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*Created in 1935*

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**SECTION-BY-SECTION COMMENTARY**  
**ON THE REVISIONS TO THE**  
**FIRST CLASS TOWNSHIP CODE,**  
**THE ACT OF JUNE 24, 1931 (P.L. 1206, NO. 331),**  
**REENACTED AND AMENDED MAY 27, 1949 (P.L. 1955, NO. 569), AS AMENDED**

**Act 96 of 2020**

**(HB 2073, PN 3052)**

**Article I. PRELIMINARY PROVISIONS**

Section 101. *Short Title; Effective Date.* No changes.

Section 102. *Definitions.* New definitions are added and all definitions are reorganized to be alphabetized. “Board of commissioners” is added as this term is used throughout the First Class Township Code. The definitions of “individual” and “person” are derived from 1 Pa.C.S. section 1991 while “municipal corporation,” “municipality” and “Pennsylvania Municipalities Planning Code” track definitions added to the Borough Code in its 2012 rewrite (Act 43 of 2012). The definition of “municipal authority” or “municipality authority” is also added.

Section 103. *Excluded Provisions.* Both the Vehicle Code and reference to any law relating to the giving of municipal consent to public utilities are added to the list of those acts which the First Class Township Code neither repeals nor contains any provisions relating thereto. These additions track changes made to the Borough Code by Act 43 of 2012. Editorial amendments.

Section 104. *Construction of Act Generally.* Resolutions are now included with ordinances, regulations and rules, that if made pursuant to any act repealed by the First Class

Township Code, continue with the same force and effect as if the act had not been repealed. Subdivided, with new section 104(b) specifying that powers under other statutes shall not be affected by this reenactment which tracks similar additions to the Borough Code by Act 43 in 2012 and the Third Class City Code by Act 22 in 2014.

Section 105. *Constitutional Construction.* No changes.

Section 106. *Construction of References.* Editorial amendment.

Section 107. *How Act Applies.* The date of enactment of the First Class Township Code is inserted. Editorial amendment.

Section 108. *Saving Clauses Where Class of [Townships] Township Changed.* Editorial amendments.

[Section 109. *Exception as to Taxation.*] Repealed. This provision is essentially the same reservation contained in section 103(a). A similar section was repealed in the Second Class Township Code in its rewrite in 1995.

Section 110. *Legal Advertising.* This section provides an updated cross-reference for a newspaper of general circulation by citing 45 Pa.C.S. § 101 (relating to definitions) which defines a newspaper of general circulation as follows: “A newspaper issued daily, or not less than once a week, intended for general distribution and circulation, and sold at fixed prices per copy per week, per month, or per annum, to subscribers and readers without regard to business, trade, profession or class.” Subdivided. Editorial amendments.

**Article II. CLASSIFICATION [AND CREATON OF TOWNSHIPS OF THE FIRST CLASS], CREATION, REESTABLISHMENT AND CHANGE OF NAME OF TOWNSHIPS**

**(a) Classification**

Section 201. *Classification of Townships.* A title was added to this existing section. The date of enactment of the First Class Township Code is inserted. Clarification is added that a township that is not a township of the first class or a home rule municipality shall be classified as a township of the second class. Editorial amendments.

**(b) Creation of Townships of the First Class from Townships of the Second Class**

[Section 205. *Enrollment to Ascertain Population.*] Repealed. See new section 205.1.

Section 205.1. *Creation of Townships of the First Class from Townships of the Second Class.* This new section replaces deleted sections 205 through 208 and mirrors the procedure in reestablishing a second class township from a first class township (see section 202 of the Second Class Township Code), except section 205.1 also has density provisions. The Second Class Township Code does not have a similar provision regarding creating a first

class township; it only has a provision relating to reverting to a second class township from a first class township.

The phrase “at any time” is pursuant to the Pennsylvania Supreme Court decision in *In re Concord Township Voters*, 119 A.3d 335 (Pa.2015). Although the procedure to become a first class township is significantly changed, this phrase is still important to show that the procedure to become a first class township may be done at any time, not just within a certain time frame of the population statistics being released by the Federal government. The language in paragraph (1) relating to population density and how it shall be determined has been reviewed by the Pennsylvania State Data Center.

[Section 206. *Proclamations by County Commissioners.*] Repealed. See new section 205.1.

[Section 207. *Submission of Question to Voters.*] Repealed. See new section 205.1.

[Section 208. *Returns of Election and Effect Thereof.*] Repealed. See new section 205.1.

#### **(bb) Reestablishment of Townships of the Second Class**

[Section 209. *Submission of Question to Voters; Returns of Election, and Effect Thereof.*] Repealed. See new section 209.1.

[Section 209a. *Submission of Question to Voters; Returns of Election, and Effect Thereof.*] Repealed. See new section 209.1.

Section 209.1. **Reestablishment of Townships of the Second Class.** This new section replaces repealed sections 209 and 209a in order to keep the procedure for reverting to a second class township from a first class township consistent between the two township codes. Since 1995 when the Second Class Township Code was revised, there has been an inconsistency between the Second Class Township Code and First Class Township Code as regards the procedure to revert from a first class township back to a second class township. The revision now contemplates only the Second Class Township Code method of reversion which is not tied to population density determinations and actions of the county commissioners. Language is added, however, to provide that a first class township cannot revert back to a second class township any sooner than five years after becoming a first class township. Five years was chosen because this time frame would be after the current term is up for the sitting township commissioners in office when the first class township was first created. Staff is not aware of any first class township reverting to a second class township in the past.

**(c) Creation of Townships of the First Class by Merger or Consolidation**

Section 220. **Consolidation or Merger.** This new section cross-references the Municipal Consolidation or Merger Act in 53 Pa.C.S. Ch. 7 Subch. C.

**(d) Officers of Newly Created Townships**

Section 225. ***Officers for New Townships.*** Subdivided. Subsection (a) contains the original language, with editorial amendments, of original section 225; subsection (b) is derived from section 226; and subsection (c) is derived from section 227. Subsection (b) has new language cross-referencing section 407 relating to the schedule for election of township commissioners first divided into wards, to address townships that had been divided into wards as current language in section 226 only addressed the election of commissioners in townships not divided into wards.

[Section 226. ***Election of Commissioners in New Townships.***] Repealed. The substance of the section is moved to section 225(b).

[Section 227. ***Election of Tax Collector in New Townships.***] Repealed. Moved to section 225(c).

Section 235. ***Certificate of Creation of Township.*** The clerk of court now certifies a copy of the charter of the township to the Department of State and the county planning commission in addition to the Department of Community and Economic Development and the Department of Transportation. Editorial amendments.

**(f) Change of Name of Township of First Class**

Section 240. **Change of Name of Township.** This new section is comprised of previous sections 2.201, 2.202 and 2.203 in now deleted Article II.I. Section 240(a) provides that, in addition to upon petition by electors to the court of common pleas, the board of commissioners may upon passage of a resolution, seek a change in the name of the township through a referendum. Subsection (b) does not include the publication and notice requirement that was in prior section 2.202, however a filing must still be made with the court. This tracks a change made in a similar section in the Second Class Township Code in 1995. Subsections (b) and (c) make a conforming amendment from existing language in Article II.I by adding reference to a resolution in addition to the existing reference to a petition.

[**Article II.I. CHANGE OF NAME OF TOWNSHIP OF FIRST CLASS**] Repealed. The substantive portion of this article is moved to Article II in new subdivision (f).

[Section 2.201. ***Petition of Electors.***] Repealed. The substance of this section is relocated to section 240(a).

[Section 2.202. ***Filing and Advertisement of Petition.***] Repealed. The substance of this section is relocated to section 240(b).

[Section 2.203. *Returns and Effect of Election.*] Repealed. The substance of this section is relocated to section 240(c).

**Article III. TOWNSHIP LINES AND BOUNDARIES**

Section 301. *Stream Boundaries.* Editorial amendments.

Section 302. ***Petition to Court; Establishment of Disputed Boundaries.*** Reference to “freeholders”<sup>1</sup> is deleted thus leaving the petition to be signed by residents of the township. The reasons for which township lines may be altered are deleted except to ascertain and establish disputed lines and boundaries between a township and other municipal corporations which remains. The Commonwealth Court<sup>2</sup> has held that section 302 as it relates to the alteration of township lines to suit the convenience of the inhabitants is invalid. Other than to determine a disputed boundary line, the only constitutionally valid procedure for making boundary alterations are initiative and referendum pursuant to the Pennsylvania Constitution, Article IX, Section 8 which was a mandate to the legislature requiring it to adopt legislation creating uniform procedures for consolidation, merger or change of the boundaries of a municipality. The failure of the legislature to enact such legislation within the mandated two year period ending in April 1970 invalidated all preexisting statutory provisions establishing procedures for boundary changes. Editorial amendments.

Section 303. ***[Petition to Court; Commissioners’ Report] Boundary Commissioners; Report.*** This reworked section tracks a corresponding section in the Borough Code except a registered surveyor or registered engineer is now a registered “professional” surveyor or registered “professional” engineer.<sup>3</sup> “Boundary” is inserted before commissioners throughout the article to distinguish boundary commissioners from township commissioners. At the suggestion of a registered professional geologist, language is added that prior to a hearing, the boundary commissioners shall have a registered professional surveyor survey the disputed boundary line which survey shall be reviewed by the boundary commissioners or another registered professional surveyor. Surveyors can often dig or explore and find a stone or other marker but any survey results would need to be reviewed. Editorial amendments.

Section 304. ***Exceptions and Procedure.*** Language is added that the court shall direct publication of the decree establishing the lines and boundaries. Editorial amendments.

Section 305. ***Boundary Monuments.*** Similar to the Borough Code, this section is reworked to remove the specified intervals with which monuments need to be placed and instead authorizes

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<sup>1</sup> A freeholder is a person enjoying a continuous right of ownership and possession of real property for an indeterminate period by fee simple or life estate.

<sup>2</sup> See *Establishment of Boundary Between Collier Township and Robinson Township*, 360 A.2d 841 (Pa.Cmwlt. 1976).

<sup>3</sup> See the *Engineer, Land Surveyor and Geologist Registration Law*, Act 367 of 1945, sections 3, 4.2 and 4.3.

the court to order that a township line ascertained and established to be appropriately marked.

Section 306. *Compensation and Expenses of **Boundary** Commissioners; Cost.* A conforming amendment is made by removing reference to “altering” township lines. Now clarifies that the compensation and expenses of the boundary commissioners shall be a reasonable amount as approved by the court. Editorial amendments.

Section 307. *Adjustment of Indebtedness.* Reference to municipalities is changed to municipal corporations. Editorial amendments.

#### **Article IV. WARDS**

Section 401. *Creation[, Division and Redivision] **and Alteration** of Wards.* Subdivided. Similar to the Borough Code and Third Class City Code, the board of commissioners has the power, by ordinance, to create, modify or abolish wards in the township rather than the court of common pleas. Case law<sup>4</sup> provides that reapportionment is a legislative function pursuant to Article IX, Section 11 of the Pennsylvania Constitution, although case law<sup>5</sup> also notes the distinction between reapportionment (rebalancing population) versus restructuring the form of government (such as completely eliminating wards). Nonetheless, there is no constitutional prohibition to having the creation, alteration or abolishing of wards as a legislative function provided that the language is not at odds with constitutional provisions. Cross-references are made to the Municipal Reapportionment Act<sup>6</sup> and to section 11<sup>7</sup> of Article IX of the Pennsylvania Constitution. New subsection (d) clarifies that all wards in the township shall be numbered and composed of compact and contiguous territory as nearly equal in population as practicable.

Section 402.1. ***Petition of Electors.*** This new section, which tracks the Borough Code, authorizes electors to petition the board of commissioners to initiate proceedings under section 401, and the board of commissioners shall, by motion, determine whether to initiate proceedings. If the board of commissioners has not approved a motion within 90 days after presentment of the petition, the electors may petition the court of common pleas and contest the existing apportionment as violating section 401(b) or (d).

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<sup>4</sup> See *Board of Commissioners, Springfield Township v. Kahn*, 320 A.2d 372 (Pa.Cmwlth 1974); see also *In Re: Municipal Reapportionment of the Township of Haverford*, 873 A.2d 821 (Pa.Cmwlth.2005).

<sup>5</sup> See *Varner v. Swatara Township Board of Commissioners*, 185 A.3d 295 (Pa.2018).

<sup>6</sup> 53 Pa.C.S. Ch. 9 (relating to municipal reapportionment). This act only permits the court to intervene in a reapportionment when there has been inaction by the governing body.

<sup>7</sup> Article IX, section 11 (relating to local reapportionment) of the Pennsylvania Constitution provides that within the year following the Federal decennial census, and at other times as determined by the governing body of any municipality, the governing body that is not entirely elected at large must reapportion the municipality into compact and contiguous districts as nearly equal in population as practicable.

- [Section 403. *Filing and Confirmation of Report; Exceptions.*] Repealed. This section provided for a report to and confirmation by the court.
- Section 403.1. **County Board of Elections.** This new section, patterned after a similar provision in the Borough Code, requires a copy of the ordinance enacted pursuant to section 401, along with a plot showing ward boundaries, to be forwarded to the county board of elections.
- [Section 404. *Compensation of Commissioners.*] Repealed. Since there is no court proceeding, there are no court appointed commissioners and thus no need for compensation.
- [Section 405. *Election Districts.*] Repealed. The board of commissioners, not the court, establishes or modifies wards.
- [Section 406. *Numbering of Wards.*] New 401(d) provides for the board of commissioners to number the wards.
- Section 407. *Schedule for Election of Commissioners in Townships First Divided into Wards.* Editorial amendments.
- Section 408. *Schedule of Election of Commissioners in Newly Created Wards.* Editorial amendments.
- Section 409. **Pennsylvania Election Code.** This new section tracks a corresponding section in the Borough Code. Clarifies that nothing in this article affects the powers and duties of the court of common pleas, the county board of elections or restrictions on alteration of election districts as provided in the Pennsylvania Election Code.

