—The viewers provided for in the preceding section may be appointed before or after the entry, appropriation, or injury of any land or property or appropriation of any materials for constructing such improvements.

Section 1523. *Notice of Meeting of Viewers.*—Except as otherwise provided in this act, the viewers shall give at least ten days' notice of the time of their first meeting, by publication in one or more newspapers of the county, and by handbills posted upon the premises, or otherwise as the court shall direct.

Section 1524. *Swearing Viewers; Hearings; Schedules of Damages and Benefits.*—The viewers having been sworn or affirmed faithfully, justly, and impartially to decide and a true report to make concerning all matters to be submitted to them and in relation to which they are authorized to inquire, and having viewed the premises and examined the land or property, shall hear all parties interested and their witnesses and shall determine the benefits, if any, and shall prepare a schedule thereof.

Section 1525. *Assessment of Benefits.*—The viewers shall assess the total cost of the improvement, or so much thereof as may be just and reasonable, upon the lands or properties peculiarly benefited, and shall report the same to the court.

Section 1526. *Notice When Schedules Will Be Exhibited.*—The viewers shall give notice to all parties upon whom assessments for benefits are made, of a time not less than ten days thereafter, and of place where the viewers will meet and exhibit their schedule and hear all exceptions thereto.

Section 1527. *Service of Notices.*—The notice required by the preceding section shall be given, in the manner provided by law for the service of a summons in a personal action, if the parties can be found in the county in which such borough is located; or upon an adult person residing upon the land of property affected by the assessment, in case the owner or reputed owner cannot be found in said county; and to all others by publication in the newspaper or newspapers in which the first notices

of the view were published, and by posting conspicuously on the premises. Council may by ordinance provide by whom the notice shall be served and posted and fix the compensation for such service.

Section 1528. Reports of Viewers; Plan of Improvements.—After making whatever changes are necessary, the viewers, or a majority thereof, shall report to the court, showing benefits allowed and assessed in each case, and file therewith a plan to be prepared or secured by the viewers showing the improvement, the lands or properties, taken, injured, or destroyed and the lands or properties benefited.

Section 1529. Notice of Filing of Report.—When the report is filed, notice thereof shall immediately be given, by publication once in the newspaper or newspapers publishing the notice provided for in section 1523 of this act. Such notice shall state the date of filing of the report, contain a schedule of benefits assessed, and shall state that, unless exceptions are filed thereto or an appeal to the court of common pleas is taken therefrom within thirty days from the date of filing, the report will be confirmed absolutely.

Section 1530. Borough to Pay Costs of Proceedings.—The cost of the proceedings, including court costs, except the compensation of the viewers, shall be paid by the borough.

Section 1531. Exceptions to Report of Viewers.—Within thirty days after the filing of any report, any party interested may file exceptions to the same; and the court shall confirm, modify, or change the same, or change the assessments made therein, or refer it back to the same or new viewers.

Section 1532. Confirmation of Report of Viewers.—When the report is filed, the prothonotary shall mark it confirmed nisi. In case no exceptions are filed thereto, or no appeal taken therefrom, he shall enter a decree that the report is confirmed absolutely.

Section 1533. Effect of Exceptions on Confirmation of Report.—When exceptions are filed which affect the entire report, the same shall not be confirmed absolutely as to any part thereof until the exceptions have been finally disposed of; when the exceptions do not affect the entire report, the court shall confirm the assessments to which exceptions have not been taken.

Section 1534. Appeals from Confirmations After Exceptions.—Within three months after the confirmation of any report, following the filing of exceptions thereto, any party interested may appeal from the decree of the court below to the Superior or Supreme Court, as the case may be.

Section 1535. Effect of Appeals.—When any appeal is taken from

the action of the court of common pleas confirming any viewers' report or part thereof, if the appeal affects the entire report, it shall have the effect of suspending the absolute confirmation thereof until the appeal is finally disposed of; but where the appeal is to matters which do not affect the entire report, or any other assessment, such appeal shall affect only the particular assessment for which the appeal is taken.

Section 1536. Filing Assignments of Error, Et Cetera.—In order to determine whether any appeal affects the entire report, or any particular assessment, the appellant shall file in the court below, before or at the time of filing his writ of certiorari, a copy of his assignments of error or statement of the grounds of appeal. Upon failure so to do, the borough or any party interested may, by notice or rule upon the appellant, cause such assignments of error, or statement of the grounds of appeal to be filed.

Section 1537. Certificate of Judge of the Court Below.—Upon the request of the borough, or any party interested, the court below, or any judge thereof in vacation, shall certify whether the appeal affects the entire report, and said certificate shall be conclusive. Where the court or judge certifies that the appeal will affect the entire report, no further proceedings shall be taken in the court below until after the final action of the appellate court; but where the court or judge certifies that the appeal will affect only a particular assessment, then the confirmation of all other assessments shall be final.

Section 1538. Effect on Affirmation of Decree of Court Below.—If, on any appeal, the action of the court below is affirmed, the date of the decree or judgment of the appellate court shall be taken as the day on which the report was finally confirmed.

Section 1539. Consolidation of Appeals.—Where any appeal is taken to the Supreme Court, and an appeal is also taken to the Superior Court, and the appeals in both cases are substantially the same, the Superior Court may certify such appeal to the Supreme Court to be heard with the other appeals from the same report.

The Supreme Court shall consolidate all such appeals and hear them as one case. Where several appeals are taken from the confirmation of the same report, either to the Superior or Supreme Court, and the grounds of appeal are similar, the appellate court may consolidate the appeals.

Section 1540. Appellants May Unite in Appeals; Effect Thereof.—Several parties may unite in a single appeal, either to the Superior or Supreme Court, where the grounds of appeal are similar, but the uniting of the appellants shall not unite the amounts or change the jurisdiction.

When the appeal, if taken by each appellant singly, would be to the Superior Court, then the appeal shall be to that court; but, if the appeal of any one appellant would be to the Supreme Court, then the joint appeal shall be to that court. If an appeal has been taken to the Supreme Court, any other party, without regard to the amount involved, if the grounds of appeal are similar, may appeal to the same court and join in such appeal.

Section 1541. Appeals from Reports of Viewers for Jury Trial.—Within thirty days after any report of viewers is filed in court of common pleas, any party whose land or property is taken, injured, or destroyed, or against whom benefits are assessed, may appeal to the court of common pleas and demand a trial by jury. Several parties may unite in a single appeal, and where the grounds of appeal are similar the court may hear such appeals as one proceeding; but each party shall, in any event, be entitled to demand a separate trial by jury. Where an appeal is so taken as a portion of the report, the portion not appealed from shall be confirmed absolutely, at the expiration of thirty days after the report is filed in court.

Section 1542. Reasons for Appeals to Be Stated.—The appeal as provided in the last preceding section, shall state the grounds upon which it is taken, and shall be signed by the appellant, or by his agent or attorney; and shall be accompanied by an affidavit that is not taken for the purpose of delay but because the appellant believes that injustice has been done.

Section 1543. Costs.—Upon the trial of any such appeal, in case the party appellant does not obtain a verdict more favorable than was the report of the viewers, the appellant shall not recover any costs.

Section 1544. Notices; Appeals from the Court Below.—The court of common pleas shall order what notices shall be given in connection with such proceedings, and may, by rule or otherwise, prescribe the form of pleadings. After verdict and final judgment, either party may, within three months, appeal to the Superior or Supreme Court.

Section 1545. Appeals to the Wrong Court.—Should any appeal to the Supreme Court or Superior Court be made to the wrong court, such court shall certify the appeal to the court to which it should have been taken.

Section 1546. Appeals Not to Prevent Filing Liens.—No appeal to any court shall prevent the filing of liens by any borough for any assessment made by any such report, but, upon the final termination of the issue, the court shall make such order as to the lien filed as shall appear right and proper.

Section 1547. Assessments to Bear Interest.—All assessments for benefits, costs, and expenses shall bear interest at six percent per annum from the expiration of thirty days after they shall have been finally ascertained, and shall be payable to the treasurer of the borough.

(c) Damages for Injury to Property

Section 1561. Right to Damage Given in Certain Cases.—The right to damage against boroughs is given to all owners or tenants of lands, property, or material, abutting on, or through which pass, streets, injured by the vacating of such streets, or the vacation of bridges and piers, abutments and approaches therefor.

Section 1562. Juries of View to Assess Damages and Benefits.—All juries of view for assessing damages for taking, using, occupying, or injuring land, property, or material, are directed to assess the damages, provided for in the preceding section, against boroughs, and the benefits in connection therewith, and make a report thereof to the court.

Section 1563. Appeals from Viewers' Reports.—The right of appeal to the court of common pleas, the right of trial by jury, and the right to file exceptions are given to any party not satisfied with such report.

Section 1564. Appeals from Court Below.—After disposal of exceptions, or after verdict and final judgment, any interested party may appeal to the Superior or Supreme Court, as in other cases.

Section 1565. Damages for Vacations.—Whenever viewers are appointed to vacate any street, and the vacation of the same takes no land from the owner abutting thereon, if, in the opinion of the viewers, such vacation damages the property of the abutting owner, they may award damages to such owner as though land has been actually taken, and such damages shall be ascertained as provided in the law governing eminent domain.

## ARTICLE XVI

### LAND SUBDIVISION

Section 1601. Grant of Power.—For the purpose of assuring sites suitable for building purposes and human habitation and to provide for the harmonious development of boroughs, for the coordination of existing streets with proposed streets, parks or other features of the official street plan of the borough, for insuring adequate open spaces for traffic, recreation, light and air, and for proper distribution of population, thereby creating conditions favorable to the health, safety, morals and general welfare of the citizens, any borough is hereby empowered to adopt, by ordinance, land subdivision regulations. Such regulations may include definitions, design standards, plan requirements, plan processing



procedures, improvement and construction requirements, and conditions of acceptance of public improvements by the borough.

Section 1602. Enactment of Land Subdivision Ordinance.—The provisions of the land subdivision ordinance may be adopted by reference to a code or to parts thereof determined by the council, or such provisions of the ordinance may be supplied by reference to a typed or printed code prepared under the direction of or accepted by the council, or such provisions may consist of a standard code approved as aforesaid, or parts thereof, and also further provisions typed or printed as aforesaid. Copies of the provisions of the ordinance thus adopted by reference shall be made available to any interested party at the cost thereof or may be furnished or loaned without charge. Such land subdivision ordinance shall not be advertised by publication of the full text thereof, and, in place of such complete advertisement, an informative notice of intention to consider such proposed land subdivision ordinance in such reasonable detail as will give adequate notice of its contents and a reference to the place or places within the borough where such proposed land subdivision ordinance may be examined or obtained shall be published in the manner and within the time limit provided by this act for publication of notice of other proposed ordinances. Such land subdivision ordinance need not be recorded in or attached to the ordinance book, but it shall be deemed to have been legally recorded if the ordinance by which the land subdivision ordinance was adopted by reference shall have been recorded, with an accompanying notation stating where the full text of the land subdivision ordinance shall have been filed.

The procedure set forth relating to the adoption of the ordinance may likewise be adopted in amending, supplementing or repealing any of the provisions of the ordinance.

Section 1603. Definition of "Subdivision".—"Subdivision" as used in this article is hereby defined as the division of a single lot, tract or parcel of land, or a part thereof, into two or more lots, tracts or parcels of land, including changes in street lines or lot lines, for the purpose, whether immediate or future, of transfer of ownership or of building development; provided division of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access, shall not be included within the meaning of "subdivision."

Section 1604. Public Hearing.—No such regulations shall be adopted until after a public hearing shall have been held by council in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be pub-

lished at least fifteen days prior to the hearing in one newspaper of general circulation in the borough.

Section 1605. Subdivision Control.—Where subdivision regulations have been adopted under the authority of this article, no subdivision of any lot, tract or parcel of land shall be effected, no street, sanitary sewer, storm sewer, water main, or other facilities in connection therewith, shall be laid out, constructed, opened or dedicated for public use and travel, or the common use of occupants of buildings abutting thereon, except in strict accordance with the provisions of such regulations and of this act.

Section 1606. Subdivisions Wherein Lots Abut Existing Improved Streets of Sufficient Width.—Such regulations may provide that plans of subdivisions wherein lots abut existing improved streets of sufficient width shall be subject to approval or rejection by the borough engineer or a committee appointed by council, as specified in the ordinance establishing such regulations. In the event such a plan is disapproved, the reasons therefor shall be set forth in writing and given or sent to the applicant. Any person aggrieved by a decision of the borough engineer or the said committee may appeal to the borough council within ten days after such decision shall have been made. Such appeal shall be considered by the council at its next regular meeting. The decision of council shall be final.

Section 1607. Subdivisions Wherein Lots Abut Existing Streets of Insufficient Width or Proposed Streets.—(a) Approval or Rejection or Such Plans by Council; Appeal to Court. Such regulations may provide that plans of subdivisions wherein lots abut existing streets of insufficient width or streets proposed to be laid out through unimproved land shall be subject to approval or rejection of council. Council shall have authority to seek the advice and opinion of the borough solicitor or a committee appointed by council, as specified in the ordinance establishing such regulations. In the event such a plan is rejected by council, the reasons therefor shall be set forth in writing and given to the applicant.

(b) General Requirements; Prerequisites to Approval of Plan. Council shall not approve any subdivision plan unless all streets thereon shall be approved in accordance with the provisions of section 1735 of this act. In determining whether or not any such street shall be approved, council shall consider whether such street shall be of sufficient width and proper grade, whether it shall be so located as to accommodate the probable volume of traffic thereon, afford adequate light and air, facilitate fire protection, provide access of fire fighting equipment to build-

ings, and provide a coordinated system of streets conforming to the borough's official plan of streets. No such plan shall be approved by council unless all land whereon buildings are to be constructed shall be of such character that it can be used for building purposes without danger to health or peril from fire, flood or other hazard.

(c) **Improvements or Guarantee Thereof Prerequisite to Approval of Plan.** Before approving any subdivision plan, council shall require, either that the necessary grading, paving, and other street improvements, including, where specified by council, curbs, sidewalks, street lights, fire hydrants, water mains, sanitary sewers and storm sewers, shall have been installed in strict accordance with the standards and specifications of the borough, or that the borough be assured, in the form of a bond or deposit of funds or securities in escrow sufficient to cover the cost to the owner of the required improvements, as estimated by the borough engineer or any other person designated by council, that the said improvements will subsequently be installed by the owner of said subdivided lot, tract or parcel of land. Where the subdivision plan has been approved and recorded, either after the specified improvements have been completed and approved by council, or if prior to completion upon proper completion guarantee as aforesaid, purchasers and mortgages of lots in the subdivision, with or without buildings thereon or on any of them, shall be relieved of any and all liability for any deficiency in lack of or failure to complete the improvements above mentioned as set out in said plan, or required as a condition precedent to the approval of the plan of subdivision, and any failure to complete or properly complete said improvements shall not encumber any or all of the lots in the subdivision.

(d) **Public Hearing.** Before acting on any subdivision plan, council may arrange for a public hearing thereon, after giving such notice as council may deem desirable in each case.

(e) **Modifications.** Council may alter any subdivision plan, and specify alterations, changes or modifications therein which it deems necessary, and may make its approval subject to such alterations, changes or modifications.

(f) **Appeals Where Council Refuses Approval.** In any case where council disapproves a subdivision plan, any person aggrieved thereby may, within thirty days thereafter, appeal therefrom by petition to the court of quarter sessions of the county wherein such subdivision is located, which court shall hear the matter de novo and, after hearing, enter a decree affirming, reversing or modifying the action of the council, as may appear just in the premises. The court shall designate the man-

ner in which notices of the hearing of such appeal shall be given to all parties interested. The decision of the court shall be final.

(g) Recording. The action of council or of the court on appeal in approving any subdivision plan and an approved duplicate copy of such plan shall, within thirty days after the date of approval, be recorded by the owner in the office of the recorder of deeds of the county wherein such land is located.

(h) Recorded Plan to Become Part of Official Plan. After an approved subdivision plan shall have been officially recorded, the streets, parks and other public improvements shown thereon shall be considered to be a part of the official plan of the borough.

(i) Offer of Dedication May Be Noted on Recorded Plan. Streets, parks and other public improvements shown on a subdivision plan to be recorded may be offered for dedication to the borough by formal notation thereof on the plan, or the owner may note on such plan that any such improvements have not been offered for dedication to the borough.

(j) Streets, Parks and Other Improvements Private Until Dedicated or Condemned. Every street, park or other improvement shown on a subdivision plan that is recorded as provided herein shall be deemed to be a private street, park or improvement, until such time as the same shall have been offered for dedication to the borough and accepted, by ordinance or resolution, or until it shall have been condemned for use as a public street, park or other improvement.

Section 1608. Sale of Lots; Issuance of Building Permit or Erection of Building.—In any borough where subdivision regulations shall have been adopted under the authority of this article, no lot in a subdivision may be sold, no permit to erect, alter or repair any building upon land in a subdivision may be issued, and no building may be erected in a subdivision, unless and until a plan of such subdivision shall have been approved and properly recorded, and until the improvements required by council in connection therewith shall have either been constructed or guaranteed as hereinabove provided. Where, owing to special conditions, a literal enforcement of this provision would result in unnecessary hardship, council may make such reasonable exception thereto as will not be contrary to the public interest, and may permit the sale of a lot, issuance of a permit, or erection of a building, subject to conditions necessary to assure adequate streets and other public improvements.

Section 1609. Penalty.—In any borough which shall adopt subdivision regulations under the provisions of this article, any person, co-

partnership, or corporation, who or which shall subdivide any lot, tract or parcel of land or lay out, construct, open or dedicate any street, sanitary sewer, storm sewer, or water main, for public use or travel, or for the common use of occupants of building abutting thereon, or sell any lot or erect any building in a subdivision without first having complied with all the provisions hereof and the subdivision regulations adopted hereunder, shall be guilty of a misdemeanor, and upon conviction thereof, such person, or the members of such copartnership, or the officers of such corporation, responsible for such violation, shall be sentenced to suffer imprisonment not exceeding two years, or to pay a fine not exceeding one thousand dollars (\$1,000), or both, in the discretion of the court.

## ARTICLE XVII STREETS

### (a) General Provisions Relating to Streets

Section 1701. Definitions.—The following words and terms, as used in this article, shall be construed as follows:

(1) “Street” shall mean and include any street, as defined in section 111 of this act, either for or intended for public use, and shall include the cartway, sidewalk, gutter, and/or the right-of-way area, whether or not such street, or any part thereof, is owned in fee by others than the borough. Streets shall be of two classes, opened and unopened.

(2) “Opened streets” shall mean and include all streets within the borough used as public passageways.