## **Article V. ELECTION OF OFFICERS; VACANCIES IN OFFICE**

### **(a) General Provisions**

- Section 501. *Eligibility.* A new subsection (c) states that no individual may hold more than one elective township office at the same time. Currently, there is no language that prohibits a township commissioner from being appointed or elected as a tax collector. Townships that are members of the Pennsylvania State Association of Township Commissioners were surveyed and results indicate that no tax collector is also serving as a township commissioner. The Local Tax Collection Law itself does not list any incompatible offices for the office of tax collector.<sup>8</sup> As background information, Act 188 of 2012 which bifurcated the offices of township treasurer and tax collector, deleted section 511, a section that prohibited a township treasurer from holding any other township office except that of tax collector. Act 188 did not add a section prohibiting the tax collector from holding any other township office, which appears to be an oversight.

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<sup>8</sup> However, the Public School Code of 1949, section 322 (relating to eligibility; incompatible offices) prohibits a tax collector from also holding the office of school director.

Section 502. *[Hold Until Successors Qualified.] **Term of Office.*** This section is renamed and reworded to put an emphasis on the term of office and that township officers, including township commissioners, do not hold over past the first Monday in January succeeding the municipal election. This is a substantive change in regards to township commissioners. The purpose of a township commissioner holding over if the successor did not qualify may have been to prevent a vacancy in the office of township commissioner, but should a vacancy arise, the remaining commissioners have 30 days to appoint an individual to fill the vacancy. Also, if there are no wards and three commissioners are up for reelection, there is a question as to which commissioner whose term was up, stays in office if one individual elected as commissioner does not qualify.

Section 503. *Elected Officers [Enumerated].* Subdivided. This section is greatly expanded by relocating language from subsequent subdivisions into the paragraphs here on each of the respective elected offices. This structure is similar to the corresponding section in the Borough Code. Reference to the offices of elected auditors and the elected controller are removed. Language in subsection (a)(1)(i) relates to townships divided into wards and is relocated from section 504 although rather than continuing to refer to specific years from which four year terms begin for those commissioners from even- or odd-numbered wards, language is added that commissioners from even- or odd-numbered wards are elected at alternate municipal elections. Similarly, language in subsection (a)(1)(ii) relates to townships not divided into wards and is relocated from section 505.

Subsection (a)(2)(i) relates to the office of elected tax collector and includes relocated language from section 510 as well as new language cross-referencing the Local Tax Collection Law and requirements relating to qualified tax collector. Since specific years are deleted for commissioners, a specific year from which subsequent four year terms begin for the tax collector is similarly deleted. Thus, the revised language now simply states that tax collectors are elected at municipal elections every four years.

Subsection (a)(2)(ii) is new and provides that if no individual is elected as tax collector or if the position becomes vacant, the board of commissioners may by resolution appoint an individual or person to collect taxes. An appointed person would need to post all bonds to the same extent as would an appointed individual and as further provided in terms and conditions established by the board of commissioners. New language also provides that if a person other than an individual is appointed as a tax collector, no individual employed by the appointed tax collector or any officers of the appointed tax collector shall be required to be or become a qualified tax collector or to file criminal history record information.

Subsection (a)(3) relates to the office of elected auditor and includes relocated language from section 520. Subsection (a)(4) relates to the office of elected controller and includes relocated language from sections 525 and 526.



The language in new subsection (b) is relocated from other sections and provides that the terms of each elected officer begins the first Monday of January next succeeding the individual's election.

**[(b) Commissioners]**

[Section 504. *Number and Election of Commissioners in Townships Having Wards.*] Repealed. Now relocated to sections 501 and 503(a)(1)(i).

[Section 505. *Number and Election of Commissioners in Townships Not Divided into Wards.*] Repealed. Now relocated to sections 501 and 503(a)(1)(ii).

**[(c) Tax Collector]**

[Section 510. *Election of Tax Collector.*] Repealed. Now relocated to sections 501 and 503(a)(2)(i).

**[(d) Assessors]**

Section 515 under this subdivision was previously repealed.

**[(e) Auditors]**

[Section 520. *Election of Auditors.*] Repealed. Now relocated to section 503(a)(3).

**[(f) Controller]**

[Section 525. *Election of Controller.*] Repealed. Now relocated to section 503(a)(4).

[Section 526. *Acceptance of Controller; Provisions by Ordinance.*] Repealed.

**(g) Vacancies in Office**

Section 530. *Vacancies in General.* Provides that a person, *other than an individual*, is not required to file the residency affidavit as required by section 501 if appointed to fill a vacancy in the office of tax collector. An individual appointed as a tax collector under section 4.2 or 4.4 of the Local Tax Collection Law also need not file the affidavit under section 501. Editorial and conforming amendments.

**Article VI. GENERAL PROVISIONS RELATING TO TOWNSHIP OFFICERS**

**(a) General Provisions**

- Section 601. *Oath.* Cross-references 53 Pa.C.S. § 1141 (relating to form of oaths of office) which is applicable to all elected or appointed municipal officials. New language also clarifies who may administer oaths or affirmations for township officials by referencing any judge or magisterial district judge of the county or a notary public. Editorial amendments.
- Section 602. *Bonds.* Clarifies that “*required to give bond*” means “by law or action of the board of commissioners” which tracks the Borough Code. New subsection (b), which tracks a provision in both the Borough Code and Third Class City Code, authorizes the board of commissioners to purchase insurance in lieu of a bond provided that the insurance covers the same events of loss and insures the township against the same misconduct as the bond. The insurance in lieu of a bond provision does not apply to a tax collector.
- Section 603. *Compensation.* New subsection (a.1) provides that notwithstanding section 34 of the Local Tax Collection Law which limits the salary of a tax collector, a township treasurer who is the elected tax collector may receive a salary or compensation for the treasurer’s work as the township treasurer. Editorial amendments.
- Section 604. *Removal of Township Officers and Appointees.* No changes.
- Section 605. *Annuities in Lieu of Joining Pension or Retirement System.* Subdivided. New subsection (d) provides that going forward a township may no longer provide for an annuity in lieu of joining a pension or retirement system, although this will not affect the rights of any current or retired township employee or appointee already entitled to payments if the annuity was entered into prior to the effective date of the subsection. Language relating to the intent of the section is repealed. Editorial amendments.

**[(b) County Associations of Township Officers]**

Relocated to new subdivision (c.1) so that the sections relating to a county association follow the sections relating to a state association in subdivision (c).

[Section 610. *Formation of County Associations; Meetings.*] Relocated to section 624.1.

[Section 611. *Membership of Associations; Expenses of Members.*] Relocated to section 624.2.

[Section 612. *Officers of Association; Ex-Officio Membership.*] Relocated to section 624.3.

**(c) State Association of Township Officers**

- Section 620. *[Formation of] State Association [Authorized] of Township Commissioners.* Subdivided. The purpose of the association is generalized to address the interests of townships. In conformance with language in the Pennsylvania State Association of Township Commissioners' constitution and bylaws, "educational conference" is added after "annual meeting" throughout the section. This change emphasizes the educational component of the Association. Language relating to who may attend meetings is moved to section 621.1(a). Now providing that the expenses of the annual conference *may* be paid *in full or in part* by the member townships rather than *shall* be paid. Deleting specifics in regards to how dues may be used. "Ratified" is now added after reference to "authorized." Editorial amendments.
- [Section 621. *Delegates from Townships.*] Relocated to section 621.1(a).
- Section 621.1 *Authorization to Attend Annual Meetings and Educational Conferences.* Subsection (a), relocated from section 621, clarifies that the designation of a delegate to each annual meeting and educational conference shall be by motion which tracks the Borough Code. Also part of subsection (a) is language from section 620 on who may attend annual meetings although the new phrasing is on sending a delegate and "no more than two other officers" but the total number remains the same. Also authorizes, by motion, the designation of additional officers as nondelegates and township employees to attend each annual meeting and educational conference. While this designation here is new, the authorization is implied since existing language in what is now section 622(b) discusses the expenses of "other officers" to be paid as well as employees' regular wage rate to be paid during attendance at annual meetings. Subsection (b) is new but such authorization is implied in section 624 which discusses reimbursement of expenses for attending conferences, institutes and schools.
- Section 622. *Expenses [of Delegates] Paid by Townships.* Subdivided. The changes to this section include: inserting "other conference or educational training" throughout since section 624 is now repealed; deleting reference to committee meetings of the State association; deleting reference to the commissioners' self-employment; and changing "may" to "shall" in regards to the commissioners paying for expenses of the delegate, officers and employees. Editorial and conforming amendments.
- [Section 623. *Expenses of Annual Meeting.*] Repealed. The substance of the section is relocated to section 620(b).
- [Section 624. *Conferences, Institutes and Schools.*] Repealed. The substance of the section is relocated to section 622(a)-(b).

**(c.1) County Associations of Township Officers**

- Section 624.1. **Formation of County Associations; Meetings.** Relocated from previous section 610. Reference is now inserted to a “joint county or *regional* association.” Reference to “conventions” is deleted and “institutes or schools” is modified to “educational training.” The purpose of the Association is generalized and language on various specific purposes is deleted.
- Section 624.2. **Membership of Associations; Expenses of Members.** Relocated from previous section 611. Language from HB 1750 is added that authorizes newly elected township commissioners prior to officially taking office to attend conferences or educational training and to receive reimbursement for specified expenses. Conforming and editorial amendments.
- Section 624.3. **Officers of Association; Ex-Officio Membership.** Relocated from previous section 612. Conforming and editorial amendments.

**(d) Civil Service for Police and [Firemen] Firefighters**

Throughout this subdivision, “firemen” and “fire apparatus operators” are changed to “firefighters”; “person” is changed to “individual” and “reduced in rank” is changed to “demoted.”

- Section 625. **Appointments of Police and [Firemen] Firefighters.** Subdivided. New subsection (c) tracks a similar section in the Borough Code and provides that nothing in the subdivision applies to retirement and nothing prevents a township from adopting a compulsory retirement age for its employees or for any class of employees. Editorial amendments.
- Section 626. **Civil Service Commission Created; Appointments; Vacancies.** Subdivided. Clarifies that a civil service commission is established in each township subject to section 625(a) which provides that this subdivision does not apply to any township having a police force of less than three members or to townships having less than three paid firefighters. Now cross-references 53 Pa.C.S. § 1141 which relates to the oath of office. New subsection (f), relocated from section 649, provides that the civil service commissioners receive no compensation. Editorial amendments.
- Section 627. **Offices Incompatible With Civil Service Commissioner.** Editorial amendments.
- Section 628. **Organization of Commission; Quorum.** Subdivided. Language is added that the civil service commission meets “within 30 days” of the first Monday of each even-numbered year. This time frame would allow sufficient time to meet in case of inclement weather. Editorial amendments.
- Section 629. **Clerks and Supplies; Solicitor.** New language, which matches the usual practice, adds that the commission may appoint a solicitor with the township paying a reasonable

annual amount for the solicitor's services to the township. This provision tracks a similar section in the Borough Code. Editorial amendments.

- Section 630. *Rules and Regulations.* Subdivided. New language provides that the board of commissioners do not have the power to promulgate rules and regulations, or their amendments, but may make suggestions for them to the civil service commission who shall weigh the suggestions for possible inclusion. Current language remains that the board of commissioners must first approve the rules or regulations (and now also their amendments) before their effective date. Reference to amendments throughout the section tracks the Borough Code. The language in subsection (b) is new and provides that the rules and regulations shall reflect any minimum qualifications for police officers and paid firefighters pertaining to specified criteria adopted by resolution of the board of commissioners since these criteria may have cost implications. Now, rules and regulations, and their amendments, shall be made available for public distribution or inspection rather than printed. Editorial amendments.
- Section 631. *Minutes and Records.* Adds a cross-reference to section 645 (relating to hearings on dismissals and demotions). Editorial amendments.
- Section 632. *Investigations.* Editorial amendments.
- Section 633. *Subpoenas.* Subdivided. The fine for an individual refusing or neglecting to obey a subpoena issued by the civil service commission is raised from a maximum of \$100 to a maximum of \$500 and a minimum of \$250. The previous \$100 fine was inserted in 1949; the U.S. Department of Labor's website<sup>9</sup> shows \$100 to have the spending power of just over \$1,000 in today's dollars. While reference to a summary offense is removed, both 18 Pa.C.S. §106(c)(2) and 101 Pa. Code §15.66(a)(8) both say if imprisonment is not more than 90 days, it is a summary offense. Editorial amendments.
- Section 634. *Annual Report.* Editorial amendment.
- Section 635. *General Provisions Relating to Examinations.* The phrase "in the township or in a newspaper circulating generally in the township" in regards to a newspaper of general circulation is removed as unnecessary since section 110 (relating to legal advertising) discusses a newspaper of general circulation. Editorial amendments.
- Section 636. *Application for Examination.* Specific information that must be on the application is deleted and instead the application shall require information as required by the commission's rules and regulations. Editorial amendments.
- Section 637. *Rejection of Applicant; Hearing.* The reasons for which the commission may refuse to examine or refuse to certify are enumerated. New language throughout subsection (b) tracks a similar section in the Borough Code. The existing language was ambiguous as

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<sup>9</sup> [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)

to whether the applicant or the aggrieved individual, or both, could have counsel at the hearing, and did not provide for the aggrieved individual other than mentioning the individual at the beginning of the paragraph. Now both the applicant and the aggrieved individual may have counsel at the applicable hearing. The applicant and aggrieved individual could potentially be different, e.g., if a fee was not paid, it is possible that the individual would not be considered an applicant. Language is added to make the law consistent between applicants (this section) and employees (section 645) in regards to the deliberations of the civil service commission that may be held in the nature of a closed executive session. Here, the deliberations would be held after a public hearing on whether an applicant was unjustly denied being placed on the certified eligibility list or was incorrectly denied an examination. The commission's disposition of the matter however, constitutes official action that must occur at a public meeting. Editorial amendments.

Section 638. *Eligibility List and Manner of Filling Appointments.* Language, which tracks the Borough Code, is added that if three individuals are not available for the eligibility list, then a lesser number of individuals may be certified. Editorial amendments.

Section 639. *Age; Applicant's Residence.* In regards to eligible age to apply for examination, changing from "more than" to "at least" eighteen years of age which tracks the Borough Code. Clarifying that the commissioners means the board of commissioners. Deleting the requirement that the decision to require non-resident police officers or non-resident paid firefighters become residents of the township after appointment be by ordinance as residency is a technical issue. New language is added that the civil service commission's rules and regulations shall reflect any residency requirement required by the board of commissioners or under a collective bargaining agreement or award. Editorial amendments.

Section 640. *[Probation] Probationary Period.* Subdivided. New language in subsection (c), which tracks the Borough Code, provides that the decision of a township to suspend or discharge a probationer is final and is not subject to the hearing provisions of section 645. Editorial amendments.

Section 641. *Provisional Appointments.* Subdivided. The civil service commission now holds a competitive examination and certifies an eligibility list within 90 days of a provisional appointment rather than within three weeks as three weeks was deemed insufficient to meet all the hiring requirements. Editorial amendments.

Section 642. *Promotions.* Subdivided. Editorial amendments.

Section 643. *Physical and Psychological Medical Examinations.* Editorial amendments.

Section 644. *Removals.* Additional subdivisions added. Now clarifies that suspension may be without pay only if an individual is suspended for enumerated reasons. This change tracks section 1190(a) in the Borough Code. The section-by-section commentary for Act 43 amending the Borough Code noted that boroughs should be able to suspend without pay without

fearing a Section 1983 action. The addition of “without pay” also conforms to a phrase on suspensions without pay in section 645 (relating to hearings on dismissals and demotions). New language in subsection (a.2) provides that an individual has ten days from the date of receiving a notice of a statement of charges to request a hearing under section 645. Reference to a fire chief is added to current language that provides reductions in the force are not applicable to a chief of police. Editorial amendments.

Section 645. *Hearings on Dismissals and [Reduction] **Demotions***. Subdivided. Language is added that the failure of the commission to hold a hearing within ten days from the filing of written charges does not result in the dismissal of the charges filed. Now all parties have the right of appeal to the court of common pleas rather than only the individual suspended, removed or demoted, and the appeal must be taken within 30 days rather than 60 days. New language is added that unless the board of commissioners or the individual in question request that the proceedings be open to the public, the proceedings before the civil service commission must be held in the nature of a closed executive session. The deliberations of the civil service commission, including interim rulings on evidentiary or procedural issues may be held in private although the commission’s disposition of the disciplinary action constitute official action and must occur at a public meeting. All of these changes track the Borough Code. Additional new language which tracks the Third Class City Code provides that where a police officer or firefighter who is a member of a bargaining unit is subject to disciplinary action, the police officer or firefighter has the option of challenging the imposed discipline by using the procedures provided by this section or by a proceeding in grievance arbitration. Choosing one precludes the opportunity to proceed in the alternative method.

Section 646. *Present Employes Exempted*. Editorial amendments.

Section 647. *Discrimination [on Account of Political or Religious Affiliations] **Prohibited***. Subdivided. Citations to antidiscrimination laws added. Editorial amendments.

Section 648. *Penalty*. Increasing the maximum fine from \$100 to \$500. This increase aligns with the increased fine in section 633 (relating to subpoenas).

[Section 649. *Salaries of Civil Service Commission.*] Repealed and language relocated to section 626(f).

Section 650. *Police Force and [Fire Apparatus Operators] **Firefighters** Defined*. Subdivided. Editorial amendments.

## **Article VII. TOWNSHIP COMMISSIONERS**

Section 701. *Organization; Failure to Organize*. Subdivided. Language relating to the place of meeting to be the oldest polling place in the township is deleted as being antiquated. Additional language is deleted that stated that any action taken or business transacted other than organization of the commissioners as a board at any organization meeting held

prior to the effective date of this amending act is validated and confirmed. Similar language was deleted in 1995 when the Second Class Township Code was updated. New language on the appointment of other officers is added which tracks the Borough Code. Editorial amendments.

Section 702. *Monthly Meetings, Quorum, Voting.* New language provides that only members of the board of commissioners physically present at a meeting place within the township count in establishing a quorum. New subsection (b.1) provides that the board of commissioners may, pursuant to an established telecommunications policy, provide for participation of the members by telecommunication devices, such as telephones or computer terminals, which permit at a minimum audio communication between locations. All members of the board, whether physically present or not, must be able to speak to and hear the comments and votes if any, of the other members as well as speak to and hear the comments of the public who are physically present at the meeting. A majority of the members of the board must be physically present at the advertised meeting place within the township and a quorum must be established at the convening or reconvening of the meeting. However, if a member of the board is disqualified from voting as a matter of law, but is still physically present, members of the board participating by telecommunication device shall be counted to maintain a quorum.<sup>10</sup> Any changes to the telecommunications policy become effective no sooner than 30 days following the vote to change the policy in order to prevent changes to the policy becoming effective during a meeting. Nothing in subsection (b.1) is to be construed to limit the protections and prohibitions contained in any law or regulation relating to the rights of the disabled.

Section 703. *Compensation.* Subdivided. The maximum salary amounts for township commissioners in townships of varying population sizes is increased based on inflation. The goal is to standardize the maximum allowable salaries of elected officials and adjust the annual maximum salary limits according to changes in the Consumer Price Index. This section itself does not directly increase any commissioner's salary; each township must establish a salary by ordinance, and any changes to that compensation take effect at the beginning of the commissioner's next term of office. The salary increase is commensurate with the salary changes in a 2019 bill package sponsored by the Local Government Commission. The bills in the package amend the Borough Code (HB 1529 and SB 688) and Second Class Township Code (HB 1530 and SB 689). The proposed maximum amounts are based on the cumulative increases in the Consumer Price Index for all Urban consumers (CPI-U) in the Pennsylvania, New Jersey, Delaware and Maryland area as applied to the current salary maximums, last set in 1995. The CPI-U is a standard metric of inflation reported by the United States Department of Labor, Bureau of Labor Statistics.

Paragraph (7) is new and provides that in townships with a population of 45,000 or more, the salary of a commissioner is a maximum of \$210 per year per 1,000 residents

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<sup>10</sup> In *McAdoo Borough v. Commonwealth, PA Labor Relations Board*, 469 A.2d 693 (Pa.Cmwlth. 1983), the court held that where a borough council member has a personal or pecuniary interest in outcome of the vote, neither his vote nor his presence can be counted toward either majority or quorum. Overruled on other grounds in 485 A.2d 761 (Pa. Dec. 21, 1984).



or fraction of 1,000.<sup>11</sup> Three first class townships have a population over 45,000. The phrase regarding an increase may be applied to the salary amount of the commissioner at the time an increase is enacted is deleted.<sup>12</sup> The sentence regarding a change in salary to become effective at the beginning of the next term is based on the other municipal codes.

In new subsection (a.1), the bill would also authorize an alternative, optional form of compensation based on a per-meeting attended basis. Total annual compensation could not exceed the amounts authorized in subsection (a).

Section 704. *Reports to Auditors.* This section, which relates to liquid fuels information, is rephrased and tracks a corresponding section in the Second Class Township Code. Editorial amendments.

#### **Article VIII-A. APPOINTED TOWNSHIP TREASURER**

Section 801-A. Township Treasurer. There is a built-in conflict of interest for a commissioner to also be the treasurer so new language is added to prohibit this conflict. New language added in Article V prohibits an individual from holding more than one elective township office at the same time. It does not touch on appointive office such as that of a treasurer.

Similar to section 603 (relating to compensation), new language is added that notwithstanding section 34 of the Local Tax Collection Law which limits the salary of a tax collector, a township treasurer who is the elected tax collector may receive a salary or compensation for the treasurer's work as the township treasurer. New language is added to subsection (c) that the treasurer shall, within 60 days of being appointed, nominate to the board of commissioners a person as the deputy treasurer. If the nominated person meets the bonding requirements, the board may appoint the person as the deputy treasurer. The deputy treasurer has the rights and powers and shall perform the duties of the township treasurer if the treasurer is unable to perform the duties due to sickness, absence or inability to act. The phrase on sickness, absence or inability to act tracks the Third Class City Code. The board of commissioners may appoint a deputy treasurer if the treasurer is unable to perform the duties and had failed to nominate a deputy treasurer.<sup>13</sup>

Section 802-A. *Treasurer's and Deputy Treasurer's Bond.* Subdivided. New language clarifies that the treasurer shall give a fidelity bond to the township *before entering upon the duties of*

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<sup>11</sup> Three first class townships (non-home rule) have a population over 45,000 in 2018. Bristol Township in Bucks County (54,582 population which would equate to a maximum allowable salary of \$11,550); Abington Township in Montgomery County (55,310 population which would equate to a maximum allowable salary of \$11,760); and Lower Merion Township in Montgomery County (57,825 population which would equate to a maximum allowable salary of \$12,180).

<sup>12</sup> See *Buckwalter v. Borough of Phoenixville*, 985 A.2d 728 (Pa.2009) (holding that state constitutional provision in Art. III, §27 that provides that no law shall increase or decrease public officer salary after election or appointment applied to ordinances and borough ordinance that eliminated salary mid-term violated the constitution).

<sup>13</sup> Section 901.1 authorizes the board of commissioners to appoint an assistant secretary by resolution.

*office.* A sentence is added that the bonding requirements of the section also apply to the deputy treasurer. New subsection (b) provides that in lieu of the bond, the board of commissioners may purchase insurance as provided in section 602(b).

Section 803-A. *Treasurer's Duties.* New language, which tracks the Borough Code, is added that an order shall not be executed unless there is money available in the treasury. A cross-reference is added to the Electronic Transactions Act and, therefore, reference to a facsimile signature by the president or vice president is deleted as unnecessary. Editorial amendments.

Section 804-A. *Penalty for Failure to Perform Duties.* No changes.

Section 805-A. *Use of Special Funds; Penalty.* Editorial amendments.

Section 806-A. *Depositories of Township Funds.* Current language in paragraph (6) is repealed as surety bonds set up for collateral are no longer commonplace. A deposit (surety) bond is an insurance contract with three parties and the language in this context is antiquated and pre-dates Act 72 of 1971. Instead, banks and local governments rely on the FDIC insurance for the small amount it covers, and then obtain appropriate collateral per Act 72. Thus, new language in paragraph (6)(i) tracks language from the County Code rewrite,<sup>14</sup> section 1762(b)(1),(2) which adds a cross-reference to collateralization under Act 72 which has been substituted in place of the original language. In addition monthly reporting requirements have been specified. If a township desires an even more secure position than pooled collateral permitted under Act 72, new language in paragraph (6)(ii) gives a township discretionary authority to enter into an agreement with the depository in which the township could stipulate, among other things, the types of sufficiency of collateral that would be permitted. The amount of the pledged collateral in paragraph (6)(ii) is 102% which relates to pledged collateral or the value of the actual securities kept on hand by the bank.

#### **Article VIII-B. TAX COLLECTOR**

Section 801-B. *Powers and Duties of Tax Collector.* Editorial amendment.

#### **Article IX. TOWNSHIP SECRETARY**

Section 901. *[Election] Appointment of Secretary; Salary.* Clarifying language is added that the secretary is appointed rather than elected and serves at the pleasure of the board. The secretary's duties are relocated to section 902(a) with the provision of books (now equipment) and supplies relocated to section 902(b). Editorial amendments.

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<sup>14</sup> Act 154 of 2018.

- Section 901.1. *Assistant Secretary.* New language, which tracks the Borough Code and Second Class Township Code, provides the assistant secretary may assist the secretary without the secretary being absent or under disability. Editorial amendments.
- Section 902. *Duties; Penalty.* The duties of the secretary are enumerated with some relocated from section 901. Current language is repealed that provides the secretary shall furnish, upon request, a statement showing the amount of any remaining appropriation as this would change constantly. Records are still available through the Right-to-Know Law. Subsection (b) is new although the contents are relocated from section 901; the phrase “suitable books” is deleted and reference to the necessary equipment and supplies is substituted.
- Section 903. *Records Open to Inspection.* A cross-reference to the Right-to-Know Law is added and language relating to a taxpayer inspecting records during business hours is deleted. This change tracks the Borough Code. The Right-to-Know Law, section 1113 states that public records shall be available during the regular business hours of an agency.

## Article X. AUDITORS

### **(a) Elected Auditors**

- Section 1001. *Meetings; General Duties[; Compensation].* Subdivided. Language relating to a quorum is relocated within the section. Provisions relating to compensation are moved into a new section 1001.1. Subsection (b)(3) provides that as directed by the board of commissioners, the auditors shall audit the accounts of all officers of the township upon the death, resignation, removal or expiration of the term of the officer. This is similar to language in the Borough Code. Subsection (c), also similar to the Borough Code, provides that the place of the audit is the place the records of the person are normally kept unless otherwise agreed to by the auditors and the person being audited.
- Section 1001.1. **Compensation.** While the section is new, the substance of the section is relocated from section 1001.
- Section 1002. *Subpoenas; [Power to Administer] Oaths; [Penalty] **Perjury**.* Subdivided. This section is modified to provide that if a person refuses or neglects to appear if subpoenaed by an auditor, the auditors shall petition the court of common pleas to issue the subpoena and to require the person to produce documents or to appear and to testify before the court. This procedure is similar to the Borough Code.
- Section 1003. *[Surcharges;] **Completion, Filing and Publication of Auditors’ Report[; Publication of Financial Statements] and Financial Statement.*** Subdivided. Language relating to surcharges is moved into a new section 1006.1. A cross-reference to section 110 is added in regards to a newspaper of general circulation. Filing information is relocated within the section into what is now subsection (d).

Language in subsection (d) clarifies that it is the secretary of the auditors who files a copy of the audit report with the township secretary. The specific fine of \$5.00 per day for each day's delay in the auditors' filing the report is repealed, but the offense remains a summary offense. By default, unless a statute provides otherwise, a fine for a summary offense is \$300 and not to exceed 90 days in jail. See 101 Pa. Code § 15.66(a)(8), (b); 18 Pa.C.S. §§ 106(c)(20), 1101(7), and 1105.