(3) “Unopened streets” shall mean and include all streets within the borough not used, accepted or maintained, but placed on the borough plan for future or prospective use, or placed on the plan of a real estate project, or referred to in individual deeds.

(4) “Laying out” shall mean and include the plotting of an unopened street or portion thereof on the borough plan or on the plan of a real estate development and shall include the plotting of an unopened street in any case where any of the lines of the same are proposed to be revised, or in any case where the same was never previously laid out, although such street may have been opened and used.

(5) “Opening a street” shall mean and include 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.

(6) “Improving a street” shall mean and include any work upon any street or portion thereof done or proposed to be done in order to open the same, if such street shall not previously have been opened, or if

previously opened, to make the same more usable, or more suitable for use by the traveling public or safer for such use, and shall include, but shall not be limited to grading, paving, curbing and macadamizing.

(7) "Portion thereof" shall mean and include a portion either of the width or of the length <sup>1</sup> of a street and, therefore, 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.

(8) "Personal notice" shall mean and include notice upon the owner of a premises either by personal service upon such owner or by certified mail to such owner <sup>2</sup> at his last known address, or where service shall not have been successfully made by either of the two methods first mentioned herein, then by leaving such notice at or upon such premises.

(9) "Person" shall mean and include a natural person, association, firm, corporation or political subdivision.

Section 1702. Right of Borough to Take Over Streets.—Any borough shall have the right at any time to take over, by laying out and/or opening the same—

(1) Any street as it appears upon the borough plan;

(2) Any street, or portion thereof, which the borough shall determine to acquire by the exercise of its rights under the power of eminent domain, by following the procedure set forth in the law governing eminent domain;

(3) Any street to which the public shall have acquired rights by constant use over a period exceeding twenty-one years;

(4) Any street or portion thereof, laid out or constructed by any person, which the borough shall see fit to take over or accept as provided in this article.

Section 1703. Dedication of Streets Privately Constructed.—No borough shall acquire any right in or responsibility for any street privately constructed until dedication of such street shall have been presented to and accepted by the borough and until such dedication shall have been recorded in the county office for the recording of deeds.

Section 1704. Streets Connecting With Street of Other Municipality or Township.—No action shall be taken under this article that would result in the change of location or grade, or the vacation of any street or portion thereof that connects with a street of another municipality or township, without approval of the court of quarter sessions of the county in which such municipality or township is located, unless such

<sup>1</sup> "and" in original.

<sup>2</sup> "of" in original.

municipality or township shall itself first file with the borough secretary its approval of such proposed action.

Section 1705. **Entry on Land to Maintain Marks and Monuments.**—The borough council, its agents and employes, 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 article.

Section 1706. **Exclusive Nature of Provisions.**—The provisions in this article, as applicable to the dedication, acceptance, laying out, opening and vacation of streets, shall be exclusive, and no streets shall be acquired, laid out, opened or vacated by any borough except under such provisions.

#### (b) Plan of Streets

Section 1711. **Borough Street Plan.**—Every borough shall prepare, maintain and keep on file among the records of the borough a plan of streets, to be known as the borough plan. Such plan shall be and remain the property of the borough, but shall be available for public inspection at all reasonable times. The borough plan shall show in scale and accurate drawing those streets which the borough shall wish to appear upon such plan as existing and/or prospective streets. Such plan shall indicate every street in such a way that such street can be identified and physically located. Such plan may indicate the present or proposed width of any street, and the division of such width into present or proposed cartway, grass strip, sidewalk area or for any other purpose. Such plan may be expanded to prepare for and indicate present or future grades, water courses, and/or culverts. When a street shall have been placed upon the borough plan, such placement thereof shall constitute public notice that the borough intends to recognize such street as a present or proposed street within the system of borough streets. All subdivisions of property made after the preparation and filing of the borough plan shall conform to such plan. The borough plan shall be adopted and amended by ordinance.

#### (c) Laying Out Streets

Section 1721. **Authority to Lay Out Streets; Procedure.**—Any borough shall have the authority, by ordinance, to lay out any area described upon the plan of streets, for prospective or future development or opening as a street. The enactment and recording of such ordinance, and the plotting of such area upon the plan of streets shall constitute public notice of the borough's right therein from the date of enactment of such ordinance.

Section 1722. **Improvements Erected Within Lines Laid Out; Right**

to Damages.—Whenever a street shall have been laid out as provided in section 1721 hereof, the owner or subsequent owner of such area shall have no right to damages for erections or improvements placed thereon after the date of enactment of the ordinance laying out such street, and the measure of the damages when such street shall be opened shall be the fair market value of such area as of the date of enactment of the ordinance opening such street, but not including any erections or improvements placed thereon after the date of enactment of the ordinance laying out such street: Provided, That there shall be no right to damages prior to the enactment and recording of the ordinance opening a street.

Section 1723. Effect of Laying Out Street Without Opening Thereof.—The laying out of a street, without opening the same, shall create no right to public use of such street.

Section 1724. Effect of Failure to Open Street After its Laying Out.—At any time after any street or portion thereof shall have remained laid out but not opened for a period of ten years or longer, any owner or owners of fifty percent of the front feet of the land over which such street or portion thereof was laid out may petition the borough council to remove such street from the plan of streets and to cancel the laying out thereof. Council shall thereupon, following at least fifteen days' notice in a newspaper of general circulation in the borough, and at least fifteen days' personal notice to the owners of all real estate abutting upon the land over which such street or portion thereof was laid out, hold a public hearing on the matter. Council may, on motion, deny the petition, or, by ordinance, grant such petition and remove such street or portion thereof from the borough plan and cancel the laying out thereof. Any person aggrieved by the decision of the council, either granting or denying such petition, may appeal therefrom within thirty days from the date of such decision, to the court of quarter sessions.

Whenever any street shall have been laid out and shall not have been opened to, or used by the public for a period of twenty-one years, such street shall not thereafter be opened without the consent of all of the owners of the abutting real estate.

#### (d) Opening and Acceptance of Streets

Section 1731. Authority to Open Streets; Procedure.—Any borough shall have authority, by ordinance (i) to open any street or portion thereof previously laid out; or (ii) simultaneously to lay out and open any street or portion thereof. Any street or portion thereof so opened shall be a public street of the borough. No such ordinance shall become effective until thirty days after the enactment thereof. Within ten days



after the enactment of any such ordinance, the borough shall give personal notice to the owners of all property abutting the street so proposed to be opened. During such thirty-day period between the enactment and taking effect of such ordinance, any interested party may petition council for a hearing, which council shall hold within thirty days after the date of such petition, and of which the borough shall give at least fifteen days' notice in a newspaper of general circulation in the borough. Any such petition shall serve to stay the effective date of such ordinance, until council shall have held such hearing and shall have acted upon such petition by motion, or, in case of further appeal, until the court shall have finally disposed of the matter. After such hearing and within thirty days after action by council upon such petition, any party aggrieved by council's action thereupon may appeal to the court of quarter sessions.

Section 1732. Petition for Opening Street; Action Thereon.—Any person or persons, constituting a majority in number and interest of the owner of the real estate abutting upon any area may petition the council to open such area as a street or portion thereof. Council shall hold a hearing upon such petition, following at least fifteen days' notice to all owners of abutting real estate not joining in such petition, and following at least fifteen days' notice thereof in a newspaper of general circulation in the borough. Following such hearing council shall either by motion deny such petition or by ordinance open, or lay out and open such street or portion thereof. All provisions of section 1731 hereof applicable to ordinances enacted by authority of that section shall apply to ordinances enacted by authority of this section.

Section 1733. Procedure for Opening Street; Action for Damages and Benefits; Award Thereof.—Upon the effective date of an ordinance enacted by authority of section 1731 or 1732 hereof, the borough shall have authority to enter upon and take possession of the street or portion thereof opened by such ordinance, if no structures are upon such street. If any structure shall have been located upon such street or portion thereof so opened, prior to the laying out of such street or prior to the simultaneous laying out and opening thereof, such street shall not be opened until the owner of such structure shall have been given sixty days' personal notice to vacate the same. If any of the parties cannot agree upon damages sustained by reason of the opening of any street or portion thereof, such damages shall be assessed by a jury of view under the provisions of the law governing eminent domain. Council shall not be required to file any bond or security for the exercise of the right granted by this section. All parties whose ground is taken in

the opening of a street or portion thereof shall have three years from and after the effective date of the ordinance opening such street or portion thereof in which to bring an action for damages resulting therefrom. In case of the assessment of damages for the opening of any street or portion thereof, the award of damages, if any, shall include all damages resulting from the grade at which such street or portion thereof is to be opened; the plan attached to the report of the viewers awarding the damages shall have therein a profile plan showing the existing grade as well as the grade to which such street or portion thereof is to be opened. Any costs and expenses which cannot be assessed upon property benefited shall be paid by the borough.

Section 1734. Acceptance of Streets.—Any borough may, by ordinance, accept any opened street not previously dedicated to or laid out by the borough, by following the procedure set forth in section 1731 or 1732 hereof, and the effect of such acceptance shall be the same as of opening such street: Provided, That no street may be accepted unless such street connects with at least one other previously opened street or State highway.

Section 1735. Streets Not to Be Constructed, or Dedicated or Opened to Travel Without the Approval of Council.—No person shall construct, dedicate, or open to travel any street, or any drainage facilities in connection therewith, for public use or travel or for the common use of occupants of buildings abutting thereon in any borough, without first submitting suitable plans thereof to the council for its approval. Such plans shall be prepared in accordance with such rules and regulations as may be prescribed by the council, and shall show the profiles of such street, the course, structure and capacity of any drainage facilities, and the method of drainage of the adjacent or contiguous territory, and also any other or further details that may be required under the rules or regulations adopted by the council. Before acting upon any such plans, the council may, at its discretion, arrange for a public hearing after giving such notice as it may deem desirable in each case. The council is authorized to alter such plans, and to specify any changes or modifications of any kinds, which it may deem necessary with respect thereto, and may make its approval of such plans subject to any such alterations, changes or modifications. Any plans, when so approved, shall be signed on behalf of the borough by such officer as the council may designate, and shall be filed where the same shall be available to public inspection among the records of the borough at all reasonable times. No street, or any drainage facilities in connection therewith, shall be constructed or dedicated for public use or travel, except in strict accordance with plans

so approved by the council, or with further plans subsequently approved by it in the same manner.

In any case where council has heretofore required or shall hereafter require the construction or improvement of streets or parts of streets, or of any drainage facilities in connection therewith, or the posting of a bond or other security for so doing, within any parts or subdivisions of a borough, as a condition to approval of any plan thereof, and the materials or other specifications for such construction or improvements are required by the borough to be of better quality or type or otherwise superior to and more costly than those of most of the already existing streets and drainage facilities in connection therewith of the borough, or of the particular zone of the borough, in case it has a zoning ordinance, the cost of such construction or improvement shall be allocated and paid in accordance with the provisions of section 1761 of this act, and the submission of a plan shall not be deemed a petition for the construction or improvements so required, but if the borough shall require substantially the same quality or type and specifications of street and drainage facilities as generally exists either in the borough, or, if the borough has a zoning ordinance, in the particular zone involved, the submission of a plan shall be deemed a petition therefor by a majority in the number of feet assessable, properties abutting thereon, and the cost of such constructions and improvements shall be paid in accordance with the provisions of section 1761 of this act under such circumstances: Provided, That council and the person or persons submitting a plan may in all cases, by agreement, provide otherwise as to such costs: And provided further, That this section shall not authorize the recovery or avoidance of any such costs heretofore agreed to or paid. Whenever council requires the construction or improvement of streets or parts thereof, it shall establish or cause to be established the grades of such streets or parts, or shall approve the grades indicated upon the plan submitted before such streets or parts are improved or constructed. Council's approval of plans, whether or not such plans are subject to any such conditions as to streets, parts of streets, or drainage facilities in connection therewith, shall constitute the streets as shown upon the plans so approved as streets of the borough, any plan so approved as filed and as recorded, indicate clearly all such constructions and improvements required to be made, the grades thereof, the materials and other specifications required, and the allocation of cost thereof, as provided by law or as agreed upon.

Section 1736. Appeal From Refusal of Council.—In any case where the borough council shall refuse to approve any plans submitted to it,

any person aggrieved by the action of such council may, within thirty days after such action, appeal from such action, by petition to the court of quarter sessions of the county which court shall hear the matter de novo, and, after hearing, may enter decree affirming, reversing or modifying the action of the council as may appear just in the premises. The court shall designate the manner in which notice of the hearing of any such appeal shall be given to all parties interested. The decision of the court shall be final.

The action of the borough council, or the court on appeal, in approving any such plan, and such approved plan, shall be recorded by the person applying for such approval in the office of the recorder of deeds in the county.

Section 1737. Streets Opened Without Approval; Penalty.—If any street, or any drainage facilities in connection therewith, shall be opened, constructed or dedicated for public use or travel, except in strict accordance with plans approved by the council, or the court on appeal, as provided in this subdivision, neither the borough council nor any other public authority shall place, construct or operate any sewer, drain, water pipe or other facilities, or do any work of any kind in or upon such street; and neither borough council nor any other public authorities shall have any responsibility of any kind with respect to any such street, or drainage facilities, notwithstanding any use of the same by the public: Provided, however, That nothing herein contained shall prevent the laying of trunk sewers, drains, water or gas mains, if required by engineering necessity for the accommodation of other territory.

Any person who shall construct, open or dedicate any street or any drainage facilities in connection therewith, for public use or travel in any borough, without having first complied with the provisions of sections 1735 and 1736 of this act, or of any borough ordinance adopted pursuant thereto, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000), or suffer imprisonment not exceeding two years, or both, in the discretion of the court. Nothing herein contained shall be construed to apply to the Department of Highways of the Commonwealth.

(e) Vacating Streets

Section 1741. Authority to Vacate Streets; Procedure.—Any borough shall have authority, by ordinance, to vacate or close any street or portion thereof previously opened or laid out, but no street or portion thereof providing the sole means of access to any lot or tract of land shall be vacated unless those to whom access would be denied shall con-

sent. No such ordinance shall become effective until thirty days after the enactment thereof. Within ten days after the enactment of any such ordinance, the borough shall give personal notice to the owners of all property abutting on the street or portion thereof so proposed to be vacated. If any street or portion thereof proposed to be vacated shall be on a recorded plan, the borough shall also give personal notice of the proposed vacation thereof to all owners of property appearing on such plan. During such thirty-day period between the enactment and taking effect of such ordinance, any interested party may petition council for a hearing, which council shall hold within thirty days after the date of such petition, and of which the borough shall give at least fifteen days' notice in a newspaper of general circulation in the borough. Any such petition shall serve to stay the effective date of such ordinance, until council shall have held such hearing and shall have acted upon such petition by motion, or, in case of further appeal, until the court shall have finally disposed of the matter. After such hearing and within thirty days after action by council upon such petition, any party aggrieved by council's action thereupon may appeal to the court of quarter sessions.

Section 1742. Petition for Vacating Street; Action Thereon.—Any person or persons constituting a majority in number and interest of the owners of the real estate abutting upon any street or portion thereof may petition the council to vacate such street or portion thereof. Council shall hold a hearing upon such petition, following at least fifteen days' personal notice to all owners of abutting real estate not joining in such petition, and following at least fifteen days' notice thereof in a newspaper of general circulation in the borough. Following such hearing the council shall either by motion deny such petition or by ordinance vacate such street or portion thereof. All provisions of section 1741 hereof applicable to ordinances enacted by authority of that section shall apply to ordinances enacted by authority of this section: Provided, That any petition for the vacation of any street or portion thereof may release the borough from all damages sustained as a result of such vacation, if such petition is signed by the owners of all the property abutting upon such street or portion thereof, and, where any such release shall have been included in such petition, no proceedings for award of damages shall be had and no damages as a result of such vacation shall under any conditions be awarded to any abutting property owner.

Section 1743. Action for Damages.—If the parties cannot agree upon the damages sustained by reason of the vacation of any street or portion thereof, such damages shall be assessed by a jury of view under the law

governing eminent domain.

Section 1744. Effect of Vacation.—When a street or portion thereof shall have been vacated, all public right in or to such street or portion thereof shall cease, but such vacation shall not affect any private rights acquired by any of the owners of <sup>1</sup> abutting property.

(f) Straightening and Relocating Streets

Section 1751. Authority to Straighten and Relocate Streets; Procedure.—Any borough may, by ordinance, provide for straightening and/or relocating any street previously opened, involving the opening of a portion of such straightened and/or relocate street over land not previously a portion of such street and/or the vacation of a portion of such previously opened street no longer to be used for street purposes. In such cases, such straightening and/or relocation shall be considered as an opening and/or vacation and shall be effected in the same manner and by the same procedure as provided in prior sections of this article for opening or vacation of streets, as the case may be, but such opening and/or vacation may be considered as a single proceeding, to be effected by enactment of a single ordinance, and it shall not be necessary to enact one ordinance for vacation and another for opening.

(g) Improvement of Borough Streets

Section 1761. Proceedings With or Without Petition.—Boroughs with petition or without petition may improve streets, or parts thereof, or a particular width, or additional widths thereof, with or without the assistance or contribution of the United States of America, the State, the county, or a corporation occupying the <sup>2</sup> thoroughfare and may assess and collect the whole cost thereof, or the whole cost not thus aided or contributed, or any part thereof, from the owners of real estate abutting on the improvement by an equal assessment on the foot-front basis or according to benefits as provided in article XV of this act including the expenses of the necessary drainage. The council may make equitable adjustments for corner lots or lots of irregular shape where an assessment for full frontage might be unjust. Property not otherwise assessable shall become assessable by the petition of the owner or the owners' representative. In all cases where the whole width of the highway is being paved without State or County aid and more than two-thirds of the total cost is proposed to be assessed on abutters the borough shall for this purpose be considered as owner of non-assessable property, of street intersections and of the deducted frontage on equitable adjustment. At the discretion of the borough council, the total cost of the

<sup>1</sup> "abuting" in original.

<sup>2</sup> "throughfare" in original.

improvement or a lesser amount, if the borough desires, may be assessed on the assessable properties abutting without any deduction for non-assessable property or street intersections, or for the equitable adjustments aforesaid, if the petition states that the total cost may be assessed on the abutters: Provided, if in connection with such proceedings any street or sidewalk is so graded or changed in grade that private property is damaged thereby and the damages have not been released or agreed upon, then the damages shall be awarded as provided in the law governing eminent domain, and benefits, costs, and expenses in connection with the improvement shall be assessed as provided in article XV: Provided further, That owners of all real estate abutting upon any such improvement shall be assessable for the cost thereof, whether such property owner be a natural person, partnership, association, firm or corporation, including but not limited to any nonprofit corporation or association, and any public utility corporation, or political subdivision, but not including the Commonwealth of Pennsylvania or the United States of America.