- Section 1004. *Canceling Orders.* No changes.
- Section 1005. *Penalty for Failure to Perform Duty.* Similar to section 1003, the specific fine of \$100 is removed but the language on a summary offense remains.
- Section 1006. *[Employment and Compensation of] Attorney **to Auditors.*** Subdivided. Language on the auditors needing the agreement of the township commissioners in regards to the compensation of the auditors' attorney is new and is derived from language in the Borough Code. If the compensation cannot be agreed upon, the court of common pleas establishes the compensation on petition of the auditors.
- Section 1006.1. ***Surcharge by Auditors.*** This section is new and expands and clarifies surcharge provisions previously found in section 1003 in a manner similar to other municipal codes. An officer or person may not be surcharged in excess of the actual financial loss to the township. A surcharge must take into consideration as its basis the results of the act, error or omission and the results had the procedure been strictly in accordance with law. The surcharge imposed must be limited to the difference between the costs actually incurred and the costs that would have been incurred had legal means and authorized procedures been employed. This does not, however, apply to a case involving fraud or collusion. The procedures in the Local Tax Collection Law apply to balances or shortages in the accounts of the tax collector. Similar to language in the Ethics Act in 65 Pa.C.S. §1109(g), new language provides that an officer may not be surcharged if the officer acted in good faith reliance on a written, non-confidential opinion of the solicitor of the township or on the solicitor's publicly stated opinion at an open meeting and recorded in the official minutes of the meeting. This does not apply if the solicitor's opinion was rendered under duress or if the parties seeking the opinion colluded to purposefully commit a violation of law.
- Section 1007. *Balances Due to Be Entered as Judgments.* Language relating to the amount of a balance or any express surcharge shall, if no appeal is taken or after an appeal has been finally determined in favor of the township, be entered by the prothonotary as a judgment against the officer is rephrased to be similar to the Borough Code. Editorial amendments.
- Section 1008. ***Collection** of Surcharges.* Editorial amendments.
- Section 1009. *Appeals from Report.* Editorial amendments.

- Section 1010. *Appeal Bond.* Editorial amendments.
- Section 1011. Previously repealed.
- Section 1012. [*Consolidation of*] ***Procedure on Appeals.*** Subdivided. The substance of subsection (a) is largely derived from now repealed section 1015, although that section did not have new language relating to the opposing party in the appeal may use any facts, figures or findings of the report as prima facie evidence against an officer or person. The new language tracks the Borough Code.
- [Section 1013. *Testimony and Argument.*] Repealed. A similar section was repealed in the Second Class Township Code rewrite in 1995.
- [Section 1014. *Framed Issues.*] Repealed. Similar sections in the Borough Code and Second Class Township Code were repealed in their respective rewrites in 2012 and 1995, respectively.
- [Section 1015. *Prima Facie Evidence.*] Repealed. The substance of this section is relocated to section 1012(a).
- Section 1016. ***Findings of Fact and Law; Judgment; Appeals.*** Editorial amendments.
- Section 1017. *Cost.* Editorial amendment.
- Section 1018. Previously repealed.
- Section 1019. [*Counsel*] ***Attorney Fees.*** This section is modified to comport with the Borough Code and Second Class Township Code. Previously, if an appeal of the auditor's report or settlement of the accounts of any public officer resulted in the recovery of money for the township, the court made an order to pay counsel fees. The section now clarifies that, in the opinion of the court, if the final determination is more favorable to the officer than that awarded by the auditors, the township shall pay reasonable attorney fees incurred by the officer. If the final determination is more favorable to the township, the officer who is the subject of the surcharge proceeding shall pay reasonable attorney fees incurred by the township, elector or taxpayer. If the final determination finds partly for the township and partly for the officer, the court may order that both pay a portion of the reasonable attorney fees.

**(b) Appointed Independent Auditor**

- Section 1050. ***Appointment of Independent Auditor.*** The provisions of subdivision (b) apply when the board of commissioners have enacted an ordinance for the appointment of an independent auditor in lieu of elected auditors pursuant to section 503(a)(3). The appointment of an independent auditor is by resolution. An independent auditor shall be a certified public accountant or a firm of certified public accountants.

Section 1051. **Audits.** Subsection (a) relates to the annual audit of the finances of the township as presented in the annual audit and financial report. Nothing precludes the board of commissioners from requiring the audit to be a more complete or comprehensive audit than is required under this article. Subsection (b) relates to interim audits which may be required by the board of commissioners including an interim audit of the accounts of a township officer upon the death, resignation, removal or expiration of the term of the officer. Subsection (c) provides that audits shall consist of an examination in accordance with U.S. generally accepted auditing standards. Subsection (d) provides a definition.

Section 1052. **Completion, Filing and Publication of Annual Audit and Financial Report.** Subsection (a) requires the independent auditor to complete the annual audit as soon as practical after the end of the fiscal year. Subsection (b) provides for filing requirements of the audited report. Subsection (c) provides publication requirements. Notice that the audited report is available for public inspection must be published by the township secretary once in at least one newspaper of general circulation. Public inspection shall be in accordance with the Right-to-Know Law. A copy of the complete annual audit and financial report including the accompanying independent auditor's report must be supplied to the publishing newspaper. Subsection (d) provides that the annual audit report and annual financial statements must be on a uniform form prepared and furnished as provided in section 1701a. Subsection (e) clarifies that nothing in subdivision (b) prohibits a registered elector or taxpayer from appealing an annual audit and financial report of the independent auditor in accordance with and subject to the procedures in subdivision (a) if the registered elector or taxpayer believes a surcharge should exist against an officer or person.

## **Article XI. CONTROLLER**

Section 1101. *Oath and Bond of Controller.* Subdivided. A cross-reference is added to 53 Pa.C.S. §1141 in regards to the oath of office and to section 602 regarding bonds. Language relating to a controller justifying his bond as to the amount is repealed as well as language setting the bond for \$20,000. Language requiring the amount of the bond to be set by ordinance is retained and clarifying language is added that the amount of the bond shall be sufficient to adequately protect the township. Subsection (c) is new and provides that in lieu of a bond, the board of commissioners may purchase insurance as provided in section 602(b).

Section 1102. *Salary of Controller.* Language setting the maximum salary at \$5,000 is repealed, although language is added that states any change in salary, compensation or emoluments of the office will be effective at the beginning of the next term of the controller.

Section 1103. *General Powers and Duties of Controller[; May Require Attendance of Witnesses; Penalty].* Subdivided, and the powers of the controller are enumerated within

subsection (c). Language relating to a controller having the same power and authority as elected township auditors in regards to an audit is relocated within the section.

Section 1104. *[Controller to Countersign] **Countersigned** Warrants.* Editorial amendments.

Section 1105. *[Controller to Prevent Appropriation Over Drafts] **Prevention of Appropriation Overdrafts**.* Editorial amendments.

Section 1106. *Amount of Contracts to Be Charged Against Appropriations.* Subdivided. Editorial amendments.

Section 1107. *Management and Improvement of Township Finances.* Editorial amendment.

Section 1108. *[Books] **Financial Records** to Be Kept by Controller.* Editorial amendments.

Section 1109. *Appeals from Controller's Report[; Bond; Procedure on Appeal].* The title of this section is shortened since the section does not expressly discuss the bond and procedural aspects of the appeal, but only cross-references procedures generally.

Section 1110. *Controller to Retain [Books, Documents, Et Cetera] **Financial Records** Pending Appeals.* Editorial amendments.

## **Article XII. TOWNSHIP SOLICITOR**

Section 1201. *[Election; Vacancies] **Township Solicitor**.* Subdivided. The two-year term of the solicitor is removed along with vacancy language. New language provides that the solicitor serves at the pleasure of the board, and also authorizes the appointment of special counsel, as needed. The solicitor or special counsel may be an individual or a law firm, partnership, association or professional corporation.

[Section 1202. *Bond.*] This section is repealed as Rule 1.15 of the Rules of Professional Conduct (R.P.C. 1.15) governs the handling of client funds. All lawyers are required to certify compliance with the provisions of this rule as part of the annual licensing process with the Disciplinary Board of the Supreme Court of Pennsylvania. Both R.P.C. 1.15 and general law impose fiduciary duties upon attorneys who hold funds on behalf of clients and other third parties. R.P.C. 1.15 applies to any property that belongs to a client or third party that comes into a lawyer's possession. No other municipal code specifically mentions a bond for the faithful performance of the solicitor's duties.

Section 1203. *[Solicitor to have] Control of [Law] **Legal** Matters.* Clarifies that except where the board of commissioners has appointed special counsel for a specific matter, the solicitor advises on the township's legal matters. Editorial amendments.

Section 1204. *Duties of Solicitor.* This section is similar to corresponding sections in the Second Class Township Code and Borough Code. Restructured to enumerate the solicitor's duties.

Adds a phrase “if directed or requested to do so by the board of commissioners” and deletes reference to being directed by ordinance or resolution. Adds reference to ordinances in regards to what the solicitor may prepare or approve.

### **Article XIII. TOWNSHIP ENGINEER**

#### **(a) General Provisions**

Section 1301. *[Election of Township Engineer; Term; Filling of Vacancies]* **Township Engineer.** Subdivided. Reference to the two-year term and the filling of vacancies is deleted and language added that the engineer serves at the pleasure of the board of commissioners. New language provides that “engineer” as used in this article means one or more engineers or a firm of registered professional engineers.

[Section 1302. *Bond.*] Repealed, as section 602 (relating to bonds) is applicable to any officer or employee of a township. No other municipal code specifically mentions a bond for the engineer.

Section 1303. *Control of Engineering Matters.* Subdivided. Adds a phrase that “except where the board of commissioners has appointed an engineer for a specific matter,” the township engineer directs and controls engineering matters in the township. Editorial amendments.

Section 1304. *Duties; Preparation of Plans.* Now requires the engineer to provide reports as directed by the board of commissioners. Now also provides that the engineer may (as opposed to shall) prepare plans, specifications and estimates of the work undertaken by the township. Editorial amendments.

Section 1305. *Certificate of Commencement and of Completion of Municipal Improvements.* Subdivided. Reworded for clarity and tracks the Second Class Township Code although “time of completion” is changed to “date of completion” to better align with the Municipal Claims and Tax Lien Law. Cost and date of completion are needed for purposes of filing liens.

Section 1306. *Surveys.* Editorial amendment.

#### **[(b) Real Estate Registry]**

Sections 1310–1315 are repealed and relocated to new Article XV-A (relating to real estate registry). Section 1316 is also repealed and relocated to section 1502.54 (relating to conservation district) within the Corporate Powers article.

### **Article XIII-A. TOWNSHIP MANAGER**

Section 1301-A. *Township Manager.* Relocated from section 1502(IV) which had been added by Act 73 in 2011. Act 73 did not use “person” or “individual” in regards to who may be a township



manager but language has been added here to include “one individual, a partnership, an association or a professional corporation.”

Section 1302-A. *Power and Duties; Employment Agreement.* Relocated from section 1502(IV) although the phrase “no later than two years after the effective date of the agreement” is deleted as it is superfluous. Language that the employment or professional services agreement may remain in effect for a specified period terminating no later than the date of the board of commissioners’ organization meeting following the next municipal election is retained. New language, which tracks the Borough Code, is added that provides an employment or professional services agreement executed on or after a municipal election but before the first meeting in January the year after the municipal election shall be void.

Section 1303-A. *Bond.* Relocated from section 1502(IV). New language adds a cross-reference to section 602(b) relating to the purchase of insurance in lieu of a bond.

Section 1304-A. *Incompatibility.* This new provision provides that no township manager may hold the office of township commissioner. If the manager is a partnership, limited partnership, association or professional corporation, the incompatibility applies to all officers and those employees directly providing services to the township. New section 501(c) provides that no individual may hold more than one *elective* township office at a time.

### **Article XIII-B. VETERANS’ AFFAIRS**

#### **(a) Pennsylvania National Guard**

Section 1301-B. *Eminent Domain for National Guard Purposes.* Relocated from section 1502(XLI).

Section 1302-B. *Land for Armory Purposes.* Relocated from section 1502(XLII). The phrase “other actual place of regularly stated religious worship” is new and borrowed from the Pennsylvania Constitution, Article VIII, section 2(a)(i) (exemptions and special provisions). The phrase is also used in the Municipalities Planning Code and the Consolidated County Assessment Law.

Section 1303-B. *Assistance to Armories.* Relocated from section 1502(XL). Current language on “water, light or fuel” has been changed to “reasonable utilities.”

Section 1304-B. *Support of Pennsylvania National Guard Units.* Relocated from section 1502(XLVI) except the retained cap provides the appropriation may not exceed \$1,500 without distinguishing the type of troop. Current law provides the cap is not to exceed \$750 for a dismounted company or similar unit and not to exceed \$1,500 for any mounted or motorized troop or similar unit.

#### **(b) Support of Veterans’ Organizations and Memorials**

Section 1311-B. *Appropriations to Veterans' Home Associations*. Relocated from section 1502(XLVII.I). Other than changing “club-house” to “meeting facility” no changes were made. There are six veterans’ homes in Pennsylvania: Philadelphia, Scranton, Hollidaysburg, Erie, Spring City and Pittsburgh.<sup>15</sup>

Section 1312-B. *Memorial or Veterans' Day Appropriations*. Relocated from section 1502(XXXVI).

Section 1313-B. *Care of Memorials*. Relocated from section 1502(XXXVII).

Section 1314-B. *Purchase of Burial Grounds for Deceased Servicepersons*. Relocated from section 1502(XXXVIII).

#### **Article XIV. POLICE**

Section 1401. *Appointment, Compensation and Training of [Policemen] **Police Officers***. Subdivided. Now provides the board of commissioners “may” appoint and fix the number and rank of members of the police force as opposed to the current “shall.” Current language in section 1502(V) provides that “[t]he board shall have power. . . [t]o establish, equip, and maintain a police force and to define the duties of the same” implying the provision of police services by establishing a police force is discretionary. Thus, the change from “shall” to “may.” New subsection (b), which tracks a provision in the Third Class City Code, provides that police services may be provided by municipal police officers under a contract, through purchasing police services or by joining or developing a consolidated regional police service. Current language authorizes joint municipal agreements (section 1502(LIII)) and joint contracts for police and fire protection (section 1502(LIV)). Municipal statistics from the Department of Community and Economic Development’s website indicate that six first class townships contract for police services from another municipality, one is part of a regional police force and one relies solely on the Pennsylvania State Police for police services.<sup>16</sup>

New subsection (c), which tracks the Borough Code, provides that the board of commissioners may remove, suspend or demote any police officer in accordance with either Act 144 of 1951 (applicable to forces of less than three members) or subject to the civil service provisions in Article VI, subdivision (d) (applicable to forces of three or more members).

Language in subsection (d) is from existing language within this section that authorizes a police officer to hold the office of constable, health officer or school director of a school district situated within a second class county so long as the police officer also serving as a school director does not serve as a school police officer. New subsection (e) which tracks the Borough Code provides that no police officer may participate in any political or election campaign while on duty or in uniform or while using township property other

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<sup>15</sup> <https://www.dmva.pa.gov/stateveteranshomes/Pages/default.aspx>, last accessed November 15, 2018.

<sup>16</sup> [http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=MuniPolice\\_Excel](http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=MuniPolice_Excel), last accessed November 16, 2018.

than to exercise the officer's right of suffrage. While similar language is also contained within the civil service sections, the language here in subsection (e) would additionally pertain to police covered under the Police Tenure Act.

Language in subsection (g) now provides that the police chief or other members of the police force may attend training classes offered by county government in addition to existing language on classes offered by the Federal and State government. Editorial amendments.

Section 1401.1. *Special Fire Police.* This new section tracks the Second Class Township Code and cross references 35 Pa.C.S. Pt. V, Ch. 74, Subch. D.

Section 1402. *Chief of Police and Other Officers.* No changes.

Section 1403. *Powers of [Policemen] **Police Officers.*** This section is modified to track both the Second Class Township Code and Borough Code regarding the powers and duties of township police officers.

Section 1404. *Service of Process; Fees.* Editorial amendments.

Section 1405. *Supervision of Police.* Editorial amendments.

[Section 1406. *Keepers to Receive Prisoners.*] Repealed, which tracks the deletion of similar language in both the Second Class Township Code and Borough Code.

Section 1407. *Badge.* Editorial amendment.

Section 1408. *[Not to Receive Fees] **Certain Compensation Prohibited.*** Subdivided. Editorial amendments.

Section 1409. *[Establishment of] Police Pension Fund[; Management].* Subdivided. With the exception of section 1409.1, all remaining sections in this article relating to police pensions (sections 1411 – 1415) have been consolidated into this section. Both the Second Class Township Code and Borough Code did similar consolidations in their 1995 and 2012 respective rewrites. Subsection (a) adds prefatory language that the section applies to a police force of less than three full-time members. Both the Second Class Township Code and Borough Code added “full-time” in their rewrites. There is no statutory definition of “full-time members.” The Police Tenure Act references “a police force of less than three members” and then in defining “removal” uses the term “regular full-time officers.”

The language in subsection (b) relating to investment or insurance instruments is relocated from repealed section 1415. The reference to an ordinance in subsection (b) is new although this comports with the existing reference in an ordinance in subsection (a). Subsection (c)(ii) is new and tracks the Borough Code regarding the appointment of a chief administrative officer to execute the administrative affairs of the pension plan.

While Act 205 of 1984<sup>17</sup> does not specifically require the appointment of a chief administrative officer, it implies that a pension administrator exists. New subsection (d) contains language relocated from repealed section 1410 although the sentence relating to retired police officers being subject to service as police reserves until unfit for service because of age or disability is not carried over. A similar sentence was deleted in the Borough Code rewrite. New subsection (e) contains language from repealed section 1412; new subsections (f) and (g) contain language from repealed section 1413; new subsection (h) contains language from repealed section 1411. New subsection (i) contains language from repealed section 1414 plus new language “upon the basis upon which the person first became entitled to the benefit” which tracks the Borough Code. This new subsection deletes some of the language in section 1414 that related to not getting a pension for failing to comply with a general regulation relating to the management of the fund that had been made by ordinance.<sup>18</sup> Subsection (j), a cross-reference to Act 600<sup>19</sup> and Act 15,<sup>20</sup> is new and tracks the Borough Code.

- Section 1409.1. *Private Police Pension Funds; Optional Transfers.* Editorial amendments.
- [Section 1410. *Minimum Service for Retirement.*] Repealed; language is relocated to section 1409(d).
- [Section 1411. *Retirement Allowance.*] Repealed; language is relocated to section 1409(h).
- [Section 1412. *General Funds of Township not Liable.*] Repealed; language is relocated to section 1409(e).
- [Section 1413. *Township Appropriations; Gifts; Management.*] Repealed; a portion of the language is relocated to section 1409(g); reference to Act 205 is now in section 1409(f).
- [Section 1414. *Reasons for Denying Retirement Allowance.*] Repealed; a portion of the language is relocated to section 1409(i). The language relating to a person not getting a pension for failing to comply with a general regulation relating to the management of the fund made by ordinance, even though the person would get notice and a hearing is not carried over.
- [Section 1415. *Annuity Contracts in Lieu of Police Pension Fund.*] Repealed; language is relocated to section 1409(b).
- Section 1416. *School Crossing Guards.* Language within each subsection is enumerated which tracks the Borough Code. In subsection (b), ordinance is changed to resolution since subsection (a) authorizes a resolution when the commissioners appoint crossing guards directly

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<sup>17</sup> Act of Dec. 18, 1984 (P.L. 1005, No. 205) known as the Municipal Pension Plan Funding Standard and Recovery Act.

<sup>18</sup> See *Police Officers of Borough of Hatboro v. Borough of Hatboro*, 559 A.2d 113 (Pa.Cmwlth.1989) (Holding that contractual pension rights of public employees become fixed upon employee’s entry into system and cannot be subsequently diminished or adversely affected, although both parties can change pension plans by mutual consent. Public retirement benefits are viewed as deferred compensation and being a form of contract rights are protected by both the United States and Pennsylvania constitutions). See also *Borough of Nanty Glo v. Fatula*, 826 A.2d 58 (Pa.Cmwlth.2003) (quoting *Hatboro*).

<sup>19</sup> Act of May 29, 1956 (1955 P.L.1984, No.600), referred to as the Municipal Police Pension Law.

<sup>20</sup> Act of February 1, 1974 (P.L.34, No.15), known as the Pennsylvania Municipal Retirement Law.

without having the school board do the hiring and oversight. Now there will be consistency between the two methods of hiring school guards, i.e., whether the commissions adopt a resolution to appoint school crossing guards or adopt a resolution to allow the school board to assume hiring and oversight of the crossing guards. Clarifies in subsection (b)(4)(iii) that plan means a township or school district pension or benefit plan which tracks the Third Class City Code. Editorial amendments.

## **Article XV. CORPORATE POWERS**

Section 1501. *Suits; Property.* New language authorizes the power to have and use a corporate seal and to alter the seal. All other municipal codes authorize a seal. Now adds “exchange” to those actions the board of commissioners may take in regards to real and personal property. The power of exchange already exists (current section 1501(II)), but since portions of section 1501 are bifurcated into two additional sections (1501.1 – Real Property; 1501.2 – Personal Property), the power of exchange is listed here as well. “Subject to the restrictions, limitations or exceptions as set forth in this act” is added to clarify the best interests of the township.

Section 1501.1. **Real Property.** This section is derived from portions of section 1501. The threshold amount at which the sale of real property must be advertised is increased from \$1,500 to \$6,000. A cross-reference to Act 78 of 1979 is added regarding when no compliant bids are received. Although the threshold amount differs, new subsection (e), which tracks the Borough Code, provides that real property may be sold for \$6,000 or less without advertisement or competitive bidding only after receiving an appraisal by a qualified real estate appraiser. Subsection (e) is further expanded to provide that if real property will be sold without advertisement or competitive bidding, the board of commissioners must make a public announcement of its intention to sell the property at a public meeting at least 30 days prior to the sale.

New subsection (f)(1)-(4) authorizes the board of commissioners to exchange real property, pursuant to a resolution, for real property of equal or greater value for municipal purposes, provides a reversion clause similar to the Borough Code, and provides for the application of the Flood Plain Management Act (Act 166 of 1978) in any real property exchange. Structural modifications and editorial amendments.

Section 1501.2. **Personal Property.** Portions of this new section are continued from the original language in section 1501, but now personal property need not be disposed of by ordinance or resolution. Deleting reference to “by ordinance” tracks a change in the Borough Code 2012 rewrite; deleting reference to “by resolution” since current law does not require either an ordinance or resolution for the sale of *real* property. “Best responsible” bidder and “high” bidder are changed to “highest” bidder to comport with sections 1501.1(a) and 1501.3(a). Like the section on real property, this section relating to personal property cross references Act 78 of 1979 regarding the procedure to be used when no compliant bids are received after advertisement. Subsection (e) clarifies that exchange of personal property is by resolution. The sentence relating to this clause shall not prohibit the sale

or exchange of township property to public utilities is deleted since even if deleted, the effect remains the same, i.e., the township can sell or exchange township property to public utilities. The other municipal codes do not have comparable language. Structural modifications and editorial amendments.

Section 1501.3. **Exceptions.** Portions of this new section are continued from the original language in section 1501. Paragraph (2) which tracks both the Second Class Township Code and Borough Code provides an additional exception to advertising if the real or personal property is to be sold to a council of government, consortium, cooperative or other similar entity. Language relating to a surcharge is relocated to new section 1501.4. The last sentence in the original section is repealed as it is confusing. If the township needs the property to conduct existing governmental operations, the township would not be selling the property. Paragraph (4) adds an authority or industrial and commercial authority as defined by the Economic Development and Financing Law (Act 102 of 1967). Structural modifications and editorial amendments.

Section 1501.4. **Surcharge from Sale or Lease.** The substance of this new section is relocated from existing language near the end of original section 1501 as it seemed out of place within that section.

Section 1501.5. **General Powers.** Previously 1502(LII). Similar general powers are found in the other municipal codes.

Section 1502. **Specific Powers.** This section, which previously was structured using Roman numerals, is now bifurcated into separate powers with each specific power in a new section. The language now solely in section 1502 tracks the Borough Code and provides that the township may provide for enforcement and penalties for violations of ordinances and that the specific powers of a township include those in this article. Previous 1502 (I) and (II) are relocated to new Article XXXIII-A (relating to ordinances). Previous 1502(IV) is relocated to new Article XIII-A (relating to township manager).

The following paragraphs are repealed and are neither continued nor relocated elsewhere in the Code: (VII - committing magistrate) as out-of-date; (VIII - vagrants) as out-of-date; (XI - road implements) as this level of specificity not needed; (XVIII – building and housing regulations) since the Second Class Township Code repealed a nearly identical section in its 1995 rewrite; (XXI – building lines) as the Municipalities Planning Code addresses the subject matter; (XXV – milk inspection) as the Milk Sanitation Law (Act 210 of 1935) and its regulations govern the subject matter; (XXXI – amusements) as 1502.10 now clarifies that townships may regulate businesses unless prohibited by law; (XXXIX – appropriations to civic associations) as section 1502.43 provides for appropriations for civic projects or programs and Article VI provides for county associations of townships.

Section 1502.1. ***Officers, Positions and Departments.*** Subsection (a) of this section was previously 1502(III); editorial amendments. Subsection (b) is new and tracks the Third Class City

Code and adds language relating to the hiring and discharging of employees and the fixing of salaries or compensation.

Section 1502.2. *Police Force*. Previously 1502(V). Editorial amendments.

Section 1502.3. *Lockups [and Commitments]*. Previously 1502 (VI). Language is streamlined and tracks the Third Class City Code. Editorial amendments.

Section 1502.4. **Rewards**. This new section authorizes the board of commissioners to offer rewards for information leading to the arrest and conviction of individuals guilty of committing certain crimes within the township. All other municipal codes have a specific power relating to rewards.

Section 1502.5. *Disorderly [Practices] **Conduct***. Previously 1502(IX). This section, which is now similar to corresponding sections in the Third Class City Code and Borough Code, is expanded to clarify that the board of commissioners may, by ordinance, provide for penalties for the prohibited conduct. Any definition of disorderly conduct must be substantially similar to 18 Pa.C.S. § 5503 (relating to disorderly conduct).

Section 1502.6. *Public Safety*. Previously 1502(X). Editorial amendments.

Section 1502.7. **Fire Protection**. Previously from 1502(XVII) and a portion of 1502(XVI). Subdivided. Clarifies that an appropriation may be for the use of the township in addition to the existing language on fire companies for providing fire protection. Adds “purchase” along with existing language on operation and maintenance of fire engines, apparatus and stations. New subsection (b) tracks the Second Class Township Code and authorizes contracts and grants to municipal corporations or volunteer fire companies for fire protection in the township. Subsection (c) adds that the making of rules and regulations for the government of fire companies may be by ordinance or resolution. Current language does not specify either one so townships are given a choice.

Section 1502.8. *Building and Housing [Sanitation] Regulations*. Previously 1502(XIX). The language is simplified to essentially only keep the cross-reference to Article XXXI-A (Uniform Construction Code, property maintenance code and reserved powers). The deleted language is in section 3106-A (relating to reserved powers).

Section 1502.9. *Numbering Buildings*. Previously 1502(XXII). Reference to naming streets is relocated to section 2080.1. Reference to “by ordinance” is new but if numbering is required and there is a penalty for not complying, then the requirement must be authorized by ordinance. Also, the comparable section in the Second Class Township Code also references an ordinance. Reference to regulating the numbering of “lots” is new and tracks the Borough Code.

Section 1502.10. **Regulation of Business**. This new section is comprised of previous paragraphs XLIII (junk dealers, pawnbrokers, auctions), XXIV (markets, market houses and peddling); a

small portion from XXVI (nuisances) plus new language, some of which tracks the Borough Code. Paragraph (2), derived from the Borough Code, is new and authorizes townships to prohibit, license and regulate businesses unless prohibited by law. Paragraph (3), also new, cross-references Act 217 of 1963 which regulates and licenses fire sales. Act 217 is already applicable to first class townships.

Section 1502.11. *Nuisances **and Dangerous Structures***. Previously 1502(XXVI). This section tracks the Borough Code. Reference to “weeds” is moved within the section but is not new. The phrases “noxious or offensive manufacture, art or business” and “prejudicial to the public health or safety” are moved to section 1502.10 (regulation of business). This Code has been the only municipal code that did not specifically mention abandoned vehicles. Reference to abandoned or junked automobiles has now been included here in this section.<sup>21</sup> Editorial amendments.