Section 1762. Notice of Assessments.—The borough secretary of the borough shall cause thirty days' personal notice of the assessment to be given to each party assessed.

Section 1763. Collection of Assessments.—If any assessment shall remain unpaid at the expiration of the notice, it shall be the duty of the borough solicitor to collect the same, with interest from the time of completion of the improvement, by action of assumpsit, or by a lien to be filed and collected in the same manner as municipal claims. When an owner has two or more lots, against which there is an assessment for the same improvement, all of such lots may be embraced in one claim.

(h) Improvement of Streets Outside or Partly Outside Borough Limits

Section 1771. Agreements to Improve Boundary Streets.—Any borough may enter into agreement, with any adjoining municipality and/or township for improving streets which may be boundaries between such borough and municipality or township, and may provide in such contract that the damages, costs, and expenses of such improvement shall be divided between such borough, municipality, and/or township in the proportion agreed upon. The borough may assess its share of such costs against the owner of property abutting upon the borough's side of such improvement, in the manner provided in sections 1761, 1762 and 1763 of this act.

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, and the benefits incident thereto shall be assessed and

collected in the manner provided in article XV of this act; but the borough may agree to pay any part of the costs, damages, and expenses of such improvements out of the general funds.

**Section 1772. Proceedings to Improve Boundary Streets by Agreement with Counties and Townships.**—Whenever the center line of any street constitutes the dividing line between any borough and a township located in the same county, the borough may enter into a contract with the commissioners of the county and the commissioners or supervisors of the township, as the case may be, to improve such street. Such improvement shall be constructed and subsequent repairs shall be made under the supervision of the borough, and in compliance with the plans to be agreed upon, in writing, between such borough and the commissioners of the county and the commissioners or supervisors of the township. One-half of the cost of such repairs shall be borne by the borough. The borough may assess its share of such costs against the owners of property abutting on the borough's side of such improvement, in the manner provided in section 1761, 1762 and 1763 of this act.

**Section 1773. Streets More Than One-Half the Width of Which Are Within the Borough.**—Whenever any street, more than one-half the width of which is within the limits of any borough, shall divide such borough from any other municipality or township, such street may be improved by the borough within which the greater width is located, in the same manner as if such street were entirely located within the limits of said borough. The property abutting on the side of such street, which is located outside the limits of the borough making such improvements, shall, for a depth of one hundred and fifty feet, plus one-half the width of said street, from its center line, be assessed for any and all municipal improvements to or on the said street in the same manner as such property would be assessed under the laws of the Commonwealth if it were entirely located within the limits of such borough.

**Section 1774. Assessment on Property Outside Limits Where Boundary Line Street Entirely Within Borough.**—Wherever any street, entirely within the limits of any borough, shall divide such borough from any other municipality or township, located in the same county, the property on the side of the street opposite the line of the borough shall, for the depth of one hundred and fifty feet, be assessed for municipal improvements on such streets on which such property shall abut, in the manner provided by this article for assessments by the foot-front rule; and such improvements may be made, assessed, and collected in accordance with the provisions of this article for assessments by the foot-front rule.



Section 1775. Streets Outside Limits; Appropriations to Improve Connecting Links.—Any borough may, singly, or jointly with any other borough, city, township and/or county, appropriate and expend moneys for the improvement of streets outside the limits of such borough, for the purpose of connecting improved streets in such borough with State highways. No such street shall be improved which shall be more than <sup>1</sup> one mile in length.

(i) Acquisition and/or Use of Abutting Lands for Embankments, Slopes, Fills and Culverts, or for Unobstructed View

Section 1781. Use of Abutting Lands for Embankments, Slopes, Fills, and Culverts.—In the improvement of any street or portion thereof, any borough may use as much of the land abutting on the same for the construction of embankments, slopes, fills and culverts, as may be necessary and proper for the completion of the improvement; and the assessment of damages, costs, and expenses, resulting thereby, shall be regarded as other assessments of damages, costs, and expenses, caused by the improvement of streets, in said borough, and shall be assessed and paid, as is provided by the law governing eminent domain.

Section 1782. Acquisition of Property for Unobstructed View.—Any borough may, singly or jointly with another borough, city, county or township, acquire, by purchase or by the right of eminent domain, a free and unobstructed view down and across such 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 assure a free and unobstructed view in all directions at such crossings, and to so prevent the use of such lands for any purpose or in any manner which may interfere with or obstruct the view of persons traveling upon any such street or highway.

Upon any such condemnation, the borough having had such view condemned may, from time to time, abate or remove or cause to be abated or removed any obstruction to the view over and across such lands except poles used in furnishing telephone, telegraph or electric service to the public.

The proceedings for the condemnation of such view over and across such 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 borough, city, county or township, shall be taken in the manner provided in the law governing eminent domain.

Upon the purchase or condemnation of a view, the owner of such lands

<sup>1</sup> "on" in original.

may make every such use thereof as will not interfere with a free and unobstructed view at the dangerous crossing or curve and, unless specially provided for in such purchase or condemnation proceedings, such purchase or condemnation shall be constructed to prevent the owner thereof from using the land for pasture or the growing of grass, oats, wheat or other crops which will not obstruct the vision more than wheat.

### ARTICLE XVIII SIDEWALKS

Section 1801. Power to Lay Out, Ordain and Establish Sidewalks and to Compel the Construction Thereof.—Any borough may lay out, ordain and establish sidewalks, curbs, gutters and surface water drains along any street, and, with the consent of the Secretary of Highways of the Commonwealth, along any State highway, and may, with or without petition, require owners of property abutting on any street or State highway to grade, construct, drain, pave and repave the sidewalk, curb or gutter and keep the same in repair, and in safe and usable condition along such property, at such grades and under such regulations and specifications as council may prescribe: Provided, That the word "sidewalk" as used in this article, shall mean and include the portion of a street located outside the cartway, and may include paved footway, unpaved grassplot, curb and gutter.

Section 1802. Sidewalks on Land Abutting State Highways and Along Roads Outside Borough.—Any borough may ordain and lay out sidewalks, gutters, and/or surface water drains upon land abutting the sides of State highways, and upon land abutting the sides of public roads, where such roads are outside the borough limits, but the land upon which such sidewalks, gutters and/or surface water drains are to be laid out is within the borough limits.

Section 1803. Establishment of Grades.—Any borough may establish a grade or grades for sidewalks, which grade or grades may be separate and apart from the grade or grades established for the cartway or roadway.

Section 1804. Boroughs May Pay All or Part of Cost of Grading and Curbing.—The borough may pay all or any part of the cost and expenses of grading and curbing any sidewalk.

Section 1805. Borough May Do Work; Collection of Cost.—Upon the neglect of any property owner to comply with any of the requirements provided in the preceding sections of this article, the borough may, after notice, cause the grading, paving, repairing, curbing, and/or guttering to be done at the cost of such owner, and may collect the cost thereof and ten percent additional, together with all charges and ex-

penses, from such owner, and may file a municipal claim therefor or collect the same by action in assumpsit.

All such notices shall be served upon the owner of the premises to which the notice refers, if such owner is a resident of the borough. If the owner is not a resident, then the notice may be served upon the agent or tenant of the owner, or upon the occupant of such premises, after such premises, if the owner has no agent or tenant or there is no occupier of such premises, then service shall be by notice posted upon the premises.

Section 1806. Emergency Repairs to Sidewalks.—In addition to the remedies now vested in boroughs to make repairs to sidewalks, any borough shall have power to make emergency repairs to any sidewalks thereon, where, in the opinion of the officer or head of the department or committee lawfully having charge of sidewalk repairs, a dangerous condition exists that can be repaired by an expenditure of not more than one hundred dollars (\$100). Before any such repairs are made, a notice to make the repairs within forty-eight hours shall be served upon the owner of the said property. If the owner cannot be served within the county, notice may be served upon the agent of the owner or the party in possession, or if there is no agent or party in possession, the notice may be served by posting the same upon such premises.

Upon the completion of the work, the cost thereof shall be a charge against the owner of the property, and shall be a lien, until paid, upon the abutting property, provided a claim is filed therefor in accordance with the law providing for the filing and collection of municipal claims. Any such charge may also be collected by action of assumpsit. This section is intended to provide an additional remedy for boroughs in connection with emergency repairs, where the actual cost of doing the work does not exceed one hundred dollars (\$100), and the certificate of the officer or head of the department or committee in charge of repairs to sidewalks shall be conclusive evidence of the existence of the emergency justifying the repair under the terms of this section.

#### ARTICLE XIX

#### BRIDGES, VIADUCTS AND UNDERGROUND PASSAGEWAYS

Section 1901. Construction or Acquisition and Maintenance of Bridges and Viaducts.—Any borough may locate and build, or acquire by purchase, condemnation or otherwise, any bridge or viaduct and the piers, approaches and abutments therefor, to be used and thereafter improved and maintained as a street, over any river, creek, stream, railroad or public or private property or over and across a combination of any of them, whether such bridge or viaduct shall be wholly within,

or partly within and partly without the borough limits. The proceedings for laying out and opening any such bridge or viaduct shall be the same as provided by this act for the laying out and opening of streets, and any such bridge or viaduct or portion thereof may thereafter be vacated under the same procedure as provided in this act for the relocation or vacation of streets or portions thereof.

Section 1902. Right to Appropriate Property; Assessment of Damages.—In any case where the borough shall not have agreed with the owner or owners for damages done, or likely to be done, by the erection of any such bridge or viaduct, the borough may take and appropriate the land and property necessary, over and across which to erect such bridge or viaduct and the damages caused by such taking and appropriation shall be assessed according to the law governing eminent domain.

Section 1903. Boundary Bridges.—Whenever a bridge or viaduct shall cross the boundary line of a borough and another municipality or township, the borough may unite with such municipality or township in the construction and maintenance of such bridge, and shall pay an equal share of the expenses incident thereto.

Section 1904. Contracts With Railroads and Other Companies and With Counties.—The borough may also enter into a contract with the county commissioners, and also with railroads, street railways, and other companies, or parties interested, for the building and maintenance of such bridges or viaducts, and for the payment of any damages caused by the location or erection thereof. Such contracts may stipulate that the borough, county, railroad company, street railway, or other company or party interested, shall pay a certain part of the contract price of the work, including damages; or may stipulate that each shall construct a certain portion of the work, and may provide otherwise for the payment of damages.

When any railroad company, street railway, or other company or party interested, shall agree to pay a certain portion of the cost of such work, it shall pay the same into the borough treasury; and the borough treasurer shall pay the same over to the contractor, as may be provided in the contract; but the amount to be paid by the county shall be paid directly to the contractor. The agreement may provide for the maintenance of the bridges and viaducts after their erection. Nothing herein contained shall authorize any borough to contract with a county for the maintenance of any bridge or viaduct which does not cross a place over which the county is authorized to build bridges; but such bridge or viaduct shall be maintained as a borough structure, and the borough may contract with any party interested, except the county, for the maintenance of the same.

Section 1905. Overhead and Underground Passageways.—Whenever the comfort and safety of the residents of any borough and any adjoining municipality or township be enhanced by any overhead or underground passageway connecting with adjoining streets in either borough or municipality or township, and extending to any plant or place of business where residents of such borough are employed, such borough may jointly with each adjoining municipality or township, construct and maintain any such passageway or they may join with other interests in the construction and maintenance thereof.

## ARTICLE XX SANITARY SEWERS

### (a) Laying Out, Ordaining and Construction of Sewers and Construction of Sewage Treatment Works

Section 2001. Power to Lay Out, Ordain and Construct.—Boroughs, with the consent and permit of the Sanitary Water Board, and of the Water and Power Resources Board, where requested, may lay out, ordain and construct sanitary sewers in streets and on public or private property, and may construct sewage treatment works on land owned or acquired for such purposes, and pay the costs and expenses thereof out of borough funds, or may assess the costs and expenses of sanitary sewers as herein provided. Sanitary sewers laid and constructed in streets may be located in the center of the street or on either side of the cartway or of the curb lines thereof in any street and may be for the service and use of properties on both sides of the street or on only one side of the street in which they are laid, as directed by the borough council, and the costs and expenses of such sanitary sewers may be assessed against properties benefited, accommodated or improved thereby regardless of the property line location, and regardless of whether any portion of a property so benefited, accommodated or improved shall physically abut upon such sanitary sewer. The term "sanitary sewer," as used in this article, shall mean and include a sewer used for receiving and collecting sewage matter and liquid waste from the inside of buildings and structures, and, in those boroughs where there shall be what is known as "combined sewers," receiving, in addition to such sewage and liquid waste from the inside of buildings and structures, storm, roof or surface drainage or any of them, the term "sanitary sewer," as used in this article, shall include such combined sewers.

Section 2002. Assessment According to Benefits.—Where a borough constructs sanitary sewers and desires to assess the costs and expenses upon property benefited, whether or not such property abuts upon such sewer, then on petition, viewers shall be appointed, as provided in article

XV of this act, who shall assess the damages, costs, and expenses of the sanitary sewer upon the property benefited, accommodated or improved according to benefits, if sufficient can be found, but if not, then the deficiency when finally ascertained shall be paid by the borough. The proceedings of the viewers and the proceedings of their report shall be as provided in article XV of this act.

Section 2003. Assessment by Foot-front Rule.—Where a borough constructs sanitary sewers and desires to assess the costs and expenses thereof by the foot-front rule, it may by ordinance provide that the expenses shall be assessed against the property benefited, improved or accommodated by any sanitary sewer, whether or not such property abuts upon such sewer, by the foot-front rule and may provide for equitable assessments and/or adjustments when special conditions exist where an assessment for the full frontage would be unjust. The secretary of the borough shall cause thirty days' notice of the assessment to be given to each party assessed, either by service on the owner or his agent, or left on the assessed premises.

Section 2004. Places and Manner of Construction.—The borough shall fix the places along, where such sanitary sewer and branches thereof, shall be laid down, and shall prescribe the manner in which they shall be constructed.

Section 2005. Permit from Sanitary Water Board.—No contract for the construction of any sewer system or treatment works shall be entered into until a permit for the construction of the same shall have been obtained from the Sanitary Water Board.

Section 2006. Assessments of Cost.—Whenever any borough shall construct any sanitary sewer and assess the cost thereof by the foot-front rule, the assessment, duly certified under the seal of the borough, attested by the new president of council and secretary, shall be collectible from the owner of property benefited, improved or accommodated thereby.

Such certificate of assessment shall be prima facie evidence, in any suit for the recovery of the same, of the correctness and validity of such assessment.

The assessment herein referred to shall be computed under the terms of the ordinance, but the individual assessments need not be expressed therein.

Section 2007. Collections of Assessments—If the owners of property against which a foot-front assessment has been made shall refuse to pay such assessment within thirty days after notice of the same, it shall be the duty of the borough solicitor to collect the same, with in-

terest from the time of completion of the improvement, by action of assumpsit, or by lien to be filed and collected in the same manner as municipal claims. When an owner has two or more lots against which there is an assessment for the same improvement, all of such lots may be embraced in one claim.

Section 2008. Regulations of Borough.—The borough may enforce by penalties, such regulations as it may ordain with reference to the use and maintenance of such sanitary sewerage system and treatment works.

Section 2009. Extensions Beyond Borough Limits; Eminent Domain.—The borough may extend the necessary sewer mains and outlets beyond the limits of such borough, to a point where such sewage is to be disposed; and shall have power to enter upon and condemn such lands, property and materials for the construction of all such sewer mains, outlets, and treatment works as may be necessary for the disposal of such sewage.

Section 2010. Notice of Certain Ordinances.—No ordinance for any construction of sewers or treatment works beyond the limits of the borough, shall be <sup>1</sup> adopted until notice thereof has been given, by publication of the proposed ordinance, once a week for four weeks in one newspaper of general circulation in the borough, and also by serving copies of such proposed ordinance upon all land owners through whose land such sewer is to pass, or on whose lands any treatment works are to be located, at least ten days before final action thereon. But no notice, as herein provided, shall be required where such construction beyond the limits of a borough is entirely within the limits of any street or State highway. In such cases a written notice shall be given to the corporate authorities of the municipality or township having jurisdiction over such street and consent of the State Department of Highways shall be obtained in the case of any State highway, before construction is commenced.

Section 2011. Security for Damages; Assessments.—Before entry shall be made upon private property without the owner's consent, for the purpose of laying any sewer or constructing any treatment works, security for all damages which may be done shall first be given to such owner in such form and in such amount as the court of common pleas of the county may direct. All damages caused by the construction of any such sewer or works, or by the taking of lands and materials, shall be ascertained in the manner provided in the law governing eminent

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<sup>1</sup> "adpoted" in original.

domain for property taken, injured, or destroyed, and shall be paid out of the borough treasury.

**Section 2012. Unlawful to Build Within Right-of-Way of Sewers.—**It shall be unlawful for any person to erect any building or make any improvement, within the right-of-way of any sewer laid out or ordained to be laid out, after due notice thereof; and, if any such erection or improvement shall be made, no allowance shall be had therefor in the assessment of damages.

**Section 2013. Opening Sewers.—**If any borough shall lay out or ordain any sewer, over or under private property, located in whole or in part within the limits of such borough, and proceedings to open the same and to assess the damage arising therefrom shall not be proceeded with by the borough, within two years from the enactment of the ordinance, the whole proceeding shall be void.

(b) Joint Sewers

**Section 2021. Building Joint Sewers.—(a)** Boroughs may jointly with other cities, boroughs or townships build and construct sanitary sewers, including trunk line sewers or drains and sewage treatment works, and may connect into such system existing sanitary sewers, and may assess their respective portions of the cost thereof, or so much thereof as may be legally assessable, upon property benefited, improved, or accommodated by the improvement, either by viewers or by the foot-front rule as provided in this article. Any portion of the cost of such improvement not assessed or not assessable shall be paid by the respective cities, boroughs, and townships joining, as may be agreed upon.

(b) The boroughs, cities and townships joining or contemplating joining in any such improvement, in order to facilitate the building of the same and securing preliminary surveys and estimates, may by ordinance provide for the appointment of a joint sewer board composed of one representative from each of the boroughs, cities, and townships joining which shall act generally as the advisory and administrative agency in the construction of such improvement, and its subsequent operation and maintenance. The members of such board shall serve for terms of six years each from the dates of their respective appointments and until their successors are appointed. The board shall organize by the election of a chairman, secretary, and treasurer. The secretary and treasurer may be the same person. The several boroughs, cities, and townships may in the ordinances creating the board, authorize the board to appoint an engineer, a solicitor, and such other assistants as are deemed necessary, and agree to the share of the compensation of such persons each borough, city, and township, is to pay. The members of the board shall receive



such compensation for attending meetings of the board as shall be fixed in the budget, prepared by the board for submission to, and adoption by, the several boroughs, cities, and townships, as hereinafter provided, and shall be entitled to actual expenses to be paid by the respective boroughs, cities and townships which such members represent.

(c) The board shall have powers to adopt rules and regulations to govern its proceedings, and shall prepare and suggest any practical measures and plans by which the joint improvement may be carried to successful completion; and plan the future development of the system, so as to conform to a general plan. It shall have power to prepare a joint agreement or agreements for submission to and adoption by the several boroughs, cities and townships defining the advisory and administrative powers of the board; setting forth the consents of the several boroughs, cities and townships to the proposed improvement; the manner in which preliminary and final plans, specifications and estimates for the proposed improvement shall be prepared and adopted; how proposals for bids shall be advertised and contracts let; the manner in which the costs of the improvement and other incidental and preliminary expenses in connection therewith, and the future cost of operation and maintenance shall be equitably shared, apportioned and paid; and all such other matters, including the preparation and submission of annual and other budgets, as may be deemed necessary or required by law, to carry the proposed improvement to completion and to assure future maintenance and operation thereof. But nothing herein contained shall authorize the board to make any improvement or expend any public moneys which has not first been authorized by all the boroughs, cities and townships proceeding with the improvement.

(d) In any case where it shall be necessary to acquire, appropriate, injure, or destroy private property, lands, property, or material to build any such joint sewer improvement, and the same cannot be acquired by purchase or gift, the right of eminent domain shall vest in the borough, city, or township where such property is located. In any case where it shall be necessary to acquire, injure, or destroy property in any territory not within the limits of any of the boroughs, cities, or townships joining in the improvement, then the right of eminent domain shall be vested in any borough, city, or township adjacent to such territory where such property is located. Damages for any property taken, injured, or destroyed shall be assessed as provided by the general laws relating to the boroughs, cities and townships exercising the right of eminent domain; and shall be paid by the several boroughs, cities and townships joining, in the same proportion as other costs of the improvement.

(e) Each of the boroughs joining in any such improvement shall have power to incur or increase its indebtedness, not exceeding the constitutional limits, for the purpose of paying its share or portion of the cost of such improvement in the manner now provided by law for the incurring of indebtedness.

Section 2022. Approval of Sanitary Water Board.—No such sewer or sewage treatment plant shall be constructed until plans and specifications have been submitted to the Sanitary Water Board, and approved in accordance with provisions of existing laws.

Section 2023. Connections with Sewers of Adjacent Municipalities.—Any borough may connect with an existing sewer, owned by any adjacent municipality or township, for sewerage purposes, in the manner prescribed in the following sections of this subdivision of this article.

Section 2024. Applications to Court.—Whenever any borough shall desire to connect with the existing sewer of any adjacent municipality or township, and no agreement, either upon the basis of a rental payment for the use of an existing sewer or a division of the cost of the construction or maintenance thereof, has been reached between such borough and the adjacent municipality or township, an application shall be made by council to the court of quarter sessions of the county, setting forth that fact.

Section 2025. Appointment of Viewers.—If the court shall be of the opinion that such connection can be made without impairing the usefulness of the existing sewer, it shall appoint three viewers, who shall view the premises and investigate the facts of the case, and shall assess the proportionate part of the expense of building the original sewer upon such borough, and shall fix the proportion of the expense for repairs which each municipality or township shall thereafter bear, and determine all other questions liable to arise in connection therewith.

Section 2026. Report of Viewers; Appeals to Court.—The viewers shall report to the court the result of their investigation, which report shall be confirmed within thirty days unless exceptions thereto be filed. After confirmation of such report, or the disposal of any exceptions, any party interested may appeal from the decision of the court of quarter sessions to the Supreme or Superior Court.

(c) Power to Supply Sewerage Service Outside Borough Limits

Section 2031. Power to Supply Service.—Whenever any borough is maintaining and operating a sewerage system and sewage purification or treatment works, it shall be lawful for such borough to supply sewerage service to municipalities, townships, persons and corporations, outside the limits of such borough, and to enter into contracts for such

service, at rates not less than those required to be paid by persons and corporations within the limits of such borough; but <sup>1</sup>no such privilege shall conflict with the rights of any sewer company, or the rights of any other borough.

Section 2032. Power to Extend Lines and Condemn Property.—For the purpose of supplying such sewerage facilities, any such borough may extend the necessary sewer mains and pipes beyond the limits of such borough, to the points where such sewage is to be collected and received, and shall have the power to enter upon and condemn such lands, property and materials for the construction of such sewer mains, and pipes, as may be necessary to the furnishing of such sewerage service.

(d) Acquisition of Sewer Systems

Section 2041. Power to Acquire Sewer Systems.—Any borough, in which any person or persons, firm, or corporation are maintaining sewers and culverts, with the necessary inlets and appliances for surface, under surface and sewage drainage, or in which any person or persons, firm or corporation are maintaining a community sewage collection or disposal system as defined in section 2043 of this act, may become the owner of such sewers, culverts, inlets and appliances, or the owner of such community collection or disposal system, by purchase or by the exercise of the power of eminent domain, or by gift from the owner or owners thereof.

Section 2042. Assessment of Damages.—In case of disagreement, the amount to be paid shall be ascertained in the manner provided in the law governing eminent domain. In the same proceeding, the viewers shall assess the costs and expenses of the sewer, culverts, inlets and appliances, or of the sewer collection, or disposal system, acquired by the borough, upon the property benefited, according to benefits, if sufficient can be found; but, if not, then the deficiency when ascertained shall be paid by the borough.

Section 2043. Community Sewage Collection or Disposal Systems.—  
(a) For the purpose of this subdivision, a community sewage collection or disposal system is all or part of a device or devices installed on any privately or publicly owned parcel of land, intended to treat or dispose of the sewage or equivalent volume of domestic sewage from two or more residences, buildings or occupied parcels of land, or any system of piping used in collection and conveyance of sewage on private or public property.

(b) After a community sewage collection or disposal system has been acquired under the provisions of this subdivision by the borough, the

<sup>1</sup> "not" in original.

council shall have the power to enlarge such system if it deems it advisable. In such cases, the cost and expenses of such enlargement may be distributed or assessed in the same manner as if the enlargement was a regular sewer constructed by the borough under other provisions of this act.

(c) Whenever a community sewage collection or disposal system is or shall have been established or constructed within a borough by a private owner or owners, and the borough council is thereafter empowered by ordinance to acquire the ownership of the sewage disposal system so established, or when any such system has been enlarged by the borough, such acquisition and ownership shall be subject to the following provisions of this subsection:

(1) When the person or persons having established or constructed a community sewage collection or disposal system, or when more than one-half the number of the owners of properties which are connected with, have a right to use and are using a community collection or disposal system, enter into an agreement with the borough for the acquisition of the system by the borough, such agreement shall be considered a valid agreement by the owners of the sewage collection or disposal system and a transfer of ownership to the borough.

(2) The borough shall operate and maintain any sewage collection or disposal system acquired and any enlargement or addition thereto for the use of persons having acquired from the borough or from the former owner or owners the right to use the system, and for the use of other owners of property accessible thereto up to the capacity of the sewage collection or disposal system.

(3) All persons whose property connects with the sewage collection or disposal system acquired or constructed by the borough shall pay to the borough treasurer, a monthly, quarterly, semi-annual or annual charge prescribed by a resolution of the council. The amount of the charges shall not be in excess of the estimated amount necessary to maintain and operate the system and to establish a reserve fund sufficient for its future replacement.

(4) All sewer rentals or charges imposed by the council against properties connected with a community sewage collection or disposal system under the provisions of this section shall constitute liens against the properties and may be collected in the same manner as other sewer charges.

(5) All moneys received from the sewer charges shall be deposited as a special reserve fund, and shall be used only for the payment of the cost of operating and maintaining the sewage collection or disposal

system and the replacement thereof, if necessary and economically desirable. If at any time after the acquisition or enlargement of the sewage system, a regular sewer system is made available by the borough for connection with the properties using the community sewage collection or disposal system, the owners of such properties shall be subject to the other provisions of this act relating to sewers, and all money at that time in the reserve fund which was received from charges for the use of that particular sewage collection or disposal system, and which is over and above the amount expended for the operation and maintenance of that particular sewage collection or disposal system, shall be used towards the payment of any sewer assessments charged against such properties under other sections of this act.

(e) Connection and Use of Sewers

Section 2051. Ordinances to Require Sewer Connections.—Any borough may, by ordinance, require any owner of property, benefited, improved or accommodated by a sanitary sewer, to make connections with such sanitary sewer, in such manner as the borough may order, for the purpose of discharge of such drainage or waste matter as the borough may specify. The borough may by penalties enforce any regulation it may ordain with reference to any sanitary sewer connections.

Section 2052. Notice of Ordinances; Failure to Comply With Ordinance.—The owner shall be given at least forty-five days' notice of any ordinance requiring such sewer connection, and, upon failure of such owner to make such connection, the borough may make the same, and collect the cost thereof from the owner by a municipal claim or in an action of assumpsit. All connections required shall be uniform.

Section 2053. Tapping Fees.—Any borough may by ordinance provide for charging a tapping fee whenever the owner of any property connects such property with a sanitary sewer system constructed or acquired by the borough, which fee shall be in addition to any charges assessed and collected against such property in the construction or acquisition of such sanitary sewer by the borough. Whenever a sanitary sewer system or any part or extension thereof, owned by a borough, has been constructed by the borough at the expense of a private person or corporation or has been constructed by a private person or corporation under the supervision of the borough at the expense of the private person or corporation, the borough shall have the right to charge a tapping fee and refund said tapping fee or any part thereof to the person or corporation who has paid for the construction of said sanitary sewer system or any part or extension thereof. The total of said refunds shall never exceed the cost of said system or any part or extension thereof to the

person or corporation paying for the construction thereof. In any case, where the property connected or to be connected with the sanitary sewer system of the borough is not equipped with a water meter the borough may install such a meter at its own cost and expense. If the property is supplied with water from the facilities of a public water supply agency, the borough shall not install such meter without the consent and approval of the public water supply agency.

**Section 2054. Regulations and Restrictions in Use of Sanitary Sewers.**—Any borough in which there is any public sanitary sewer or sewer system shall have authority, by ordinance, to make regulations and restrictions pertaining to the use of such sewer or sewer system. Such regulations and restrictions: (i) may specify materials and/or substances which may or may not enter the public sewer or sewer system; (ii) may require that certain types or classes of waste be subjected to treatment or to grinding or other reduction in size before entering into the sewer; (iii) may restrict the quantity of waste material that may enter a sanitary sewer from any premises within any time interval; and (iv) may require that property owners provide means other than the public sanitary sewers for disposal of storm, surface and roof water originating or accumulating upon their property.

(f) Annual Rentals

**Section 2061. Ordinance for Annual Rental.**—Whenever any borough shall have constructed any sanitary sewer, sewer system or sewage treatment works, or shall have acquired wholly or partially the same at public expense, as authorized in this article, the council of such borough may provide, by ordinance, for the collection of an annual rental or charge, for the use of such sanitary sewer, sewer system or sewage treatment works, from the owner of property served by it. The council may, at its discretion, in lieu of such annual rental or charge, provide for the payment by such owner of a fixed sum.

**Section 2062. How Rental Fixed.**—Such annual rental may include the amount expended annually by the borough in maintenance, repair, alteration, inspection, depreciation, or other expense, of such sewer, sewer system or sewage treatment works, and may include interest on money expended or borrowed by the borough in the construction of the sewer, sewer system or sewage treatment works, or in the acquisition, enlargement or extension of the sewer or sewer system, and may also include an amount sufficient for the amortization of debt incurred by the borough for any such purposes, including the construction of sewage treatment works according to law. The said annual or fixed sum shall be apportioned equitably among the several properties served by the said sewers, sewer system or sewage treatment works.

Section 2063. Collection of Rental.—Such annual rental or charge, or such fixed sum, shall be authorized and collected as provided by general ordinances, and, when so levied and charged, shall be a lien on the properties charged. The collection thereof shall be made and enforced in the manner municipal claims are collected.

The council of such borough shall execute a warrant or warrants, authorizing the collection of such annual sewer rentals or charges, or such fixed sum, to the officer employed by council to collect the same. Such officer shall have the authority now vested by law for the collection of borough taxes.

Section 2064. Lien.—Such annual sewer rentals or charges, or such fixed sum, shall be a lien on the properties charged with the payment thereof, from the date set forth in the ordinance, and, if not paid after thirty days' notice, may be collected by an action of assumpsit, in the name of the borough against the owner of the property charged, or by distress of personal property on the premises, or by a lien filed in the nature of a municipal lien.

(g) Sewers on Boundary Streets

Section 2071. Power to Lay and Construct.—Boroughs shall have authority to lay and construct sewers in any street, any portion of which is within the limits of the borough, and which forms a portion of the boundary dividing the borough from any other city, borough, or township within the same county, in the same manner and to the same extent as if the whole of said street was within the limits of the said borough.

Section 2072. Assessment of Benefits.—The property benefited, improved or accommodated, which is located outside the limits of the borough constructing such sanitary sewers, shall, for a depth of one hundred fifty feet, be assessed for the cost of such sewer, in the same manner as such property would be assessed, under the laws of the Commonwealth, if it were entirely located within the limits of such borough, if such property is given permission to use such sanitary sewer and is not, at the time such sanitary sewer is constructed, provided with sanitary sewer facilities.

## ARTICLE XXI

### COLLECTION BY INSTALMENT OF STREET AND SEWER ASSESSMENTS

Section 2101. Authority for Instalment Payments.—Whenever any borough shall authorize the construction or acquisition of any sanitary sewer or system of sanitary sewers, or the improvement of any street or portion thereof, and the entire cost, or any part thereof, shall be assessed against the properties benefited, improved or accommodated by such

sewer or system of sewers, or abutting upon such street or portion thereof, such borough may authorize the payment of such assessment in equal annual, or more frequent instalments. Such instalment payments may be authorized by a general ordinance applicable to all sanitary sewers or systems thereof and/or all streets thereafter acquired, constructed or improved, as the case may be, or by one or more specific ordinances applicable to a specific sewer, system of sewers or street or portion thereof. Every such ordinance shall specify the length of time over which such instalments may be extended and whether payments are to be made by annual or more frequent instalments. All such instalments shall bear interest, as provided in the applicable ordinance, at a rate not to exceed six percent, commencing at such time as may be fixed or regulated by ordinance: Provided, That where bonds shall have been issued and sold in the manner provided by law, to provide for the payment of any street improvement, such assessments shall be payable in equal instalments during the term for which such bonds are issued, and the expenditures for such improvements, and interest thereon to the first day when interest is payable on such bonds, shall be taken as the cost of such improvement to be assessed on the property benefited.

Section 2102. Entry of Liens.—Claims to secure the assessments shall be entered in the prothonotary's office of the county at the same time and in the same form and shall be collected in the same manner as municipal claims are filed and collected, notwithstanding the provisions of this article on instalment payments.

Section 2103. Assessments; Where Payable.—Such assessments shall be payable at the office of the borough treasurer, or such other place as the ordinance shall provide, in semi-annual or annual instalments, with interest at the rate provided from the date from which interest is computed on the amount of the assessments.

Section 2104. Default in Payment of Instalment.—In case of default in the payment of any instalment and interest for a period of sixty days after the same shall become due, the entire assessment and accrued interest shall become due; and the borough solicitor shall proceed to collect the same under the general laws relating to the collection of municipal claims.

Section 2105. Payments in Full.—Any owner of property, against whom any such assessment shall have been made, may pay the same in full, at any time, with interest and costs thereon to the due date of the next instalment, and such payment shall discharge the lien.

## ARTICLE XXII

### STORM SEWERS AND WATER COURSES

Section 2201. Authority of Boroughs.—Any borough may, by ordi-



nance, after a permit shall have been obtained from the Water and Power Resources Board, and from the Federal Government, where required:

(1) Widen and deepen any water course running through or within the borough, erecting such dykes, retaining walls and embankments along the same as may be necessary to prevent the water from overflowing the banks thereof;

(2) Confine and pave any water course or portion thereof, other than a navigable stream;

(3) Engage in channel improvement through the construction and maintenance of storm sewers and the accumulation and discharge of water thereinto;

(4) Vacate or alter the course or channel of any water course, other than a navigable stream.

For any of such purposes, a borough may enter upon and condemn such property and materials as may be necessary. No borough may confine and pave, vacate or alter any water course used by any municipality, municipal authority or water company as a source of supply, unless such municipality, municipal authority or water company shall first consent to such confining and paving, vacation or alteration.

Section 2202. Right of Entry Upon Lands.—Any borough may enter upon any land lying near any water course, and secure such material as may be necessary for the purpose of making and repairing the embankments along such water course, when the same cannot be obtained by contract at reasonable price. Such boroughs shall cause no unnecessary damage to the owners of such land, and shall repair any fences which they may injure.

Section 2203. Manner of Financing Work.—The costs and expenses of any work authorized under section 2201 of this act may be paid wholly or in part by the borough from any moneys of the borough available for the purpose, with or without the assistance of the county, State or Federal Government, or the whole or any part of such costs and expenses not thus aided may be assessed, according to benefits as prescribed in article XV of this act, against properties located within the drainage area of such water course and benefited, improved or accommodated thereby.

Section 2204. Proceedings to Assess Damages.—Any person aggrieved by reason of any ordinance passed pursuant to the preceding sections of this article may complain to the court of common pleas, and proceedings may be had in the court to fix and determine the damages for property taken, injured or destroyed in the same manner as provided in the law governing eminent domain.

## ARTICLE XXIII UNDERGROUND CONDUITS

Section 2301. Powers of Boroughs.—Any borough may define, by ordinance, a reasonable district within which electric light, electric power, telephone, telegraph and other types of wires shall be placed underground in conduits, owned and constructed either by the borough or by corporations owning such wires, or by corporations organized for the purpose of laying such conduits and renting space therein.

Section 2302. Borough Regulations.—Whenever conduits are owned by any person, firm, or corporation, the borough may regulate, by ordinance, the manner in which conduits shall be used, and the terms and conditions of such use.

Section 2303. Acquisition of Conduits; Assessment of Damages.—Any borough may acquire existing conduits by purchase or by condemnation, and, in the latter case, the proceedings for the assessment of damages shall be the same as provided in the law governing eminent domain.

Section 2304. Borough Not to Surrender Rights.—The borough authorities shall not surrender or barter away the rights reserved in this article.