Section 1502.12. ***Municipal Waste***. Previously 1502(XXVII). Subdivided and restructured. Now, similar to the other municipal codes, cross-references the Solid Waste Management Act<sup>22</sup> and the Municipal Waste Planning, Recycling and Waste Reduction Act.<sup>23</sup> Similar to the County Code rewrite, now uses the term “municipal waste” as defined in Act 101 rather than ashes, garbage, rubbish and other refuse materials. Reference to recyclable materials is new which is similar to the Third Class City Code and the Second Class Township Code. Changing the contract period with refuse haulers from three to five years for the collection and removal of municipal waste (and now also recyclable materials). The five year time frame is consistent with Act 101 and tracks both the Third Class City Code and Second Class Township Code. A contract for the disposal or incineration of municipal waste is for a period not to exceed twenty years is new and tracks the Third Class City Code and Second Class Township Code. Reference to leaf and yard waste in subsections (d) and (f) is new and also tracks the Third Class City Code. Subsection (g) is new and provides that the sale of recyclable materials is not subject to the requirements imposed by law for the sale of personal property. This tracks the Third Class City Code.

Section 1502.13. ***Fireworks and Inflammable [and Explosive] Articles***. Previously 1502(XXVIII). This power is now similar to the other municipal codes but clarifies that townships, in conformity with Federal and State laws, may impose by ordinance other safeguards concerning fireworks as necessary for the health, safety and welfare of the public.

Section 1502.14. *Smoke Regulations*. Previously 1502(XXIX). Now clarifies that the board of commissioners may regulate the emission of smoke to the extent not otherwise prohibited by Federal or State law.

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<sup>21</sup> See *Commonwealth v. Nicely*, 988 A.2d 799 (Pa.Cmwlth.2010) (distinguishing between the power of a borough to regulate wrecked or abandoned vehicles as nuisances and regulate unlicensed or uninspected cars that have not been moved in a certain time frame under a property maintenance code).

<sup>22</sup> Act of July 7, 1980 (P.L. 380, No. 97).

<sup>23</sup> Act of July 28, 1988 (P.L. 556, No. 101).



- Section 1502.15. **Prohibition of Fire Producing Devices and Smoking.** This new section tracks the Borough Code and cross-references the Clean Indoor Air Act<sup>24</sup> in regards to the regulation of smoking.
- Section 1502.16. *Animals.* Previously 1502(XXX). Clarifies the regulation of animals is by ordinance. Editorial amendments.
- Section 1502.17. **Regulation of Foundations, Party Walls and [Fence Regulations] Partition Fences.** Previously 1502(XXXII). Now adds reference to the Pennsylvania Construction Code Act and its regulations. Editorial amendments.
- Section 1502.18. *Ambulances and Rescue and [Life Saving] Lifesaving Services.* Previously 1502(XXXIV). Restructured. Editorial amendments.
- Section 1502.19. *Display of Flags.* Previously 1502(XXXV). Editorial amendments.
- Section 1502.20. *Health and Cleanliness Regulations.* Previously 1502(XLIV). Editorial amendments.
- Section 1502.21. *[Comfort and Waiting Stations and Drinking Foundations] Public Facilities.* Previously 1502(XLV) and (XXXIII). Editorial amendments.
- Section 1502.22. *Hospital Appropriations.* Previously 1502(XLVII). Removes the cap on the appropriation amount. Editorial amendments.
- Section 1502.23. *Community Nursing Services.* Previously 1502(XLVII.II). Now adds reference to the elderly and other needy persons which tracks language added in the Borough Code rewrite in 2012. Editorial amendments.
- Section 1502.24. *Parking and Parking Lots.* Previously 1502(XLIX). Existing language is now subsection (a) and is enumerated although some of the language is reorganized. Subsection (b) is new and provides a general reference to statutory and regulatory protections and prohibitions relating to the rights of disabled individuals.
- Section 1502.25. *Appropriations for Certain Streets.* Previously 1502(XLIX.I). Removing reference to whether the streets are township owned or not so that appropriations are now only for public streets. Editorial amendment.
- Section 1502.26. *Airports.* Previously 1502(L). Subdivided. Reference to acquiring land by grant is new and tracks the Second Class Township Code. A cross-reference to section 206 of the Eminent Domain Code is also new and tracks the Third Class City Code. "Aviation easement" is new but a reference to a title acquired through condemnation shall be in fee simple is deleted both of which track the Third Class City Code which made these changes in its 2014 rewrite. Editorial and conforming amendments.

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<sup>24</sup> Act of June 13, 2008 (P.L.182, No. 27).

- Section 1502.27. *Appropriations for Airports*. Previously 1502(LXV). Editorial amendments.
- Section 1502.28. *Purchase and Planting of Trees*. Previously 1502(LI). Adds a cross-reference to Article XXX. Editorial amendments.
- Section 1502.29. *Intergovernmental Cooperation*. Previously 1502(LIII) and (LIV). While new paragraph (ii) tracks the Borough Code, much of the language is also found in current section 1502(LIV) (relating to joint contracts for police and fire protection). Editorial amendments.
- Section 1502.30. *Widening and Deepening [Water-Courses] of Watercourses*. Previously 1502(LV). Adds language on securing permits from all applicable agencies. Editorial amendments.
- Section 1502.31. *Regulation of Charges*. Previously 1502(LVI). Editorial amendment.
- Section 1502.32. *Street, Sewer, Sidewalk, Etc., Regulations*. Previously 1502(XVII). Subdivided. Reference to maintenance of public facilities and pipes, wires and so forth tracks the Third Class City Code. Also tracking the Third Class City Code is new subsection (b) which adds language referencing compliance with Federal and State law and the power of the Public Utility Commission to regulate public utilities under Title 66 of Pa.C.S.
- Section 1502.33. *[Creation of] Capital Reserve Fund [for Anticipated Capital Expenditures]*. Previously 1502(LVIII). Editorial amendments.
- Section 1502.34. **Operating Reserve Fund**. This new section is similar to corresponding sections in the other municipal codes. Subsection (a) enumerates the goals and general purposes of the fund; subsection (b) discusses appropriations from the general fund to this fund; subsection (c) enumerates the specific purposes of the fund; and subsection (d) discusses the investment and administration of the fund.
- Section 1502.35. *[Appropriations for Handling, Storage and Distribution of] Surplus Foods*. Previously 1502(LIX). Editorial amendments.
- Section 1502.36. *[Appropriations for] Industrial Promotions*. Previously 1502(LX). Editorial amendments.
- Section 1502.37. *[Non-debt] Nondebt Revenue Bonds*. Subdivided. Previously 1502(LXI). Editorial amendments.
- Section 1502.38. *[Appropriating Money for] Historical Properties*. Previously 1502(LXII). Editorial amendments.

- Section 1502.39. *Insurance*. Previously 1502(XXIII) and (LXIII). Subdivided and restructured. Cross-reference to the Workers' Compensation Act<sup>25</sup> is added. "Leased" is new in regards to a building or property. Paragraphs (d)(2) and (e)(3) include the date of November 29, 1985 which is the date of the amendatory act that added the relevant language.<sup>26</sup> Subsection (g) is new and tracks the Borough Code although a general phrase on the "effective date of this subsection" is added rather than the effective date of the Borough Code 2012 rewrite. Editorial and conforming amendments.
- Section 1502.40. *[Appropriations for] Urban Common Carrier Mass Transportation*. Previously 1502(LXIV). Editorial amendments.
- Section 1502.41. *Open Burning*. Previously 1502(LXVI). Editorial amendments.
- Section 1502.42. *Community Development*. Previously 1502(LXVII). Editorial amendment.
- Section 1502.43. *[Appropriations for] Observances and Celebrations*. Previously 1502(LXIX). Editorial amendments.
- Section 1502.44. *Building Hospitals*. Previously 1502(LXX). The appropriation cap of an amount not to exceed \$1 per resident per year is removed. Editorial amendments.
- Section 1502.45. *[Appropriations to] Tourist Promotion Agencies*. Previously 1502(LXXI). The appropriation cap not to exceed 10 cents per resident is removed. Editorial amendments.
- Section 1502.46. *Sale of Real **or Personal** Property to Nonprofit Medical Service Corporation*. Previously 1502(LXXII). Reference to "personal" is new but existing language in what is now renumbered as 1501.3 states the advertising requirements do not apply if township "real or personal" property is to be sold to any number of entities including a nonprofit medical service corporation. This also tracks a change in the Borough Code in its 2012 rewrite.
- Section 1502.47. *Sale of Real **or Personal** Property to Nonprofit Housing Corporation*. Previously 1502(LXXIII). Similar to a change in section 1502.46, reference to "personal" is new but existing language in what is now renumbered as 1501.3 states the advertising requirements do not apply if township "real or personal" property is to be sold to any number of entities including a nonprofit housing corporation. This also tracks a change in the Borough Code in its 2012 rewrite.
- Section 1502.48. *[Appropriations to] Nonprofit Art Corporations*. Previously 1502(LXXIV). Subdivided. Editorial amendments.
- Section 1502.49. *[Appropriations for] Neighborhood Crime Watch Programs*. Previously 1502(LXXV). Editorial amendments.

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<sup>25</sup> Act of June 2, 1915 (P.L. 736, No.338).

<sup>26</sup> Act 82 of 1985, signed into law on November 29, 1985 and effective immediately.

- Section 1502.50. *[Appropriations for Support of] Drug and Alcohol Abuse Programs.* Previously 1502(LXXV). The appropriation cap not to exceed \$5,000 is removed. Editorial amendments.
- Section 1502.51. *[Appropriations to] Watershed Associations.* Previously 1502(LXXVIII). Changed “municipal corporation” to “municipality” which tracks a change made in the 2012 Borough Code rewrite. Editorial amendments.
- Section 1502.52. *Emergency Services.* Previously 1502(LXXIX). No change other than the section number.
- Section 1502.53. **Mines and Quarries.** This new section is safety oriented and tracks the Borough Code. It authorizes the board of commissioners to require an owner or operator of a mine or quarry to furnish the township with maps, plans and drawings of workings, excavations and surface support, with periodic updates to reflect any extensions made.
- Section 1502.54. **Conservation District.** Previously section 1316. No changes made.
- Section 1502.55. **Electricity.** This new section provides a cross-reference to Article XXVII-A in regards to the manufacture and selling of electricity and regulation of its use and prices.
- Section 1502.56. **Storm Water.** This new section authorizes a township, by ordinance, and after obtaining any required permit from the Department of Environmental Protection (DEP) or other Federal or State entity, to acquire, operate and maintain areas for the infiltration, detention or retention of storm water and for other methods of storm water management authorized by DEP. This language is similar to language in the Borough Code.
- Section 1503. *Typewritten, Printed, [Photostated and] **Photocopied,** Microfilmed **and Electronically or Digitally Stored** Records Valid; Recording or Transcribing Records.* Subdivided. Adds a cross-reference to Act 250 of 1949.<sup>27</sup> Changes “may” to “shall” in regards to the process of recordation and transcribing and adds “permanently attaching” in regards to a book of record. All substantive changes track the 2012 Borough Code rewrite. Validation language in new subsection (c) was relocated from elsewhere in the existing language. Editorial amendments.

**Article XV-A. REAL ESTATE REGISTRY**

- Section 1501-A. *Real Estate Registry.* The general authorization for this article and section are derived from now repealed sections 1310 through 1315, although the current language now tracks similar provisions in the Borough Code and Third Class City Code. Authorizes a real estate registry, by ordinance, to procure accurate information on the ownership of

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<sup>27</sup> Act of May 9, 1949 (P.L.908, No.250).

real estate. The Uniform Municipal Deed Registration Act<sup>28</sup> is cross-referenced. The person in charge of the registry has access to public records without charge.

## **Article XVI. PUBLIC HEALTH**

There are three different authorized public health entities in the Commonwealth<sup>29</sup>—(1) the Pennsylvania Department of Health; (2) county/municipal health departments authorized by the Local Health Administration Law (Act 315 of 1951) where the county/municipal health departments have similar duties to those of the state Department of Health but with differing geographic jurisdictions; and (3) local health authorities pursuant to ordinance with the specific structure determined by the ordinance and its regulations, although approval must be obtained from the Department of Health prior to taking actions relating to ordering quarantines, isolations or certain other disease control measures.

### **[(a) Boards of Health]**

Section 1601. *Appointment of Boards of Health and Health Officers.* Subdivided. Changes throughout this section and article typically track the Borough Code. Now specifies that the board of commissioners may, *by ordinance*, establish a board of health or the *office of health officer* to administer and enforce the township's health and related ordinances. Now clarifies that a health officer shall either be certified, *or within six months of taking the oath of office become certified*, for the office of health officer by the State Department of Health. New subsections (b) and (c) provide for the expenses and dissolution of the board of health or the office of health officer.

Section 1602. *Members of Boards; Terms; Secretary.* Subdivided. Now provides for the option of a three member board of health, in addition to the five member board already authorized by this section. Provides that a board member be a defined professional health care provider which includes a physician, rather than only a physician, expanding the potential pool of possible board members. The definition tracks a definition added to the Borough Code in its 2012 rewrite which had in turn derived, in large part, the definition from the Peer Review Protection Act (Act 193 of 1974). Also provides that if no professional health care provider is identified to serve on the board that the board of commissioners may appoint any individual who has experience in or is knowledgeable of public health issues.

Section 1603. *Organization of Board; Salary of Secretary; Bonds; Fees and Penalties; Power to Administer Oaths.* Subdivided. Adds reference to "or affirmations" in regards to oaths. Editorial amendments.

Section 1604. *Duties of Secretary.* Duties are now enumerated. Editorial amendments.

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<sup>28</sup> Act of October 9, 2008 (P.L.1400, No.110).

<sup>29</sup> See PENNSYLVANIA HEALTH LAW BENCH BOOK (Feb. 2007), <http://www.pacourts.us/assets/files/setting-3008/file-722.pdf?cb=7605f8>, last accessed November 28, 2018.