## ARTICLE XXIV 1 PUBLIC SERVICE

- (a) Water Supply and Waterworks
- (1) General Powers to Supply Water

Section 2401. Power to Supply Water.—Boroughs may provide a supply of water for the use of the public within such borough, by erecting and operating waterworks, by purchasing and operating waterworks, by entering into contract with persons or corporations authorized to supply water within the limits of such borough, or partly by the erection or purchase and operation of waterworks, and partly by entering into a contract.

Section 2402. Contracts Not to Abridge Powers.—No contract for the supply of water hereafter entered into by any borough with any person or corporation shall, in anywise, abridge the power of the borough to construct and operate waterworks as provided in the preceding section of this article, but such power shall remain in force as though such contract had not been made.

Section 2403. Issue of Bonds Where Waterworks Acquired.—Where the price and terms are agreed upon, a borough may become the owner of and operate any water system owned and operated by a corporation

<sup>1</sup> "Public Service" not in original.

furnishing water within the acquiring borough, and in nearby townships or boroughs, and may pay therefor from the revenues derived from general obligation bonds or utility bonds <sup>1</sup> issued in the manner provided by the Municipal Borrowing Law.

**Section 2404. Refunding Bonds.**—Where any borough has heretofore acquired or shall hereafter acquire any waterworks and the appurtenances thereto, subject to any existing lien or liens, and at the time of such acquisition issues utility bonds secured solely by liens on the property of such waterworks and imposing no municipal liability; then the borough may, at the time such utility bonds mature, or at any time prior thereto, issue and sell utility bonds for the purpose of refunding such outstanding bonds, which refunding bonds shall be issued as utility bonds in the manner provided by the Municipal Borrowing Law. Such bonds so issued, shall not be deemed to be the creation of new obligations but be deemed a continuation of the bonds existing or created at the time of the original acquisition of said waterworks and the appurtenances thereto.

Such bonds shall not be refunded for a longer period than twenty years, and the refunding lien bonds issued shall not bear interest at a rate exceeding six percent, and the amount of refunding lien bonds, so issued, shall not exceed, in the aggregate, the amount of the bonds to be refunded: Provided, That any moneys placed in any fund by the borough or by any commission of waterworks for the purpose of redeeming or paying such bonds at maturity, shall be first applied to the payment, as far as applicable, of the principal of such bonds to be refunded, and the balance of such bonds only shall be refunded by the issue of new bonds.

**Section 2405. Rates in Particular Boroughs.**—Whenever the schedule of water rates in any borough, owning or controlling waterworks, shall have been fixed or limited by special act of Assembly, the borough may change the rates schedule or rates from time to time.

**Section 2406. Contracts to Supply Water for Municipal Purposes.**—Boroughs may receive bids from water companies and municipal authorities, authorized to do business within such borough, and from other municipalities operating waterworks or distributing water, for the supply of water for fire protection and for other municipal purposes, and may contract therefor with such company.

**Section 2407. Power to Supply Water Beyond Limits of Borough.**—Whenever any borough is maintaining waterworks it shall be lawful for such borough to supply water to persons and corporations outside the

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<sup>1</sup> "bonds" in original.

limits of such borough; but no such privilege shall conflict with the corporate rights of any water company, or the rights of any other municipality or municipal authority.

Section 2408. Assessment for Water Mains.—Boroughs shall have power to assess the whole cost, or any part of the cost, of construction of new water mains, built in connection with the establishment or extension of a municipally owned water supply system, whether such mains be located within or without the limits of the borough, and serving the properties abutting thereon, against the properties abutting along the line thereof, by the foot-front rule, and to collect such assessments as other municipal claims are now by law collectible: Provided, That the assessment may be rebated to the owner of the property assessed, out of rates charged for water consumed in serving the property so assessed: And provided further, That the borough may issue negotiable credit memorandum to the amount of the assessment, which may be used for the payment of any water service to the extent of the said assessment.

Section 2409. Sale of Waterworks.—By ordinance, a borough may sell all or part of its waterworks and/or water distribution system to a purchaser at such price as the parties may agree upon, and thereafter for all purposes that price shall be deemed to be the purchaser's original cost less accrued depreciation of the plant at the date of purchase: Provided, That no such ordinance shall take effect until the expiration of ten days following its enactment and if, within such ten-day period, a protest, signed by at least ten percent of the registered electors of the borough shall be filed with the borough council, such sale shall be stayed pending a referendum on the ordinance. The borough secretary within five days following the filing of such protest, shall certify to the county board of elections a copy of the ordinance and the fact of the protest, together with the number of signers thereof, and the county board of elections shall direct a referendum to be held on the matter at a special election to be held at the time of the next general or municipal or primary election occurring not less than sixty days from the date of such certification by the borough secretary. Such referendum shall be conducted by the county board of elections in the manner provided by the Pennsylvania Election Code for the holding of special elections. The ballot used when voting upon the question shall contain a question stating the nature and purpose of the ordinance and providing that a "yes" vote shall be to sustain the ordinance and a "no" vote shall be to reject it. If more electors vote to sustain the ordinance than to reject it, such ordinance shall take effect immediately; if more electors

shall vote to reject the ordinance than to sustain it, such ordinance shall be null and void and shall not take effect.

(2) Acquisition by Eminent Domain

Section 2411. Appropriation of Lands and Waters.—Any borough desiring to erect waterworks, or to improve its water supply, may appropriate springs, streams, rivers, or creeks and lands, easements and rights of way, within or without its limits, and, for the purpose of conducting water obtained outside the limits of the borough, may lay pipes under and over any lands, rivers, streams, bridges, highways and under railroads. No water appropriated under the provisions of this section shall be used in such manner as to deprive the owner thereof of the free use and enjoyment of the same for domestic or farm purposes.

Section 2412. Agreements as to Damages; Bonds.—Prior to any such appropriation, the borough shall attempt to agree with the owner as to the damage done, or likely to be done, and, if the parties cannot agree, the borough shall file its bond in the court of common pleas, conditioned for the payment to the owner of the property of the damages for the taking thereof, when the same shall have been ascertained. Upon the approval of the bond and filing thereof, the borough may enter upon such property.

Section 2413. Appointment of Viewers; Proceedings.—Upon petition of either the property owner or borough, at any time thereafter, the court shall appoint three viewers from the county board of viewers, who shall assess the damages for the property or rights appropriated, and shall fix a time for their meeting, of which notice shall be given to all parties interested. The proceedings for the assessment of damages shall be as provided in the law governing eminent domain.

(3) Acquisition by Purchase after Appraisalment

Section 2421. Petition to Court Expressing Desire to Acquire Waterworks.—Whenever any person, firm, or corporation shall own any waterworks or system, and a borough is desirous of owning and operating such waterworks or system, such borough may present its petition to the court of common pleas of the county, setting forth that the borough is desirous of owning such waterworks or system, and that it will be necessary to issue bonds, and that a value should be placed upon such waterworks or system, including all property, real and personal, used in connection therewith.

Section 2422. Appointment of Engineers as Appraisers to Make Valuation.—The court shall thereupon appoint three civil engineers as appraisers, to value and appraise such waterworks or system, and the property used in connection therewith, and the contracts or agreements

with municipalities or townships, who shall file their report in the court within three months after their appointment, unless such time be extended by the court.

Section 2423. Powers of Appraisers.—The appraisers shall have access to the books and records of the person, firm, or corporation owning such waterworks or system, to inform themselves as to the income and value thereof. They shall have power to administer oaths and are authorized to take the testimony of witnesses. Their report shall be final if not appealed from.

Section 2424. Appeal from Appraisalment.—Within ten days after notice of the filing of any report in court, either party may appeal from such appraisalment, alleging an undervaluation or overvaluation of the property, and praying for a hearing before the court. The court shall thereupon fix a time when such appeal may be heard, of which time at least ten days' notice shall be given to the parties, and, upon such hearing, the court shall have power to affirm or modify such report as to it appears just and proper. Either party may appeal from the final confirmation of such report to the Superior or Supreme Court.

Section 2425. Effect of Failure of Owner of Works to Accept Price Fixed.—After the value is finally determined, the borough is authorized to buy such waterworks or system at the valuation so fixed; and the person, firm, or corporation owning the same shall, within ten days after notice, file in court its consent to sell and convey its waterworks or system and property to the borough at the valuation fixed; and, in default thereof, such person, firm, or corporation shall cease to have any exclusive privilege of supplying the borough, or the citizens thereof, with water, and the borough may install such waterworks or system as may be necessary for the accommodation of the public.

Section 2426. Issue of Bonds.—For the purpose of such purchase, the borough may issue utility bonds in the manner provided by the Municipal Borrowing Law.

Section 2427. Limit of Bond Issue.—Such bonds shall not exceed in amount the value fixed by the appraisers or the court. The proceeds of the sale of such bonds shall be used exclusively for the purpose of paying for the property acquired.

#### (4) Power to Lease Waterworks

Section 2431. Lease of Waterworks.—The council of any borough may enter into a contract with any individual, copartnership, association, or corporation, for the leasing of any water supply, works, systems, and property, or both of such individual, copartnership, association, or corporation.

Section 2432. Term of Lease; Rental.—Such leasing may be for such term of years and at such rental, as shall be agreed upon by the borough and the individual, copartnership, association, or corporation.

Section 2433. Operation of Property.—The property, so acquired, shall be operated in the same manner as if the same had been acquired by such borough by purchase or condemnation proceedings.

Section 2434. Rates.—The council of the borough shall fix the rates to be charged for the water furnished without the limits of such borough to individuals, copartnerships, associations, or corporations.

(5) Joint Waterworks

Section 2436. Joint Acquisitions and Constructions.—Two or more boroughs may unite, or any borough may unite with a city or township in the construction or acquisition and maintenance of waterworks.

Section 2437. Permit of Sanitary Water Board.—The construction of such waterworks shall be commenced only after plans for such waterworks have been filed with the Department of Health and the Water and Power Resources Board and permits issued in accordance with law.

Section 2438. Joint Commission of Waterworks.—The boroughs, cities and townships joining in any such construction or acquisition and maintenance of waterworks, in order to facilitate the building, operation and maintenance of the same, and in securing preliminary surveys and estimates, may by ordinance provide for the appointment of a joint commission of waterworks, composed of one representative from each of the boroughs, cities and townships joining, which shall act generally as the advisory and administrative agency in the construction of such improvement and its subsequent operation and maintenance. The members of such board shall serve for terms of six years each from the dates of their respective appointments and until their successors are appointed. The commission shall organize by the election of a chairman, secretary and treasurer. The secretary and treasurer may be the same person. The several boroughs, cities and townships may in the ordinances creating the commission authorize it to appoint an engineer, a solicitor and such other assistants as are deemed necessary and agree to share the compensation for attending its meetings as shall be fixed in the budget prepared by the commission and submitted to and adopted by the several boroughs, cities and townships. The budget item providing for the compensation to the members for attending meetings shall not<sup>1</sup> exceed five hundred dollars (\$500) per year, but members in addition thereto shall be entitled to actual expenses to be paid by the respective boroughs, cities and townships which such members represent. The fee

<sup>1</sup> "exced" in original.

for each attendance at meetings shall be stipulated and no member shall be paid a fee for any meeting he does not attend.

(6) Condemnation of Lands for Road Purposes and to Prevent Contamination

Section 2441. Overflowing Roads; Acquisition of Lands to Reconstruct Roads.—Whenever any borough, in supplying water to the public, shall find it necessary, in storing water to occupy and overflow with water portions of any public road, or whenever any public road leads into or crosses over any reservoir used for the storage of water, the borough shall cause such road to be reconstructed, at its own expense, on a favorable location, and in as perfect manner as the original road, and, for such purposes is authorized to condemn land, whenever an agreement as to the price cannot be had with the owners.

Section 2442. Filing Maps and Plans.—After such change is made the borough shall file in the court of quarter sessions of the county a map or plan showing such change of road, and shall furnish to the supervisors or other authorities of the township, or municipal corporation, a copy of such map.

Section 2443. Condemnation of Lands to Prevent Contamination.—Any borough may acquire, by purchase or condemnation, such land along and contiguous to the streams of water or reservoirs from which water is taken for public use, as may be necessary to preserve the same from contamination.

Section 2444. Condemnation Proceedings.—The damages incurred in changing the location of any such public road, and in condemning land to preserve water from contamination, shall be ascertained in the manner provided in the law governing eminent domain, and shall be paid by the borough.

(7) Commission of Waterworks

Section 2451. Commission May Be Established.—Whenever any borough owns and maintains waterworks, there may be established in such borough, by ordinance, a commission of waterworks, which shall have the power of a nonprofit corporation, to be composed of three citizens of the borough, appointed by the borough council who shall be known as commissioners of waterworks. At any time after three years from the first appointment of the commissioners of waterworks, the borough may abolish such commission by repealing the ordinance establishing the same, and therefore the terms of the commissioners then in office shall terminate.

Section 2452. Terms of Commissioners; Compensation.—It shall be the duty of the borough council to appoint such commissioners of water-



works, one of whom shall be appointed to serve for one year, one for two years, and one for three years; and annually thereafter the council shall appoint one commissioner of waterworks to serve a term of three years. The terms of commissioners of waterworks in office on the effective date of this act shall terminate on the effective date of this act. In case of a vacancy the council shall fill the same for the unexpired term. Such commissioners of waterworks shall not receive any salary for their services as such, but shall be reimbursed by the borough for all expenses necessarily incurred in the performance of their duty.

Section 2453. Organization of Commissioners.—It shall be the duty of the commissioners of waterworks to meet within ten days after their first appointment, and annually thereafter, and organize by electing a president and secretary.

Section 2454. Powers of Commission.—After organization, the commissioners shall take charge and control of the waterworks of such borough. The commission shall have power to appoint all necessary officers and agents, and take from them such security for the faithful performance of their duty as they shall deem proper; and to fix the salaries and wages of such officers and agents; to provide for the repair, extension, improvement and maintenance of such waterworks, and the erection of new waterworks; to collect water rents and to make and establish the rates and conditions upon which water will be furnished to applicants therefor, and to make bylaws and regulations for the economic and efficient management of such waterworks, which shall not be inconsistent with any of the laws of the Commonwealth, or the rules and regulations of the Sanitary Water Board or the Water and Power Resources Board of the Commonwealth. No such bylaws or regulations shall become effective until they have been approved by the borough council and enacted as ordinances of the borough.

Section 2455. Issue of Bonds.—The borough may, upon the request of the commissioners of waterworks, issue general obligation or non-debt revenue bonds for the extension of the waterworks or the erection of new waterworks. Such bonds shall be designated "waterworks bonds" and shall be issued and sold in the manner provided by the Municipal Borrowing Law.

Section 2456. Plans and Specifications for the Improvements; Contracts.—The commissioners shall prepare plans and specifications of all work to be performed and materials necessary for the repair, maintenance, and extension of such waterworks, or the erection of new waterworks; and shall, after plans and specifications for the extension or the erection of waterworks have been submitted to and approved

by the Sanitary Water Board, and a permit granted therefor by the board, invite proposals for the performing of such work and the furnishing of such materials; and shall let contracts therefor to the lowest responsible bidder, and shall take adequate security for the performance of all such contracts.

Section 2457. Reports by Commission.—The commissioners shall make a monthly report to the borough council of the receipts and disbursements during the preceding month, and annually make a detailed report of the condition of the waterworks, which shall be published or otherwise made available by the council for the information of the public.

Section 2458. Care of Funds.—The commissioners shall cause all moneys collected to be deposited weekly, by the collectors, with the borough treasurer, who shall return a receipt therefor to the commissioners. All moneys so collected shall be kept in a separate fund, and shall be used for the purpose of repairing, maintaining and extending such waterworks, and the erection of new waterworks. All moneys remaining after such expenditures shall be used for the payment of any indebtedness on said waterworks and any indebtedness incurred by the borough for constructing, maintaining, improving, enlarging or extending said waterworks. Said moneys shall be used for no purpose other than as provided in this section. No money shall be drawn from such fund except upon order countersigned by the president and secretary of the commission.

#### (8) Water Connections

Section 2461. Ordinances to Require Water Connections.—Any borough supplying water for the use of the public within such borough, in any manner mentioned in section 2401 of this act, may, by ordinance, require any owner of property abutting upon any street in which there is a water main constructed or acquired by the borough, to make connections with such water line, for the purpose of conducting water to such property. The borough may by penalties enforce any regulation it may ordain with reference to such water connections.

Section 2462. Notice of Ordinance; Failure to Comply With Ordinance.—The owner shall be given at least forty-five days' notice of any ordinance requiring such water connection, and, upon failure of such owner to make such connection, the borough may make the same, and collect the cost thereof from the owner by a municipal claim or in an action of assumpsit. All connections required shall be uniform.

Section 2463. Water Main Tapping Fees.—Any borough may, by ordinance, provide for charging a tapping fee whenever the owner of

any property connects such property with a water main constructed or acquired by the borough, which fee shall be in addition to any charges assessed and collected against such property in the construction or acquisition of such water main by the borough. Whenever a water main or part or extension thereof owned by a borough has been constructed by the borough at the expense of a private person or corporation or has been constructed by a private person or corporation under the supervision of the borough at the expense of the private person or corporation, the borough shall have the right to charge a tapping fee and refund said tapping fee or any part thereof to the person or corporation who has paid for the construction of said water main or any part or extension thereof. The total of said refunds shall never exceed the cost of said system or any part or extension thereof to the person or corporation paying for the construction thereof.

(b) Manufacture and Supply of Electricity

Section 2471. Manufacture and Purchase of Electricity.—Any borough may manufacture or purchase electricity for the use of the inhabitants of such borough. Any borough owning or operating electric light plants may make contracts for supplying electricity for commercial purposes outside the limits of such borough, with the consent of the municipal and township authorities. Nothing in this section shall conflict with the corporate rights of any corporation empowered to supply electricity in territory adjacent to such boroughs, or with the rights of any other borough. No person, firm, or corporation shall introduce electric current for light, heat, or power purposes, without the consent of the borough authorities, into the limits of any borough which is furnishing electric current to the inhabitants: Provided, however, That this section shall not apply to any person, firm, or corporation manufacturing electricity exclusively for its own use: And provided further, That before any borough shall construct an electric light plant, or purchase the property of any person, copartnership, or electric light company, the question of the increase of the debt of such borough, for any of such purposes, shall first be submitted to the qualified voters of the borough, in the manner provided by law for the increase of indebtedness of municipal corporations.

Section 2472. May Regulate Use and Prices.—Any borough furnishing electricity may regulate the use of electricity in dwellings, business places, and other places in such borough, and the rate to be charged for the same.

Section 2473. Sale of Electric Light Works.—By ordinance, a borough may sell all or part of its electric light works to a purchaser for

such sale price as the parties may agree upon, and thereafter for all purposes that price shall be deemed to be the purchaser's original cost less accrued depreciation of the plant at the date of purchase.

Section 2474. Purchase of Electric Light Works.—Whenever any person, copartnership, or any electric light company organized under the laws of the Commonwealth, is furnishing light to any borough or the public within such borough, such borough may purchase the works of such person, copartnership, or corporation, at such price as may be agreed upon by the borough and such person or copartnership, or a majority in value of the stockholders of such corporation.

Section 2475. Petition for Viewers.—Upon failure so to agree on purchase price the borough may present a petition to the court of common pleas, asking for the appointment of viewers to assess the value of the plant and works so proposed to be purchased whereupon the court shall appoint three viewers from the county board of viewers, neither of whom shall be interested in such works, or be stockholders in such corporation, or taxpayers in such borough, and shall appoint a time for their meeting, of which ten days' notice shall be given to all parties in interest.

Section 2476. Duty of Viewers.—The viewers, having been sworn or affirmed justly and impartially to appraise the property, and having viewed the premises and taken such testimony as may be offered by any party touching the value of the property and franchises, they shall determine the amount of damages that such person, copartnership, or corporation will sustain, and to whom payable, and make report thereof to the court; which report shall be confirmed "nisi" by the court, and if no appeal is taken as hereinafter provided, shall be confirmed absolutely.

Section 2477. Appeal from Report; Trial by Jury.—Either party may, at any time within thirty days after the confirmation "nisi" of any such report, appeal therefrom to the court of common pleas of the county. After such appeal, either party may put the cause at issue, in the form directed by the court, and the same shall be tried before a jury. After final judgment either party may have an appeal to the Superior or Supreme Court.

Section 2478. Exceptions to Report.—If any exceptions are filed with any appeal, they shall be speedily disposed of, and, if allowed, a new view shall be ordered; but if disallowed, the appeal shall proceed as before provided.

Section 2479. Notices.—The court shall have power to order what notice shall be given in connection with any part of such proceedings.

## (c) Operation of Gas Wells; Gas Works

Section 2481. Authority to Purchase Natural Gas Well.—Any borough shall have authority to purchase, own, use, operate and control any natural gas well, or wells, for the purpose of supplying natural gas for its own municipal purposes.

## (d) Airports

Section 2491. Authority to Secure Lands for Airports.—Any borough is hereby authorized and empowered to acquire, by lease or purchase, any land, lying either within or without the limits of such borough, which, in the judgment of the council thereof, may be necessary and desirable for the purpose of establishing and maintaining municipal airport facilities. The proceedings for the condemnation of land under the provisions of this subdivision, and for the assessment of damages for property taken, injured or destroyed, shall be conducted in the manner provided by the law governing eminent domain. The title acquired by the borough exercising the power of condemnation shall be a title in fee simple.

Section 2492. Authority to Establish Airports and Lease the Same.—Any borough, acquiring land under the provisions of this subdivision, is authorized and empowered to establish, equip, condition, operate and maintain the same as a municipal airport, and may lease the same, or any part thereof, to any individual or corporation desiring to use the same for aviation purposes; and any borough may enter into a contract, in the form of a lease, providing for the use of said land, or any part thereof, by the Government of the United States, for the use by said Government of said land for aviation purposes upon nominal rental or without consideration.

Section 2493. Joint Airports.—Any borough, acquiring land under the provisions of this subdivision, is authorized and empowered to acquire, by lease or purchase, land for aviation purposes, as hereinbefore provided, jointly with any county, city, borough, township, or political subdivision of this Commonwealth, and is hereby authorized and empowered to operate and maintain said airport, jointly, with any county, city, borough, township, or other political subdivision of this Commonwealth, upon such terms and conditions as may be agreed upon between the proper authorities of the county, city, borough, township, or other political subdivision of this Commonwealth.

## ARTICLE XXV

## PUBLIC BUILDINGS AND WORKS

## (a) Eminent Domain; General Provisions

Section 2501. Exercise of Eminent Domain.—Any borough may

enter upon and appropriate private property, and also land previously granted or dedicated to public use or other use, and which is no longer used for the purpose for which the same was granted or dedicated, and also land where the title may be defective, disputed, or doubtful, for the erection thereon of public auditoriums, public libraries, public memorial buildings and monuments and such other public buildings and works as are necessary for municipal purposes within the limits of such borough.

Section 2502. Lands Excepted.—No land or property used for any cemetery, burying-ground, or place of public worship, shall be taken or appropriated by virtue of any power contained in the preceding section of this article.

Section 2503. Declaration of Intention.—Whenever the borough shall desire to acquire, enter upon, take, use and appropriate any such private property or land, for any of such purposes, it shall declare such intention by an ordinance duly enacted.

Section 2504. Proceedings.—The compensation and damages arising from such taking, using and appropriating of private property for the purposes aforesaid, shall be considered, ascertained, determined, awarded and paid in the manner provided in the law governing eminent domain.

Section 2505. Payment of Damages and Costs.—All damages when ascertained, the costs of the viewers, and all court costs incurred in such proceedings, including advertising, printing and posting notices, shall be paid by the borough.

#### (b) Refuse Disposal Facilities

Section 2511. Power to Purchase Real Estate.—Any borough, separately, or jointly, with another borough, city or township, may purchase any real estate within or without the limits of such borough or of any such other boroughs, cities, or townships, as the case may be, upon which to erect and maintain garbage or incinerating plants, or for sanitary landfill.

Section 2512. Approval of Site.—Boroughs desiring to locate any garbage or incinerating plant or sanitary landfill, shall first apply separately or jointly as the case may be to the court of common pleas for its approval of the location thereof: whereupon the court shall fix a date when objections to the location will be heard and shall prescribe what notice of such hearing shall be given. If at the time fixed for such hearing no objections shall be made to such location, the same shall be approved; but, if objection is made, the court shall proceed to hear the matter and determine whether the location is a detriment to neighboring properties. The finding of the court shall be conclusive, but shall in no

way adjudicate any question relating to damages for injury to property.

Section 2513. Authority to Take or Appropriate Real Estate.—In case the borough or boroughs cannot agree with the owner of such property as to the price, the borough or boroughs, separately or jointly, may take and appropriate, for any of such purposes, any real estate, after an ordinance or ordinances shall have been enacted providing for such taking and appropriating.

Section 2514. Proceedings.—The proceedings before the viewers for the assessment of damages for property taken, injured, or destroyed under this subdivision of this article and the proceedings upon their report shall be as provided in the law governing eminent domain.

#### ARTICLE XXVI

#### WHARVES AND DOCKS

Section 2601. Power With Regard to Wharves and Docks. Any borough may erect and repair wharves and docks, regulate and fix the rate of wharfage for all public wharves and docks within its limits, and enforce the collection of wharfage for the use of the same, and may also regulate the anchoring of vessels, boats, or rafts within the borough limits, and the depositing of freight on such public wharves.

Section 2602. Purchase and Condemnation of Real Estate.—Any such borough may acquire, by purchase or condemnation, such real estate as it may need for the construction of wharves and docks within the limits of the borough, along navigable waters. No real estate for the erection of wharves and docks shall be so taken or appropriated until an ordinance authorizing the same shall have been enacted.

Section 2603. Proceedings.—The proceedings before the viewers for the assessment of damages for property taken, injured, or destroyed under this article, and the proceedings on their report shall be as provided in the law governing eminent domain. The costs of all proceedings, including the compensation of the viewers, shall be paid by the borough.

Section 2604. How Damages Assessed.—The damages for the taking or injury of any property for use as a <sup>1</sup> wharf, pier, or bulkhead, shall include full compensation for the value of the property taken or injured; and if the property so taken or injured shall constitute a part of a plant used as an entirety, the damage to the owner or tenant shall be assessed by taking the difference in market value of such plant as a whole, including buildings and all equipment installed and used in such plant, before and after taking or injury, and notwithstanding that part of such plant may be separated by a street or highway.

Section 2605. Leases.—Any borough may lease any wharf or part

<sup>1</sup> "warf" in original.

thereof and collect rent therefor by distress or otherwise. No one term of any such lease shall be for a period longer than three years.

Section 2606. Market-Houses and Terminal Sheds.—Boroughs may erect and maintain market-houses and terminal sheds on wharves, for the receipt and distribution of freight and express. Boroughs may also construct railroad and street railway tracks, or other facilities, on wharves, to provide for the convenient hauling of such freight or express matter and may collect rents, tolls, or charges for the use of such market-houses, terminal sheds, tracks and facilities. No permit other than a license revocable at will shall be granted, and no exclusive permit for the use of such facilities shall be granted.

Section 2607. Public Use Preserved.—No structure erected, and no right granted under the powers conferred by any of the preceding sections of this article, shall interfere with the public use of wharves for water-borne commerce.

Section 2608. Saving Clause.—Nothing contained in this article shall be construed as conferring upon boroughs any power conferred by existing law on the Navigation Commissioners for the Delaware River and its Navigable Tributaries, or to permit boroughs to do any act, or to enact any ordinance, inconsistent with the laws relating to said board, or the rules and regulations of said board.

## ARTICLE XXVII

### RECREATION PLACES, SHADE TREES, FORESTS

#### (a) Parks and Playgrounds, Et Cetera

Section 2701. Power to Maintain and Improve.—Any borough may provide, improve, maintain and regulate public parks, parkways and playgrounds, playfields, swimming pools, public baths, bathing places, indoor recreation centers and gymnasiums, hereinafter called "recreation places," within the borough limits or in any adjacent township or in any city or other borough if the other borough or city shall, by ordinance, signify its consent thereto. Two or more boroughs may jointly provide, improve, maintain and regulate such recreation places within the limits of any township adjacent to any one of such boroughs. All expenses relative thereto shall be borne by the respective boroughs, in such proportion as may be agreed upon by the councils thereof.

Section 2702. Power to Acquire.—Any borough may enter upon, appropriate and acquire by gift, devise, purchase, lease, or otherwise, private property within the limits of the borough, or in any adjacent township, or any borough may designate and set apart any lands or buildings, owned by the borough and not dedicated or devoted to other public uses; and two or more boroughs may jointly appropriate and



acquire by gift, devise, purchase, lease, or otherwise, private property within the limits of any township adjacent to any of such boroughs, for the purpose of making, enlarging and maintaining recreation places. All the costs and expenses relative to any such property, acquired by two or more boroughs jointly, shall be paid by the respective boroughs in such proportions as may be agreed upon by the councils thereof.

Any borough may likewise acquire private property within the limits of another borough or city, for the purposes designated in this section, if the other borough or city shall, by ordinance, signify its consent thereto.

**Section 2703. Appropriations for Public Purposes.**—The appropriation of private property for the purpose of making, enlarging and maintaining recreation places, is declared to be the taking of private property for public use, and for all damage suffered by the owners of any property so taken, the funds of the borough raised by taxation shall be pledged as security.

**Section 2704. Proceedings.**—The proceedings before the viewers for the assessment of damages for property taken, injured or destroyed under this article and the proceedings upon their report shall be as provided in the law governing eminent domain.

**Section 2705. Validation of Prior Acquisitions.**—Whenever, prior to June 1, 1911, any borough acquired land outside its corporate limits for park purposes, such borough may own and possess such land for park purposes, and is authorized to lay out and maintain the same and to appropriate money to defray expenses incident to such work.

**Section 2706. Plan of Parks and Playgrounds.**—Every borough shall have a general plan of its parks and playgrounds, which plan shall be filed in the office of the engineer or other proper officer of the borough. All subdivisions of property thereafter made shall conform thereto. The location of parks and playgrounds, laid out and confirmed by the borough council, shall not afterwards be altered without the consent of council, and no map or plot of parks or playgrounds shall be entered or recorded in any public office of the county until approved by the borough council.

**Section 2707. No Damages for Building Within Lines.**—No person shall recover any damages for the taking for public use of any buildings or improvements of any kind placed or constructed upon or within the lines of any located park or playground after the same has been located by the borough council.

**Section 2708. Creation of Recreation Board.**—The authority to supervise and maintain recreation places, may be vested in any existing body or board, including the borough council, or in a recreation board,

as the borough council shall determine. The council of any such borough may equip, operate and maintain the recreation places, as authorized by this article, and may, for the purpose of carrying out the provisions of this article, employ play leaders, recreation directors, supervisors, superintendents, or any other officers or employes, as it may deem proper.

Section 2709. Composition of Board.—(a) If the borough council shall determine that the power to equip, operate, and maintain recreation places, shall be exercised by a recreation board, it may establish in said borough such recreation board, which shall possess all the powers, and be subject to all the responsibilities, of the respective authorities under this article. Such board shall consist of a minimum of five and a <sup>1</sup> maximum of nine persons. Two of the members may be members or appointees of the school board of the school district in which the borough is located. If the board consist of seven members, three of the members may be members or appointees of such school board. The borough members of the board shall be appointed by the borough council, and shall serve no longer than five years and the terms of the members shall be staggered in such a manner that at least one expires annually. Members of such board shall serve without pay. Vacancies in such board, occurring otherwise than by expiration of term, shall be filled for the unexpired term in the same manner as original appointments.

(b) In addition to the establishment of a borough recreation board, the borough council may appoint persons to serve as members of a school district recreation board established by the school district wherein the borough is located.

Section 2710. Organization of Board; Employes.—The members of a recreation board, established pursuant to this article, shall elect their own chairman and secretary and select all other necessary officers, to serve for a period of one year, and may employ such persons as may be needed, as authorized by this article. Such board shall have power to adopt rules and regulations for the conduct of all business within its jurisdiction.

Section 2711. Joint Ownership and Maintenance.—Any two or more boroughs, or a borough with any city or township, or a borough with a county, may jointly acquire property for, and operate and maintain, any recreation places. Any borough or boroughs shall have power to join with any school district in equipping, operating and maintaining recreation places, and may appropriate money therefor.

Section 2712. Maintenance and Tax Levy.—All expenses incurred in the operation of such recreation places, established as herein provided,

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<sup>1</sup> "minimum" in original.

shall be payable from the treasury of such borough, or boroughs, township, city, county or school districts, as may be provided for by agreement of the corporate authorities. The borough council may annually appropriate, and cause to be raised by taxation, an amount necessary for the purpose of maintaining and operating recreation places, or for paying its share of such amount.

Section 2713. Lease for School Athletics.—Any borough maintaining a recreation place, may lease such recreation place or such portion thereof, suitable for athletic sports and athletic games, to any school board, or school athletic association organized by a school board, and organized for the purpose of conducting amateur athletic sports and games among pupils of the public school, and may permit such school board or school athletic association to charge admission to such sports and games and to deny persons refusing to pay admission access to the grounds where such sports or games are being conducted, if such sports and games are not conducted for individual profit.

(b) Shade Trees

(1) Shade Tree Commission

Section 2721. Shade Tree Commission.—A borough by ordinance may establish a commission to be known as the shade tree commission, but in boroughs where the council shall not elect by ordinance a shade tree commission council may exercise all the rights and perform the duties and obligations imposed by this subdivision of this article upon the shade tree commission.

Section 2722. Composition of Commission.—The commission shall be composed of three residents of the borough, who shall be appointed by the council, and shall serve without compensation. Whenever a shade tree commission is established by any borough, the council shall appoint one member for a term of three years, one for a term of four years, and one for a term of five years. On the expiration of the term of any commissioner, a successor shall be appointed by the council to serve for a term of five years. Vacancies in the office of commissioner shall be filled by the council for the unexpired term.

Section 2723. Powers May Be Vested in Park Commission.—Whenever in any borough there exists a commission for the care of public parks, the council may by ordinance, confer on the park commission all the powers and all the duties prescribed by this article for the shade tree commission.

Section 2724. Powers of Commission.—The commission shall have exclusive custody and control of the shade trees in the borough, and is authorized to plant, remove, maintain and protect shade trees on the streets and highways in the borough.

The commission may employ and pay such superintendents, engineers, foresters, tree-wardens, or other assistants, as the proper performance of the duties devolving upon it shall require, and may make, and enforce regulations for the care and protection of the shade trees of the borough. No such regulation shall be in force until it has been approved by the council and enacted as an ordinance.

Section 2725. Report of Commission.—The shade tree commission shall annually report in full to the council its transactions and expenses for the last fiscal year of the borough.

Section 2726. Notices by Commission.—Whenever any shade tree commission proposes to plant, transplant, or remove shade trees on any street, notice of the time and place of the meeting at which such work is to be considered shall be given in one newspaper of general circulation in the borough once a week for two weeks immediately preceding the time of the meeting. The notice shall specify in detail the streets or portions upon which trees are proposed to be so planted, replanted, or removed.

Section 2727. Payment by Owners.—The cost of planting, transplanting, or removing any shade trees in and along the streets and highways in the borough, of the necessary and suitable guards, curbing or grading for the protection thereof, and of the replacing of any pavement or sidewalk necessarily disturbed in the execution of such work, shall be paid by the owner of the real estate abutting which the work is done.

The amount each owner is to pay shall be ascertained and certified by the commission to council and to the borough treasurer.

Section 2728. Assessments; Liens.—Upon the filing of the certificate with the council, the borough secretary shall cause thirty days' written notice to be given to every person against whose property an assessment has been made. The notice shall state the amount of the assessment, and the time and place of payment, and shall be accompanied with a copy of the certificate.

The amount assessed against the real estate shall be a lien from the time of the filing of the certificate with the council, and if not paid within the time designated in the notice, a claim may be filed and collected by the borough solicitor in the same manner as municipal claims are filed and collected.

Section 2729. Maintenance by Borough; Tax Levy.—The cost and expenses of caring for such trees after having been planted and the expense of publishing the notice hereinbefore provided for shall be paid by the borough.

The needed amount shall each year be certified by the commission to the council and shall be drawn against, as required by the commission, in the same manner as money appropriated for borough purposes.

The council may levy a general tax, not to exceed the sum of one-tenth of one mill on the dollar on the assessed valuation of the property in said borough taxable for county purposes, for the purpose of defraying the cost and expenses of caring for such shade trees and the expense of publishing the notice; or it may provide for the expense of the caring for trees already planted and of publishing the notice by appropriations equal to the amount certified to be required by the commission.

Section 2730. Penalties.—The commission, to the extent as may be provided by ordinance of the borough, may assess penalties for the violation of its regulations and of this article so far as it relates to shade trees. Any penalty so assessed shall be a lien upon the real estate of the offender and may be collected as municipal claims are collected.

All penalties or assessments imposed under this article shall be paid to the borough treasurer, to be placed to the credit of the commission, subject to be drawn upon by the commission for the purposes of the preceding sections of this subdivision of this article.