- Section 1605. ***Powers and Duties of Health Officer.*** Subdivided. Existing language relating to duties of the health officer is simplified and restructured into new subsection (b)(1)-(5). New subsection (a) provides that the health officer may issue a citation for violation of a health ordinance or related law which tracks the Borough Code.
- Section 1606. ***Powers and Duties of Board of Health.*** Subdivided. Similar to the Borough Code, existing language relating to the board's powers and duties is simplified and restructured into new subsections (a)(1)-(4) and (b)(1)-(3). Reference to emergency hospitals is deleted.
- Section 1607. ***Entry of Premises.*** Subdivided. Current language on entry of premises is rephrased and now in subsection (a) although language relating to "upon order of a health officer if there is no board" is new. Subsection (b) is new and provides for administrative search warrants and procedure if entry to the premises is prevented. Its purpose is to protect the township as well as the rights of property owners or occupants. This power and procedure tracks the Borough Code which had been drafted in accordance with both federal and state case law.<sup>30</sup>
- Section 1608. ***[Inspections] Abatement of Nuisances.*** Subdivided. Similar to the Borough Code, now deletes specific examples, but leaves the general power of what the board of health or health officer if there is no board may inspect in regards to a possible nuisance. Now specifies that any abatement of a nuisance shall be within a *reasonable* time. Although current language provides that a penalty may be imposed in an enforcement action, there is nothing specific as to the amount. Now the penalty amount is specified as 10%. Subsection (b) is new and authorizes the board of commissioners in lieu of, or in addition to, seeking abatement by either the owner or the health officer, may seek relief by an action at law or in equity, although the board of commissioners may seek the guidance of the board of health or health officer in determining the nature of the relief. This provision is similar to the Borough Code.
- Section 1609. ***[Budget; Appropriations] Expenditures.*** Subdivided. Now clarifies that the annual report shall be submitted each January rather than generally at the close of each fiscal year. Editorial amendments.
- Section 1610. ***Corporation in Health Work.*** Editorial amendments.
- Section 1611. ***Powers of [Secretary] State Department of Health.*** Subdivided. This section tracks changes made in the 2012 rewrite of the Borough Code which relevant language had been reviewed by the State Department of Health. Subsection (a) clarifies that nothing in this act may be construed to limit the powers and duties of the State Department of Health. Subsection (b)(1) relates to expenses to be paid by the township and is relocated from now repealed section 1612. Subsection (b)(2) relates to unpaid expenses and the

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<sup>30</sup> See *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523 (1967) and *Commonwealth v. Tobin*, 828 A.2d 415 (Pa.Cmwlth.2003).

institution of a collection action and is relocated from now repealed section 1613. Subsection (b)(3) relates to return of the payment to the State Treasurer and is relocated from now repealed section 1614.

[Section 1612. *Expenses Incurred by Board or Secretary of Health.*] This section *per se* is repealed but the substance of the section is now in section 1611(b)(1).

[Section 1613. *Suits by State Secretary of Health to Recover Expenses.*] This section *per se* is repealed but the substance of the section is now in section 1611(b)(2).

[Section 1614. *Payment of Expenses Recovered Into State Treasury.*] This section *per se* is repealed but the substance of the section is now in section 1611(b)(3).

**[(b) Vacation of Streets Declared Nuisances by Board of Health]**

Sections 1620-1627 repealed as unnecessary. Article XX (Streets and Highways) provides generally for vacation of streets. Neither the Second Class Township Code nor the Borough Code have provisions on vacating streets declared nuisances. The 2014 rewrite of the Third Class City Code repealed language regarding petitions to declare a public alley or lane to be a public nuisance.

**Article XVII. FINANCE AND TAXATION**

Section 1701. *Fiscal Year; Annual Budget; Regulation of Appropriations.* Subsection (a) clarifies that the end of the fiscal year is December 31 which corresponds to language in both the Third Class City Code and Borough Code.

Subsection (b) removes reference to the preparation of the budget must begin *at least thirty days* prior to the adoption of the budget since more time than this is needed from introduction to adoption to allow for modifications to the proposed budget. Language that by ordinance the township shall appropriate the specific sums as required by the budget is deleted as this is neither actually done nor is necessary. After the budget is adopted, the budgetary process is completed. Language on the proposed budget shall reflect the estimated revenues and expenditures of the township is relocated from elsewhere in the subsection.

Subsection (b.1) is new although some of the language is relocated from subsection (b) (cannot advertise notice of a proposed budget if it is knowingly inaccurate) or is borrowed from the Borough Code (proposed budget is kept on file with the secretary and is available for public inspection). Subsections (b.2), (b.3) and (b.4) are new although all of the respective language is relocated from subsection (b) with only editorial amendments.

Subsection (c) adds language regarding supplemental appropriations. Subsection (d) deletes language regarding a two-thirds vote of the board of commissioners being needed for certain transfers. This tracks a provision in the Second Class Township Code and is similar to a provision in the Third Class City Code.

Section 1701.1. *Amending Budget; Notice.* Subdivided for clarity. Editorial amendments.

Section 1701a. *[Committee to Prepare] Uniform **Financial Report and Forms**.* Subdivided for clarity. Subsection (a) now includes the secretary's designee. Subsection (b) now includes the actual name of the association, i.e., Pennsylvania State Association of Township Commissioners. Clarifies that the representatives shall be chosen among the finance officers or other officers of township who have knowledge of fiscal procedures. Subsections (c) and (d) have editorial and comports amendments.

Section 1702. *Appropriations Not to Be Exceeded; Changes in Appropriations.* Existing language is deleted and new language tracks a similar provision in the Third Class City Code.

Section 1703. *[Certain Contracts Invalid.]* Repealed. The subject matter is dealt with in section 1702.

Section 1704. *[Power to Create Indebtedness; Sinking Fund; Temporary Indebtedness.]* Repealed. The Local Government Unit Debt Act applies to matters relating to indebtedness.



Section 1705. *[Sinking Fund; Regulations and Investments.]* Repealed. The Local Government Unit Debt Act (LGUDA) would apply. Additionally, section 1705.1(a.1) authorizes the board of commissioners to invest township sinking funds as authorized by LGUDA.

Section 1705.1. *Investment of Township Funds.* New subsection (a.1) authorizes the investment of sinking funds pursuant to LGUDA. Subsection (d) adds a cross-reference to Act 53 of 1973 for the benefit of the reader as Act 53 authorizes additional investments. In subsection (d)(iii) and (vi), references to the “Federal Savings and Loan Insurance Corporation,” “Pennsylvania Deposit Insurance Corporation” and the “Pennsylvania Savings Association Insurance Corporation” are deleted, similar to deletions in the respective rewrites of the Borough Code and Third Class City Code. A new sentence in subsection (d)(iii) stating that deposits in savings accounts or time deposits are differentiated from savings or demand deposits authorized by Act 53 of 1973 is added for clarification. In subsection (d)(v), qualifications for an investment company are added for consistency with the qualifications for an investment company in Act 53 of 1973. In subsection (d)(vi), reference to the collateralization of certificates of deposit is deleted in that this type of collateralization is reportedly no longer used. A similar deletion was made in the 2018 rewrite of the County Code. Subsection (e)(i) and (e)(iii) provide updated cross-references. Editorial amendments.

Section 1706. *Indebtedness and Orders of Previous Years.* Editorial amendments.

Section 1708. *Disbursements to Pay Indebtedness.* Editorial amendments.

Section 1709. *Tax Levies.* Editorial amendments throughout. The phrasing in subsection (a) relating to assessment by the county assessment office tracks language in the Third Class City Code in a similar section. In paragraph (1), the requirements for public notice and hearing are streamlined and also track a similar section in the Third Class City Code.

Paragraph (8) in subsection (a) is new but is a relocation of language from sections 2601 and 2602 with no substantive changes other than to change “water lines” to “water supply” and the clarification of property owners. Instead of just “property owners” or “from owners of the property adjoining or abutting upon the improvement,” language is added to state “from those property owners as otherwise authorized by this act.” This also tracks a similar provision in the Second Class Township Code. Having cash on hand through a revolving fund would allow access to grant money.

Paragraph (9) in subsection (a) is new but is a relocation of language from sections 3001 and 3012. The reference to a joint action is patterned after a similar provision in the Borough Code.

Section 1709.1. *Additions and Revisions to Duplicates.* Clarifies that the “authority responsible for assessments in the township” is the county assessment office. Deletes the language on assessments for part of a year since it conflicts with the Consolidated County Assessment Law. See also *Global Links v. Keystone Oaks School District*, 115 A.3d 418 (Pa.Cmwltl.

2015) (allowing mid-year tax roll revisions when property was exchanged between taxed and tax-exempt entities). Editorial amendments.

Section 1709.2. *Authority to Levy, Assess and Collect Mercantile and Business Privilege Taxes on Gross Receipts.* No changes.

Section 1710. *Tax Rates to Be Expressed in Dollars and Cents.* Editorial amendment.

Section 1711. *Special Levies to Pay Indebtedness.* Editorial amendments.

Section 1712. *Delivery of Duplicates.* Editorial amendment.

## **Article XVIII. CONTRACTS**

Section 1801. *Power to Make Contracts.* Subdivided. Current language in this section is now subsection (a). Subsection (b) is new but its language on contracts being awarded to the lowest responsible bidder is relocated from section 1802(a) and (b)(1), although the additional language explaining what that means is from the Third Class City Code. Subsection (c) regarding electronic submission of bids tracks language in the Borough Code.

Section 1802. *[General Regulations Concerning] **Regulation of** Contracts.* Reference to contracts only being made with the lowest responsible bidder is deleted as duplicative since this requirement is already stated in section 1801(b). A cross-reference is added to Act 78 of 1979, an act relating to entering into contracts for the purchase of goods and the sale of real and personal property where no bids are received. A similar cross-reference was added to the Borough Code's rewrite in 2012.

Now only one advertisement for bids is required in subsection (a) rather than two. This corresponds with the single advertisement required in the Municipal Authorities Act, section 5614(d). The newspaper of general circulation shall be published or circulating in the township rather than the county to comport with section 110 (relating to legal advertising) which states "printed in the township" or if not, then "circulated in the township." Language on the advertisement shall refer to the places where copies of the full plans and specifications may be obtained is relocated here from subsection (b)(1). Language is changed from "at least" to "not less than" ten days in advance of opening bids to comport with the same phrasing relating to when the advertisement for bids needs to appear. "Lease purchase" is added and "bailment" is deleted which tracks a change in the 2012 rewrite of the Borough Code.

Subsection (a.1) adds a sentence, tracking the Borough Code 2012 rewrite, that written price quotations include electronic mail. Subsection (a.2) adds a cross-reference to subsection (a.1), in addition to the existing cross-reference to subsection (a), since both subsections mention the base amount. This also tracks the other municipal codes. Subsection (a.2)(7) now provides that rather than the Department of Labor & Industry

publishing notice in regards to the annual percentage change, the department shall transmit notice to the Legislative Reference Bureau for publication. Subsection (a.2) also includes editorial and comports amendments throughout the subsection.

Subsection (b) is modified by moving current language elsewhere within sections 1801 and 1802 and inserting language that tracks the Third Class City Code in providing that an advertisement shall specify the date, time and place bids will be both received and opened and the procedures for opening the bids. Other new language, which tracks the Borough Code, provides that bids shall be accompanied by cash, money order, certified or cashier's check or other irrevocable letter of credit. Subsection (c) has conforming and editorial amendments.

Subsection (d) which relates to exceptions to advertising and bidding has some modifications or new additions. Paragraph (d)(3) adds reference to computer software, deletes reference to manufactured products and adds copyrighted products or are needed to ensure compatibility with existing systems, facilities or equipment. Paragraph (4.1) deletes reference to tariffs on file with the Public Utility Commission and adds electricity, natural gas or telecommunication service which tracks the Second Class Township Code. Paragraph (4.2) adds reference to a council of governments, consortium, cooperative or other similar entity created under the Intergovernmental Cooperation Law.

New paragraph (6) adds those contracts for materials, supplies or equipment rental under emergency conditions under Title 35, Pt. V. New paragraph (7) adds those contracts involving equipment rental with operators if more than fifty percent of the total labor is supplied by the township through its own employees. New paragraph (8) adds those contracts that purchase repair parts or materials for use in existing equipment or facilities if the item or material is the sole item of its kind on the market or is manufactured as a replacement for the original item or equipment being repaired. Paragraphs (6) through (8) track language in the Second Class Township Code.

New paragraph (9) adds those contracts for emergency maintenance, repairs or replacements for water, electricity or public works of the township if they are not new additions, extensions or enlargements of existing facilities and equipment. New paragraph (10) adds those contracts for the mitigation of a real or potential emergency involving a clear and present danger to the health, safety and welfare of the township's residents. For contracts under paragraphs (9) or (10), the nature of the procurement and the emergency must be stated in a resolution adopted at the next public meeting. Paragraphs (9) and (10) track language added to the Borough Code by Act 99 of 2018. Also tracking the Borough Code is language that none of the exceptions within subsection (d) precludes the board of commissioners from engaging in advertising, bidding or price quotations if the board determines that it is in the public interest.

Subsection (e), which tracks language in the Borough Code, is expanded to include references to additional acts to which the award of contracts may be subject. Subsection (f) has only editorial amendments.

Section 1802.1 *Evasion of Advertising Requirements.* Subsection (a) is enumerated for clarification. Editorial amendments in both subsections (a) and (b).

Section 1804. *Bonds for Protection of Labor and [Materialmen] **Materials.*** Changes to this section in both deleted and added language tracks the Borough Code. Previously, a payment bond was required in a sum not less than 50% and not more than 100% of the contract price for a public work or improvement if the contract price was in excess of \$1,500. Now, if the contract price exceeds \$10,000 a payment bond is required for 100% of the contract price. Cross-references the Public Works Contractors' Bond Law of 1967 (Act 385). This bond requirement is in addition to any other bond requirement that is or may be required by law to be given in connection with the contract.

Section 1804.1. *Purchase Contracts for Petroleum Products; Fire Company, Etc.* Editorial amendments.

Section 1805. *Separate Specifications for Branches of Work.* Editorial amendments.

Section 1806. *[Workmen's] **Workers'** Compensation Insurance.* This section tracks changes made to the Borough Code in its 2012 rewrite. Adds language that the certificate of exemption from insurance may be issued on the basis of either individual or group self-insurance. New language also provides that a contractor must file with the township any applications to be excepted by the Workers' Compensation Act in respect to certain employees on religious grounds if the applications have been accepted by the Department of Labor and Industry. New subsection (b) provides that a contract in violation of subsection (a) is void.

[Section 1807. *Engineers and Architects Not to Be Interested in Contracts.*] Repealed. This section is incorporated into section 1811 by the inclusion of "employees" in that section as to those who are restricted from entering into township contracts and purchases if the employee has an interest in the same pursuant to the Ethics Act.