#### (2) Power of Boroughs as to Shade Trees

Section 2741. Ordinances to Require Planting and Replanting.—Any borough may, by ordinance, upon the petition of a majority of the property owners upon any public street thereof, require the planting and replanting of suitable shade trees along and upon the sides of such streets, upon such alignment and at such points as may be designated by such ordinance, by the owners of property abutting the street at the points designated. This section shall not authorize any borough to require the planting or replanting of trees at any point which may interfere with the necessary or reasonable use of any street or abutting property or unreasonably interfere with any business conducted thereon.

Section 2742. Power of Borough Where Owners Fail to Comply.—On failure of any owner, after reasonable notice, to comply with the terms of any such ordinance, the borough may cause such trees to be planted or replanted at the expense of the borough, and thereupon, in the name of the borough, collect the cost of such work from the owners in default, as debts of like amount are by law collectible.

Section 2743. Removal of Diseased Plants, Shrubs and Trees.—The commission may upon such notice as may be provided by ordinance, require owners of property to cut and remove plants, shrubs and trees, afflicted with the Dutch elm or other disease, which threatens to injure

or destroy plants, shrubs and shade trees, in the borough under regulations prescribed by ordinance. Upon failure of any such owner to comply with such notice, the borough may cause the work to be done by the borough, and levy and collect the cost thereof from the owner of the property. The cost of such work shall be a lien upon the premises from the time of the commencement of the work, which date shall be fixed by the borough engineer and shall be filed with the borough secretary. Any such lien may be collected by action in assumpsit or by lien filed in the manner provided by law for the filing and collection of municipal claims.

(c) Forests

Section 2751. Acquisition of Land for Forest Purposes.—Any borough may acquire, by purchase, gift, or lease, and hold tracts of land covered with forest or tree growth or suitable for the growth of trees, and administer the same, under the direction of the Department of Forests and Waters, in accordance with the practices and principles of scientific forestry, for the benefit of the borough. Such tracts may be of any size suitable for the purpose and may be located within or without the borough limits.

Section 2752. Approval of Department of Forests and Waters.—Before the passage of any ordinance for the acquisition of land to be used as a municipal forest, the borough shall submit to the Department of Forests and Waters, and secure its approval of, the area and location of such land.

Section 2753. Ordinance Declaring Intention.—Whenever the council of any borough deems it expedient to acquire any land for the purposes of municipal forests, it shall so declare in an ordinance wherein shall be set forth all facts and conditions relating to the proposed action.

Section 2754. Appropriations of Money.—All moneys necessary for the purchase of such tracts shall be appropriated in the same manner as appropriations for borough purposes, and such funds may be provided from the current revenue or by the proceeds of a sale of general obligation bonds in accordance with existing law.

Section 2755. Rules and Regulations.—Upon the acquisition of any municipal forest or land suitable therefor, the council shall notify the Department of Forests and Waters, which shall make such rules for the government and proper administration of the same as may be deemed necessary, and the council shall publish such rules, declare the uses of the forest in accordance with the intent of this subdivision of this article, and make such provision for its administration, maintenance, protection and development as shall be necessary or expedient. The rules

governing the administration of such forest shall have for their main purpose the producing of a continuing borough revenue by the sale of forest products.

Section 2756. Appropriations and Revenues.—All moneys necessary to be expended for the administration, maintenance, protection and development of such forests, shall be appropriated and applied as is now done for borough purposes; all revenue and emoluments arising from such forests shall be paid into the borough treasury to be used for general borough purposes.

Section 2757. Use of Forests.—Municipal forests may be used by the public as general outing or recreation grounds subject to the rules of the Department of Forests and Waters governing their administration as municipal forests and rules adopted by the council of the borough not inconsistent with law or the regulations of the department.

Section 2758. Ordinance of Sale.—Whenever the council of any borough deems it expedient to sell or lease any municipal forest or part thereof, or products therefrom, it shall so declare in an ordinance wherein shall be set forth all the facts and conditions relating to the proposed action. No ordinance for the sale of a municipal forest, or part thereof, shall be enacted until the provisions of this act relative to the sale of borough-owned real estate have been complied with.

Section 2759. Pruning or Thinning Out; Sale of Products Thereof.—In order to comply with the practices and principles of scientific forestry, the council, by resolution, shall have the power to prune or thin out any municipal forest or portion thereof, and shall have the right to sell the products of such pruning or thinning out without complying with the provisions of this act relative to advertising and bidding. In doing so, the borough may either use its own personnel or hire or contract with skilled personnel, and in such hiring or contracting, council shall not be required to obtain bids or to advertise.

#### ARTICLE XXVIII CEMETERIES

Section 2801. Management by Commission; Transfer from Borough to Company.—When the title and management of any cemetery is vested in a borough, the council of such borough may in its discretion, vest the care, management and operation of such cemetery in a commission of three citizens to be appointed by the council, such care, management and operation, and the terms of the commissioners to be as provided in the ordinance establishing such cemetery commission. Upon petition of at least ten lot owners in such cemetery, the council may, in its discretion, transfer such cemetery and the management thereof to an in-

corporated cemetery company in the manner hereinafter provided.

Section 2802. Vesting Title.—Upon the presentation to council of such petition, the council may enact an ordinance declaring that, upon the acceptance of the provisions of such ordinance by the incorporated cemetery company, filed with the borough secretary, the title and control of such cemetery shall vest in such incorporated cemetery company.

Section 2803. Recording of Ordinance and Acceptance.—A copy of the ordinance and the acceptance thereof, certified by the borough secretary, shall be recorded in the office of the recorder of deeds of the county.

Section 2804. Orders of Court as to Neglected Cemeteries.—(a) Authority is vested in the court of quarter sessions to make such orders for the regulation of cemeteries, situated in or adjacent to boroughs, as the public good shall require; and when any cemetery shall become so neglected as, in the opinion of the court, to become a public nuisance, the court may direct the removal of the dead therefrom by the borough authorities to some other cemetery.

(b) When any cemetery situated in a borough shall become so neglected as, in the opinion of the court of quarter sessions, to become a public nuisance, such court, upon petition of the borough council and after such notice as is required in subsection (c) of this section, may authorize the borough without the removal of any dead from the cemetery to improve and maintain the cemetery by the restoration, improvement or removal of some or all of the gravestones, posts, railings, fences or other structures and improvements. If the court authorizes the removal of gravestones, it shall direct the borough to erect and maintain at a prominent location in the cemetery a suitable memorial of stone, bronze or similar material having inscribed thereon the available names and dates of all persons in the cemetery the gravestones for whom have been authorized to be removed. The petition filed by the council shall include such facts as to the ownership of the cemetery as are known to the borough and shall set forth the proposed plans of the borough for the improvement of the cemetery including, if it proposes to remove the gravestones, a description of the memorial it intends to erect.

(c) Whenever the council shall file a petition as hereinbefore provided, the court shall direct such notice of the filing of the petition to be given in such manner as it shall deem appropriate and shall afford the owner or owners of the cemetery or the owners of any burial rights therein, if any appear, an opportunity to be heard before making an order authorizing the borough to improve and maintain the burial ground.

Section 2805. Transfer from Company to Borough.—Upon the petition of any incorporated cemetery company and the owners of a majority



of the taxable real estate in any borough, the court of quarter sessions may authorize the transfer of any cemetery to any borough in which such cemetery may be located or be adjacent thereto.

Section 2806. Powers of Borough.—Such transfer shall be made without cost to the borough and upon being made the borough shall exercise the powers and privileges of such incorporated company, and may purchase land within or beyond the borough limits, not to exceed thirty acres, for the extension of such cemetery, and may raise the means to pay for the same, by the sale of lots or otherwise, but in no event by taxation; the borough may lay out lots so purchased and alter the original plot of such cemetery, and may dispose of such grounds in the same manner as such incorporated company could have done.

Section 2807. Deeds to Lots.—A deed for any lot, made by the borough, shall be of the same validity as the deed of such incorporated cemetery company; and the borough is authorized to make deeds to those who <sup>1</sup> theretofore purchased lots, but had not been furnished with deeds by the cemetery company.

Section 2808. Removing Bodies to Alter Plots.—In altering the plot of any such cemetery, the bodies may be removed and reinterred in a suitable place, but without cost to surviving relatives.

Section 2809. Removal of Bodies to Other Cemeteries.—Whenever any cemetery privately owned and in charge of no person, or any cemetery in charge of any religious society or church, has ceased to be used for interments, or has become so neglected as to become a public nuisance; or when such cemetery hinders the improvement and progressive interests of any borough, or is desired by the borough as a site for any free public library building, or for any other public purpose, the court of quarter sessions of the county, upon petition of the managers of such cemetery; or upon the petition of fifty residents in the vicinity in case such cemetery is not in charge of anyone, setting forth that the improvements and progressive interests of such borough are hampered and the welfare of such borough is injured; or upon the petition of such borough setting forth that such cemetery is desired by the borough for the erection thereon of a free public library building, or for use as a recreation place, or the opening, laying out or extension through said land of any street, or for any other public purpose; and after three successive weeks of advertisement in a newspaper of general circulation in the borough may direct the removal of the remains of the dead from such cemetery.

Section 2810. Applications for Removal.—No application, as provided in the preceding section, shall be made by the managers of any

<sup>1</sup> "therefore" in original.

cemetery, in charge of any society or church, except in pursuance of the wishes of a majority of the members of such society or church, expressed at a meeting held for that purpose after two weeks' public notice.

Section 2811. Removals; How Made.—Such removal shall be made by the managers of such cemetery, or by the borough when such cemetery is in charge of no one, in a careful manner, at the expense of the party making such removal, to such other cemetery as may be selected; or if so desired by relatives or friends, to some cemetery in the vicinity.

Section 2812. Notice of Removal.—The parties making such removal shall publish, for two successive weeks, in a newspaper of general circulation in the borough, a notice declaring their intention to remove such remains.

Section 2813. Removal by Relatives and Friends.—Relatives and friends of such dead may remove such remains, at any time during such proceedings, at their own expense, before removal by the managers.

Section 2814. Care in Removal.—All bodies, when so removed, shall be placed in separate caskets and graves, and the markers placed over the remains of such bodies shall be taken by the persons authorized to make such removal, and placed as near as can be in the same relative position as before removal.

Section 2815. Right to Use Property From Which Bodies Removed.—After the removal of all dead bodies from any such cemetery, the said land shall cease to be a cemetery or burial ground for all and any purpose whatsoever; and may be acquired by the borough as other real estate is acquired for borough purposes.

Section 2816. Purchase of Plots for Burial of Deceased Service Men.—Any borough may purchase plots of ground, in any cemetery or burial ground within its limits, for the interment of such deceased members of the armed forces, as have heretofore died or shall hereafter die within such borough, or shall die beyond such borough and shall have a legal residence within the borough at the time of their death, and whose bodies are entitled to be buried by the county under the provisions of existing law. Such plots of ground shall be paid for out of the treasury of such borough.

## ARTICLE XXIX

### LICENSES AND LICENSE FEES

Section 2901. Licensing Transient Retail Business.—Every borough shall have power, by ordinance, to regulate and license each and every person, firm or corporation engaged in any transient retail business, within such borough, for the sale of goods, wares, or merchandise, whether such business shall be conducted from a fixed location within

the borough or by any person or persons engaged in peddling, soliciting, or taking of orders from house to house, and to prohibit the commencement or doing of any such business or unless the license required by such ordinance has been procured from the proper authorities by the person, firm, or corporation desiring to commence such transient retail business, and to enforce such ordinances by penalties or by other appropriate means. The amount of any such license fee shall bear a reasonable relationship to the cost of administering such ordinance and regulating, investigating, inspecting and supervising such transient retail business.

No license fee shall be charged under this section: (i) to farmers selling their own produce, (ii) for the sale of goods, wares and merchandise, donated by the owners thereof, the proceeds whereof are to be applied to any charitable or philanthropic purpose, or (iii) to any manufacturer or producer in the sale of bread and bakery products, meat and meat products, or milk or milk products, but the ordinance may require any person, partnership, firm or corporation in any or all of these excepted categories to register with the borough, and be subject to all other provisions of the ordinance except those pertaining to the payment of license fees: Provided, the term "milk or milk products" shall not include or apply to ice cream or other frozen desserts: And provided further, That any transient retail business dealing in one or more of the excepted categories and selling other goods, wares and merchandise not excepted shall be subject to the license fee fixed by the ordinance for its activities in connection with the sale of goods, wares and merchandise not in any of the excepted categories.

Section 2902. Commonwealth Licenses Saved.—Nothing contained in section 2901 of this act shall be construed to relieve any person, partnership, or corporation from the duty of taking out a license, or from the payment of any license tax imposed or authorized by any other statute of this Commonwealth.

Section 2903. Licensing Parking Lots Operated for Profit.—Any borough may, by ordinance, regulate the business of operating parking lots for profit within the borough. License or permit fees may be charged and collected from the operators of such parking lots. Any borough adopting such a regulatory plan shall require from each operator of such a parking lot a bond to be approved by council for the protection of the public from loss of or damage to vehicles parked, stored or placed under the jurisdiction of such parking lot operator: Provided, That nothing in this section shall apply to parking lots operated by a municipal authority or a parking authority.

Section 2904. Persons Taking Orders.—It shall be unlawful for any borough to levy any license fee upon any persons taking orders for merchandise by sample, from dealers or merchants, for individuals or companies who pay a license or mercantile tax at their chief places of business. Nothing in this section shall authorize any such person, firm or corporation to sell by retail to others than dealers or merchants without payment of a license or permit fee.

Section 2905. Equality of Residents and Non-Residents.—It shall be unlawful for any borough to impose, by ordinance, or exact or collect under the provisions of any ordinance heretofore or hereafter enacted, any license tax or fee upon or from any manufacturer, or the agent, representative or employe of any manufacturer who is a resident of the Commonwealth, for soliciting orders for, or for selling, any goods, merchandise or wares manufactured within this Commonwealth, that is not or cannot legally be imposed upon, or exacted, or collected from, any manufacturer or dealer, or the agent, representative, or employe of any manufacturer, who is a non-resident of the Commonwealth, for soliciting orders for or for selling any goods, merchandise, or wares manufactured without the Commonwealth.

Section 2906. Insurance Business.—It shall be unlawful for any borough to impose or collect any license fee upon any insurance company or its agents, or insurance broker, authorized to transact business under the laws of the Commonwealth.

### ARTICLE XXX

#### REAL ESTATE REGISTRY

Section 3001. Real Estate Registry Established.—For the purpose of procuring accurate information in reference to the ownership of real estate the council of any borough may provide by ordinance for a registry thereof.

Section 3002. Maintenance of Real Estate Registry.—The borough council in any borough in which a registry shall be established shall appoint or designate any officer of the borough or any other person to have <sup>1</sup> charge of the real estate registry, who shall, under the direction of the council, cause to be made all necessary books, maps and plans, as will show the situation and dimensions of each property thereon; which books, maps, or plans shall be so prepared as to show the location and the name of the owner or owners thereof, with blank spaces for the name of the owner of each lot, and with provision for the names of future owners and the dates of future transfers of title.

Section 3003. Access to Public Records.—For the purpose of estab-

<sup>1</sup> "change" in original.

lishing such registry, the person in charge of the real estate registry of any borough shall have access without charge to any public records wherein the necessary information may be obtainable, and may also cause a search to be made in other places for any muniments or evidences of title, not reported to him as herein provided, and requisite for the completion of such books, maps, or plans.

Section 3004. Keeping of Records.—The registry, books, maps and plans shall be carefully preserved, and shall be so kept, by additions from time to time, as to show the ownership of every lot, or piece of real estate, or subdivision thereof, within the limits of the borough, with the succeeding transmissions of title from the time of the commencement of such plans, but nothing contained therein shall, at any time, invalidate any municipal or tax claim by reason of the fact that the same is not assessed or levied against the registered owner.

Section 3005. Duties of Owners of Real Estate.—It shall be the duty of all owners of real estate within the limits of the borough, within one month after the date of the enactment of any ordinance establishing such registry, and of every subsequent purchaser, devise, or other owner, within one month after acquiring title in any manner whatsoever to any real estate in such borough, to furnish to the person in charge of the real estate registry, at his office, descriptions of their respective properties upon blanks to be furnished by the borough, and at the same time to present their conveyances to be stamped as evidence of the registry thereof.

Section 3006. Sheriff's Deeds; Registry Required Before Recording.—The sheriffs of the respective counties in which any such borough is situated shall present for registry the deeds of all properties within such borough sold by them at judicial sales; and the recorders of deeds of such counties shall not admit for record any deed of any property in such borough, bearing dates subsequent to the enactment of an ordinance providing for the establishment of such registry, unless the same shall first have been duly stamped as herein provided.

## ARTICLE XXXI HEALTH AND SANITATION

Section 3101. Establishment of Board of Health; Health Officers.—The administration of the health laws and ordinances in boroughs shall be enforced by a board of health, or by a health officer or officers, as the case may be, appointed by the borough council.

Where the borough council elects to appoint a health officer or officers the said health officer or officers shall have the same powers and duties, and exercise the same authority, as is prescribed for boards of health in

boroughs. All health officers, whether appointed by boards of health or by the borough council, shall have had some experience or training in public health work in accordance with rules and regulations established by the Advisory Health Board of the State Department of Health. Such health officers shall not enter upon the performance of their duties until they are certified so to do by the State Department of Health.

Section 3102. Members of Board of Health.—Where the borough council decides to appoint a board of health such board shall be composed of five members, at least one of whom shall be a physician of not less than two years' experience in the practice of his profession. The members of the board shall be appointed by the borough council. At the first appointment one member shall be appointed to serve for one year, one for two years, one for three years, one for four years, and one for five years; and thereafter one member shall, in like manner, be appointed each year to serve for five years. The members of the board of health shall serve without compensation, but if any member of the board shall be elected to the office of secretary of the board of health, he shall be entitled to receive a salary fixed by the board for that office.

Section 3103. Oaths of Members, Secretary and Health Officer; Organization; Bonds.—The members of the board shall severally take and subscribe to the oath prescribed for borough councilmen together with such loyalty oath as is prescribed and required by law; and shall annually organize by electing a president from among the members of the board, a secretary who may or may not be a member of the board, and a health officer shall receive such salary as may be fixed by the board, and ratified by the borough council, and shall serve for a period until such time as their successors may be elected and qualified. If the borough council shall so require, they shall severally give bond to the borough in such sums as council shall prescribe. For the faithful discharge of their duties, they shall take and subscribe to the oaths required of members of the board.

Section 3104. Duties of Secretary.—The secretary of the board shall keep the minutes of the proceedings of the board; shall keep accurate accounts of the expenditures of the board; shall draw all requisitions for the payment of moneys on account of the board of health from appropriations made by the council of the board, and shall present the same to the president of the board for his approval; shall render statements of the expenditures to the board at each stated meeting, or as frequently as the board may require; shall prepare, under the directions of the board, the annual report to the borough council together with the estimate of appropriation needed for the ensuing year. He shall report to

the State Department of Health at such intervals as shall be specified by the State law or regulation, the cases of communicable disease reported to the board of health, on the form provided for that purpose by such department; and shall also make an annual report to such department; and shall make such other reports and perform such other duties as the board may require.

Section 3105. Powers and Duties of Health Officer.—It shall be the duty of the health officer to attend all stated and special meetings of the board of health, and at all times be ready and available for the prompt performance of his official duties. He shall perform such duties as are vested in local health officers by State laws and regulations. He shall make sanitary inspection and shall execute the orders of the board of health and shall, in the performance of his duties, have the power and authority of a policeman.

Section 3106. Powers of Board of Health.—The board of health shall have the power, and it shall be its duty to enforce the laws of the Commonwealth, the regulations of the State Department of Health, and all ordinances of the borough enacted to prevent the introduction and spread of infectious or contagious disease; to abate and remove all nuisances which the board shall deem prejudicial to the public health; to mark infected houses or places; to recommend rules for the construction and maintenance of house-drains, wash-pipes, soil-pipes and cess-pools; and to recommend all such other rules and regulations as shall be deemed necessary for the preservation of the public health. Such rules and regulations shall not become effective until they have been approved by the borough council and enacted as ordinances of the borough. The board shall also have power, with the consent of council, in case of a prevalence of any contagious or infectious disease to establish one or more emergency hospitals, and to make provisions and regulations for the maintenance and management of the same.

The board shall also have the power to recommend to council all necessary rules and regulations not inconsistent with law, for carrying into effect the powers and functions with which the board is invested by law, and the power and authority relating to the public health conferred on boroughs. Such rules and regulations shall not become effective until they have been approved by the borough council and enacted as ordinances of the borough.

Section 3107. Entry Upon Premises.—The board of health as a body, or by committee, as well as the health officer, together with their assistants, subordinates, and workmen, under and by order of the said board, shall have the power to enter at any time upon any premises in the

borough upon which there is suspected to be any infectious or contagious disease, or nuisance detrimental to the public health, for the purpose of examining and abating the same.

Section 3108. Inspections; Abatement of Nuisances.—The board of health may inspect house-drains, waste and soil-pipes, cesspools, water-closets, slaughter-houses, hog-pens, stable-yards and any conditions or places whatsoever in the borough which may constitute a nuisance or a menace to public health; and whenever any condition or place in the borough is found by the board to be a nuisance or a menace to the health of the people of the borough it shall issue a written order of abatement, directed to the owner, or agent of the owner, of the premises, stating that the conditions specified therein constitute a nuisance or a menace to health, and ordering an abatement thereof within such time as may be specified by the board in such order. In case such order of abatement is not obeyed within the time specified therein, the board shall thereupon issue a further written order to the health officer, directing him to remove or abate the same; which order shall be executed by him and his subordinates and workmen, and the expense thereof with a penalty of ten percent thereof added thereto, shall be recoverable from the owner of the premises upon or from which the nuisance or menace to health is abated or removed, in the same manner as debts of like character are now collected by law; or the said board of health may proceed to enforce such other remedy, or inflict such penalty, as may be provided by ordinance of the borough.

Section 3109. Estimates of Expenditures; Report.—It shall be the duty of the board of health or of the health officer or officers appointed by borough council to submit annually to the council, before the commencement of the fiscal year, an estimate of the probable expenditures of the board during the ensuing year; and council shall then proceed to make such appropriations as may be deemed necessary. The board of health, or the health officer or officers, shall, in the month of January of each year, submit a report, in writing, to council of its appropriation and expenditures for the preceding year, together with such other information on subjects relative to the sanitary conditions or requirements of the borough as may be necessary.

Section 3110. Cooperation With Other Units.—Any borough may cooperate with the county or counties in which it is located, or with any city, borough, or township, as well as with the State Department of Health, in the administration and enforcement of health laws.

Section 3111. Powers of Secretary of Health.—Whenever, in the opinion of the Secretary of Health, conditions found by him to exist in



any borough shall constitute a menace to the lives and health of people living outside the corporate limits of such borough or if it be known by him that any borough is without an existing or efficient board of health, he or his agents may take full charge of and administer the health laws, regulations and ordinances in such borough; and may continue in charge thereof until he shall decide that a competent and efficient board of health, or health officer or officers, has been appointed and qualified for such borough and is ready, able and willing to assume and carry into effect the duties imposed upon it by law.

Section 3112. Expenses of Board or Secretary of Health.—All expenses incurred by any local board of health, its officers or employes, in the performance of the duties imposed upon it by law, and all expenses incurred by the Secretary of Health or his agents in accordance with the provisions of this article shall be paid by the borough wherein such duties are performed, in the same manner as other expenses of such borough are paid.

Section 3113. Failure to Pay Expenses Incurred by State Secretary.—Whenever expenses incurred by the Secretary of Health or his agents in the administration of health laws in any borough in accordance with the provisions of this article, shall remain unpaid by said borough for a period over three months after a statement of such expense has been rendered by him to such borough and demand for payment by him made, he shall, with the approval of the Governor, institute, in the name of the Commonwealth as plaintiff, an action of assumpsit against such borough for the collection of such expense from the borough in the same manner as debts of like amount are collected by law: Provided, That upon the trial of any such action of assumpsit, the reasonableness of the expenditures made by the Secretary of Health shall be submitted to the jury for its determination.

Section 3114. Disposition of Collected Funds.—All expenses incurred by the Secretary of Health in the administration of health laws in any borough, when paid to him by such borough, or when collected by him, shall be returned by him to the State Treasurer, who shall credit the amount so received to the appropriation made to the Department of Health.

## ARTICLE XXXII

### ZONING

Section 3201. Grant of Power.—For the purpose of promoting health, safety, morals or the general welfare, councils of boroughs are hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, their construction, alteration, extension,

repair, maintenance and all facilities and services in or about such buildings and structures and percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, and also to establish and maintain building lines and set back building lines upon any or all streets.

Section 3202. Districts; Procedure.—(a) For any or all said purposes, the council may divide the borough into districts, of such number, shape, and area as may be deemed best suited to carry out the purpose of this article. Within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in another district.

(b) The zoning ordinance shall provide the manner in which the boundaries of such districts shall be determined and established and from time to time amended or changed. However, no such boundary shall become effective until after public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in such borough.

Section 3203. Purpose in View.—Such regulations shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the borough.

Section 3204. Exercise by Council of Zoning Power; Notice.—The council shall exercise the powers granted in this article by ordinance which shall provide for effecting of its purposes and for the enforcement of the regulations and restrictions established therein by reasonable fines and by instituting appropriate actions or proceedings at law or in equity.

The provisions of the ordinance may be adopted by reference to a typed or printed code prepared under the direction of, or accepted by, the council. Copies of the ordinance thus adopted by reference shall be made

available to any interested party at the cost thereof, or may be furnished or loaned without charge. Such zoning ordinance shall not be advertised by publication of the full text thereof, and, in place of such complete advertisement, an informative notice to consider such proposed zoning ordinance in such reasonable detail as will give adequate notice of its contents and a reference to the place or places within the borough where such proposed zoning ordinance may be examined or obtained shall be published in the manner and within the time limit provided by this act for publication of notice of other proposed ordinances. Such zoning ordinance need not be recorded in or attached to the ordinance book, but it shall be deemed to have been legally recorded if the ordinance by which the zoning ordinance was adopted by reference shall have been recorded, with an accompanying notation stating where the full text of the zoning ordinance shall have been filed. The procedure set forth relating to the adoption of the ordinance may likewise be adopted in amending, supplementing or repealing any of the provisions of the ordinance.

Section 3205. Changes.—Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against any such change, signed by the owners of thirty-three and one-third percent or more, either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending one hundred feet therefrom, or of those directly opposite thereto, extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of two-thirds of all the members of council.

Section 3206. Zoning Commission.—In order to avail itself of the powers conferred by this article, the council shall appoint a commission of five citizens, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and council shall not hold its public hearings or take action until it has received the final report of such commission. Where a borough planning commission already exists it may be appointed as the zoning commission.

Section 3207. Board of Adjustment.—(a) The council of any borough with a zoning ordinance shall appoint a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this article may provide that said board of adjustment may in ap-

appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(b) The board of adjustment shall consist of three members, one of whom shall be designated to serve until the first day of January following the adoption of the zoning ordinance, one until the first day of the second January thereafter, and one until the first day of the third January thereafter. Their successors shall be appointed on the expiration of their respective terms, to serve three years. The members of the board shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(c) The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this article. Meetings of the board shall be held at the call of the chairman, and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official action, all of which shall immediately be filed in the office of the board and shall be a public record.

(d) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer of the borough affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(e) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and due cause shown.

(f) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within forty-five days after the hearing<sup>1</sup> or if said hearing is continued, within forty-five days after said continued hearing. If the board of adjustment does not make a decision within forty-five days after the hearing or continued hearing, it shall be deemed that such board has decided in favor of the person or the officer of the borough aggrieved or affected who is seeking relief. At the hearing, any party may appear in person or by agent or by attorney.

(g) The board of adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this article or of any ordinance adopted pursuant thereto.

(2) To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

(3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

(h) In exercising the above mentioned powers, such board may in conformity with the provisions of this article reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as in its opinion ought to be made. Notice of such decision shall forthwith be given to all parties in interest.

(i) Any person aggrieved by any decision of the board of adjustment, or any taxpayer or any officer of the borough, may within thirty days after such decision of the board appeal to the court of common pleas of the county by petition, duly verified, setting forth that such decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and specifying the grounds upon which he relies.

(j) Upon presentation of the petition in proper form, the court shall forthwith issue a writ of certiorari directed to the board of adjustment commanding it within twenty days after the service thereof to certify to the court under the certificate of its chairman, its entire record in the matter in which the appeal has been taken. The prothonotary shall serve the board of adjustment by certified mail with a copy of the writ and a copy of the appeal petition. On or before the return day of the writ the

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<sup>1</sup> "of" in original.

board of adjustment shall file the entire record with the writ in the office of the prothonotary.

(k) Any time during the pendency of an appeal, upon application of the appellant and upon due notice to the board of adjustment, the court, or a judge thereof, may after hearing grant an order of supersedeas upon such terms and conditions, including the filing of security, as the court or a judge thereof may prescribe.

(l) If upon the hearing of the appeal it shall appear to the court that testimony is necessary for the proper disposition of the appeal, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court, with his findings, of facts and conclusions of law. The court may reverse, or affirm, in whole or in part, or may modify the decision appealed from as to it may appear just and proper.

(m) Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

Section 3208. Remedies.—In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this article or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the borough, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

Section 3209. Certain Buildings of Public Utility Corporations Exempted.—This article shall not apply to any existing or proposed building or extension thereof used or to be used by any public utility corporation, if upon petition of the corporation, the Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.

Section 3210. Finances.—The council is empowered to appropriate out of the general borough fund such money, otherwise unappropriated, as it may deem fit, to finance the work of the borough zoning commission and the board of adjustment, and to enforce the zoning regulations and restrictions which are adopted, and to accept grants of money and service for these purposes from either private or public sources, State or Federal.

ARTICLE XXXIII  
ENFORCEMENT OF ORDINANCES

Section 3301. Prosecution of Ordinance Violators.—Any violation or failure to comply with any provisions of any borough ordinance shall constitute a summary offense and prosecution for every such offense shall be according to the practice in the case of summary convictions, before the mayor or any justice of the peace of the borough.

Section 3302. Arrests for Violation of Ordinances.—Persons arrested for violation of any ordinance of the borough shall be entitled to give bail for their appearance, according to the practice in cases of summary convictions.

Section 3303. Commencement of Proceedings.—All proceedings for the violation of borough ordinances and for the collection of fines and penalties imposed thereby, may be commenced by warrant or by summons at the discretion of the mayor or justice of the peace before whom the proceedings are commenced, but no warrant shall be issued except on oath or affirmation specifying the ordinance for the violation of which the same is issued, and all process may be directed to and be served by any policeman of the borough, who may execute the same anywhere within the Commonwealth.

Section 3304. Return of Warrants.—Warrants shall be returnable forthwith, and upon such return, like proceedings shall be had as in cases of summary conviction, with the same right of appeal from any final judgment.

Section 3305. Arrests on View; Complaints.—When any person is arrested on view, a complaint, on oath or affirmation shall be made immediately, whereupon like proceedings shall be had as provided in the preceding section.

Section 3306. Commitments Pending Hearings.—Any person arrested for the violation of a borough ordinance may be committed to the borough lockup, pending a hearing or trial, but in case there is no suitable lockup in which to detain prisoners the person arrested may be committed to the county jail.

Section 3307. Commitments After Hearing.—Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to the borough lockup for a period not exceeding ten days or to the county jail or workhouse for a period not exceeding thirty days.

Section 3308. Collection of Penalties.—No fine or penalty shall exceed three hundred dollars (\$300) for any single violation of any ordi-

nance. In case the defendant has goods or property of any kind whatsoever, out of which the judgment and costs can be collected by execution or other process the borough may elect to collect the judgment and costs by such proceedings.

Section 3309. Payment of Costs by Borough.—When a prisoner shall be committed to any county jail or workhouse, either for the nonpayment of a fine or penalty imposed for the violation of any borough ordinance, or while awaiting a hearing upon any charge for the violation of any borough ordinance, the costs of the proceedings and the expenses of maintaining such prisoner during his confinement shall be paid by the borough, and the county shall not be liable for any such maintenance or to any person for any costs in such proceedings.

#### ARTICLE XXXIV ACTIONS BY AND AGAINST BOROUGHS

##### (a) Municipal Claims

Section 3401. Collection of Municipal Claims.—Boroughs may proceed for the recovery of municipal claims and taxes by lien or by action of assumpsit, and jurisdiction is conferred upon justices of the peace to entertain such actions of assumpsit to the amount of five hundred dollars (\$500). In all proceedings for the recovery of municipal claims an attorney's commission of five percent may be included.

##### (b) Defenses by Taxpayers

Section 3411. Intervention by Taxpayers.—Any taxpayer of any borough may inquire into the validity of any judgment, or defend the borough in any suit or judgment, upon filing a petition with the court of common pleas of the county in which such suit is pending or judgment exists, accompanied by an affidavit that the taxpayer believes that injustice will be done to the borough in such suit or judgment. Whenever it is deemed necessary, the court may order such taxpayer to file a bond with one or more sureties, to be approved by the court, to save the borough harmless from all costs that may accrue in such proceeding subsequent to the filing of such petition. When such intervention shall have taken place, such taxpayer shall be deemed a party to the record, and no settlement of any suit or judgment, wherein such intervention shall have taken place, shall be made by the borough without notice to such intervening taxpayer and opportunity for him to be heard.

Section 3412. Appeals by Taxpayers.—Whenever a judgment is rendered by any justice of the peace or alderman against any borough, and a right of appeal is given to such borough, and for ten days immediately after the rendition of such judgment the borough officials neglect to perfect such appeal, any taxpayer of such borough may take an appeal in



behalf of the borough from such judgment to the court of common pleas of the county within the time prescribed for the taking of such appeal.

Section 3413. Affidavit by Taxpayer; Costs.—In taking the appeal, the taxpayer shall make an affidavit that the same is not taken for the purpose of delay, but because he verily believes that injustice has been done. The taxpayer shall pay the costs of the appeal, and enter sufficient bail for the payment of all costs before the justice of the peace and all costs in the court of common pleas.

Section 3414. Taxpayer to Be Party to Suit.—Upon the filing of such appeal in the court of common pleas of the county, the taxpayer shall be made a party to the suit and shall have the right to defend such borough therein.

Section 3415. Liability in Bond Transfers.—All certificates of loans, issued by a borough, shall be transferable by the legal owner thereof without any liability on the part of the transfer agents of the borough to recognize or see to the execution of any trust, whether expressed, implied, or constructive, to which such loans may be subject, unless such transfer agents of the borough shall have previously received notice in writing signed by or on behalf of the person for whom such loans appear by the certificate thereof to be held in trust, that the proposed transfer would be a violation of such trust.

## ARTICLE XXXV

### ACTS OF ASSEMBLY REPEALED; SAVING CLAUSE

Section 3501. Acts of Assembly Repealed; Saving Clause.—The act of May 4, 1927 (P. L. 519), known as "The Borough Code," and its reenactments and amendments are repealed, except that section 2, act of May 23, 1961 (P. L. 210), shall not be construed to be repealed.

All other acts or parts of acts of Assembly supplied by, inconsistent with or appertaining to the subject matter covered by this act are hereby repealed. It is the intention that this act shall furnish a complete and exclusive system for the government and regulation of boroughs, except as to the several matters enumerated in section 102 of article I of this act.

Nothing contained in this act shall be construed to repeal:

- (1) Any local or special law.
- (2) Any of the provisions of the Public Utility Law.
- (3) Any of the provisions of any law relating to the Navigation Commission for the Delaware River and its navigable tributaries.
- (4) Any of the provisions of any law enforcement of which is vested in the Department of Health of the Commonwealth or of the Sanitary Water Board.

(5) Any of the provisions of any law the enforcement of which is vested in the Department of Forests and Waters or the Water and Power Resources Board.

(6) Any of the provisions of the act of June 25, 1947 (P. L. 1145), entitled, as amended, "An act empowering cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, townships of the second class, school districts of the second class, school districts of the third class and school districts of the fourth class to levy, assess, and collect or to provide for the levying, assessment and collection of certain additional taxes subject to maximum limitations for general revenue purposes; authorizing the establishment of bureaus and the appointment and compensation of officers and employes to assess and collect such taxes; and permitting penalties to be imposed and enforced; providing an appeal from the ordinance or resolution levying such taxes to the court of quarter sessions and to the Supreme Court and Superior Court," or of any of the amendments or supplements to the said act.

Nothing contained in this act shall be construed to revive any act or part of an act heretofore repealed.

APPROVED—The 1st day of February, A. D. 1966.

WILLIAM W. SCRANTON

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No. 582

AN ACT

SB 1144

Amending the act of April 9, 1929 (P. L. 177), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," increasing the number of members of the Coal Research Board in the Department of Mines and Mineral Industries, further defining the make-up of the board; making certain provisions conform to existing law; creating the Department of Community Affairs, defining its powers and duties, and providing for the appointment of a Secretary of Community Affairs, fixing his salary, transferring certain powers and duties of the Department of Internal Affairs to the Department of Community Affairs, and transferring records, appropriations and equipment relating thereto.