[Section 1808. *Minimum Wages under Contracts.*] Repealed. Reference to minimum wage is now made in section 1802(b)(4) as Federal and state minimum wage laws still apply.

Section 1811. *[Penalty for] Personal Interest in Contracts **and Purchases.*** Deletes specific provisions and penalties and now cross-references the Ethics Act. Adds reference to "employees" from section 1807.

## **Article XIX. EMINENT DOMAIN; ASSESSMENT OF DAMAGES AND BENEFITS**

### **[(a) General Provisions Relating to Eminent Domain]**

- Section 1901. *Exercise of Eminent Domain.* Subdivided and enumerated for clarity. “Injure or destroy” is changed to “occupying” similar to language in the Third Class City Code. “Waterworks” is changed to “water systems” and “changing watercourses” is relocated within the section. “Storm water drains” is changed to “storm water facilities.” In addition to drains, an example of a storm water facility is a pond. This is a clarification of power relating to managing storm water, not a new power per se. Current language in section 2402 authorizes the taking of land for sewers and drains along streets or highways if it is reasonably impracticable to have the sewers or drains along the public streets or highways. Reference to sanitary sewer mains, drains or treatment works is moved from sections 2402 through 2404. A cross-reference to the Eminent Domain Code is added.
- Section 1902. *Restrictions As to Certain Property.* Subdivided and enumerated for clarity. Editorial amendments.
- Section 1902.1. **Declaration of Intention.** This new section is relocated from section 2804 from the article on public buildings. In addition to existing language relating to an ordinance, language is added that a declaration may be by resolution to give townships a choice since the First Class Township Code, other than section 2804, does not mandate an ordinance for condemning land. The Eminent Domain Code section 302(b)(3) says a declaration of taking needs to reference the action whether it is by ordinance, resolution or otherwise.
- Section 1906. *Value of Land or Property Not to Be Assessed as Benefits; Exceptions.* Editorial amendments.
- Section 1907. *Title Acquired.* A new exception to title needing to be in fee simple absolute is added for that of easements obtained in eminent domain proceedings, along with the existing exception of street or highway purposes. Any other exception must be agreed to by the parties in writing and must be recorded. Similar to language in the Third Class City Code.

**[(b) Procedure for the Exercise of Eminent Domain and for the Assessment of Damages and Benefits]**

- [Section 1924. *Assessment of Damages and Benefits.*] Repealed. A similar section was repealed in the Third Class City Code rewrite.
- [Section 1925. *Assessment Awards.*] Moved to section 2507-A, the new article on assessments for public improvements. A similar change was made in the Borough Code rewrite.
- [Section 1952. *Assessments to Bear Interest.*] Moved to new section 2509-A(b)(3). A similar change was made in the Borough Code rewrite. The Eminent Domain Code only addresses delay damages payable to a condemnee (property owner) by the condemnor (municipality). It does not address interest due on assessments, payable by the property owner to the township. Therefore, this power should remain, but has been moved to the new article on assessments for public improvements.

**Article XX. STREETS AND HIGHWAYS**

The redraft of this article attempts to harmonize the procedures and timing for the opening, laying out and vacating of streets. In 1968 when the Municipalities Planning Code (MPC) was enacted, language in the First Class Township Code governing plans of streets was repealed assuming that municipalities would adopt official maps and plans that would incorporate procedures for the laying out of streets. However, many municipalities, including townships, have not adopted such maps, and so there exists a gap in the law governing the laying out of streets. There is also a need for a procedure for recording and notification of property owners that applies to these townships and is consistent with the MPC. The new language in this article would provide for a uniform process for advertising, holding hearings and enacting an ordinance for the laying out, opening, and vacating of streets. Incorporating a procedure back in to the First Class Township Code would provide for those townships which do not have such procedures. Procedures relating to streets have been attempted to coordinate with the provisions of the MPC.

**[(a) Plans of Streets and Highways]**

Section 2002. **Definitions.** The following definitions are added: improving a street or improvement; laying out; opened streets; opening a street; portion; street; and unopened streets. With the exception of “street,” the definitions track the Borough Code with some modifications. “Street” is from sections 102 and 2005(b) in the First Class Township Code although the definition in section 102 remains. New language which tracks the Borough Code is added to “street”, i.e., streets are of two classes, opened and unopened. “Curb” within the definition of “street” is new at the recommendation of a township engineer. The definition of “improving a street” is from the Borough Code although the definition here in the First Class Township Code expressly excludes both “maintenance” and “macadamizing.” “Macadamizing” is being removed from elsewhere in the First Class Township Code at the suggestion of a township engineer as it is an outdated term.

Section 2003. **Township Street Plan.** Subsection (a). Now provides that a township may only adopt a plan of streets pursuant to the Municipalities Planning Code (Act 247 of 1968) if it has not maintained an accurate plan of streets adopted in accordance with this act prior to the effective date of this new section.

Subsection (b). Provides for the deemed amendment of an already existing plan of streets or an official map when any street is laid out in accordance with this act by ordinance or by final approval of a subdivision or land development plan. This language is very similar to that found within section 403 of the MPC involving deemed amendments to official maps by virtue of approved land development plans.

Subsection (c). Provides that maintenance of a plan of streets or an official map is not required for a township to lay out or open streets in accordance with this article. This is intended to reconcile the original intent of Article IV of the MPC with those townships which may still have street plans enacted outside of the MPC, or those desiring to enact new street plans.

Section 2004. **Certain Streets Declared Public Streets.** This new section provides for evidence in legal proceedings to determine the public status of streets. A street that has been used for public travel and maintained continuously by the board of commissioners is a public street with a right-of-way of not less than 24 feet even if there is no public record of the laying out or dedication for public use of the street. In any proceeding regarding the public status of a street, relevant oral or documentary evidence of public travel or maintenance and repairs by the township shall be considered as enumerated. This section tracks language in the Second Class Township Code although “roads” were changed to “streets.”

**[(b) Laying Out, Opening, Widening, Straightening, Vacating and Relaying Streets, Highways, Et Cetera; Repairs and Detours]**

Section 2005. *Power to Lay Out, Open, [Widen, Vacate, Et Cetera]* **Vacate and Alter Streets.** This section on general powers relating to streets is rewritten for clarification and is now similar to the Third Class City Code and Borough Code. In addition to the existing terms of “lay out, open, widen, straighten,” the following terms are added: “alter, extend, relocate and improve.” The existing definition of “street” is moved to section 2002 (relating to definitions).

Section 2006. *[Burial Grounds, Et Cetera, Saved]* **Prohibition.** Editorial amendments.

Section 2007. *[Notice of Hearing]* **Procedures for Laying Out, Opening, Changing, Improving or Vacating Streets.** Terms from now deleted section 2011 are integrated into this section (“widening, straightening, extending”). Also added are “altering” and “relocating” to comport with section 2005 as revised. Adding “improving” and therefore deleting sections 2052-2054 which had similar procedures for improvements. Subsections (b) and (c) are derived from now repealed section 2008 although the report and draft are to be filed in the recorder of deeds office rather than the clerk of the court. Subsection (d) is derived from now repealed section 2009 although “any citizen or freeholder of the township” is changed to “any resident or property owner affected by the report.” Now repealed section 2010 is restructured into new subsection (e).

[Section 2008. *Draft; Report.*] Repealed. Now in section 2007(b), (c).

[Section 2009. *Exceptions to Report.*] Repealed. Now in section 2007(d), although “citizen or freeholder of the township” is changed to “resident or property owner affected by the report.”

[Section 2010. *Appointment of Viewers.*] Repealed, although the substance of the section is moved to section 2007(e).

[Section 2011. *Notices to Be Posted Along Improvement.*] Repealed. This section is outdated in having notice posted of an ordinance. The *proposed* ordinance would be noticed in a newspaper of general circulation. Also section 2007(a) states that property owners get written notice 10 days before a hearing on the matter. Compare to section 2007.2 which includes reference to handbills in a petition action but before enactment of an ordinance.

- Section 2011.1. **Petition for Opening, Etc.** This new section tracks language in the Third Class City Code regarding petitions presented to the board of commissioners. Reference to “improving” and relocating” is added to the list of those actions that may be made by petition to coincide with those actions that may be initiated by the board of commissioners in section 2005, although “laying out” a street is not included here in section 2011.1. A petitioner is required to pay reasonable costs and expenses as established by resolution.
- Section 2011.2. **Notice of Petition.** This new section tracks language in the Third Class City Code although notice of the petition is published once in a newspaper of general circulation after the board of commissioners have determined the adequacy of the petition. Additionally, handbills must be posted along the line of the proposed improvement. If the board of commissioners determine to proceed with the consideration of an ordinance pursuant to the petition, notice must be published of the proposed ordinance in accordance with Article XXXIII-A (relating to ordinances).
- Section 2012. **Width of Public [Roads] Streets.** Current language that the width of a street shall not be less than 33 feet but in no case shall it be less than 24 feet is changed to the width of a street shall not be less than 24 feet. A new subsection (b) is added that the width of an alley is at the discretion of the board of commissioners. Typically, alleys have only a cartway with no additional right-of-way.
- Section 2013. **Opening and Repairing [Roads] Streets.** Subdivided for clarity. Editorial amendments.
- Section 2014. **Street Closings and Detours.** Subdivided for clarity with subsection (a) enumerated into paragraphs. Much of this section is similar to language in the Third Class City Code. New language in paragraph (1) in subsection (a) adds that a street may be closed to vehicular traffic in cases of emergency on order of the police, authorized fire official or other authorized public employee when necessary to protect the public. This is in addition to current language that authorizes the board of commissioners to close a street. The substance of paragraphs (2) and (3) are from existing language. Paragraph (4) provides clarification of the notification to the Department of Transportation of a street closing or detour that is part of a State highway. Paragraphs (5) through (8) have editorial or conforming amendments.
- Subsection (b) adds new language that tracks the Third Class City Code that if the board of commissioners and the owners of private lands on which a detour is to be located cannot reach an agreement, the township may proceed with the construction of the detour with the owner entitled to seek damages in the same manner as damages are determined for the opening of a street. Subsections (c) through (h) have only editorial amendments.
- [Section 2015. **Laying out Roads under the General Road Law.**] Repealed. New section 2016 addresses the procedures applicable to a street that is partly within and partly outside a township. The General Road Law was the selection of a neutral law.



Section 2016. **Street Connecting with Street of Another Municipal Corporation.** This section addresses the procedures applicable to a street that is partly within and partly outside a township in regards to the laying out, opening, widening, straightening, altering, extending, vacating, improving, relocating or establishing or reestablishing grades. Subsection (a) provides that to the extent the street or portion of the street is within the township, the procedures within this article shall apply. Subsection (b) provides that the procedures applicable to any portion of a street outside the township shall be pursuant to the code applicable to the classification of the other municipal corporation with which the street is shared. However, the court of common pleas must approve of any change of location or grade or the vacation of a street unless the municipal corporation first files with the township secretary approval of the proposed action. Language on the court's approval tracks the Borough Code.

**[(c) Dedicated Streets and Drainage Facilities]**

[Section 2019. *Scope of Subdivision.*] Repealed. This section referenced an article that was repealed by the Municipalities Planning Code in 1968.

Section 2020. *[Plans of Dedicated Streets]* **Acceptance of Land for Street Purposes.** Subdivided for clarity. Subsection (a) adds that the acceptance of land dedicated to the township shall be by ordinance or resolution. The Borough Code provides that such acceptance shall be by ordinance but the Second Class Township Code provides that acceptance shall be by resolution. Subsection (b) has editorial amendments. Subsection (c) is new and tracks language in the Borough Code which provides that the Municipalities Planning Code applies to the construction, security requirements and dedication of streets and connected drainage facilities if the streets are to be constructed as part of a plan required by an ordinance adopted under the MPC.

Subsection (d) relates to plans not subject to review under subsection (c). Editorial amendments. Subsection (e) is derived from now repealed section 2021 with editorial amendments. Subsections (f), (g) and (h) are derived from now repealed section 2022 with editorial amendments. Additionally, subsection (h) has new language that if a township fails to file a certificate (that existing language provides is optional under subsection (g)) with the recorder of deeds that nothing shall be interpreted to create a deemed approval of the plans nor create any responsibility of the township with respect to the land, street or drainage facility.

Subsection (i) is derived from now repealed section 2024. New language provides that the person who constructs, opens or dedicates any street or drainage facilities for public use without having complied with the provisions of this section is subject to suit for all costs and damages incurred by the township or property owners in the course of correcting substantive violations of State or municipal law or regulations arising from the unlawfully constructed street or facility.

Subsection (j) is new and tracks the Second Class Township Code. It provides that no approval of plans by the board of commissioners obligates or requires the township to construct, maintain or grade streets.

[Section 2021. *Appeals where Commissioners Refuse Approval.*] Repealed. Now in section 2020(e).

[Section 2022. *No Responsibility on Township Where Plans Not Approved.*] Repealed. Now in section 2020(f), (g) and (h).

[Section 2023. *Entry of Lands.*] Repealed. Now in new section 2028.

[Section 2024. *Penalty.*] Repealed. Now in section 2020(i).

[Section 2025. *Powers of State and Counties Preserved.*] Repealed. Now in section 2025.1.

Section 2025.1. *Powers of State and Counties Preserved.* Editorial amendments.

Section 2026. **Exclusive Nature of Provisions.** This new section tracks the Borough Code. The intent is to provide that the provisions of this article set forth the procedures for dedication, acceptance, acquisition, laying out, opening or vacation and not decisional or common law.

Section 2027. **Failure of Board of Commissioners to Hold Hearing.** This new section tracks the Borough Code. It provides that if the board of commissioners fails to hold a required hearing after the filing of a petition under this article, an aggrieved party may file a mandamus action requesting that a hearing be held.

Section 2028. **Entry on Land to Maintain Marks and Monuments.** This new section is relocated from now repealed section 2023.

Section 2029. **Bike Paths.** This new section, which authorizes the board of commissioners to provide for the construction and maintenance of bike paths, is similar to language in the Second Class Township Code.

#### **[(d) Relocation, Alteration, and Vacation of Streets in or near State Parks]**

Section 2030. *[Agreements to Relocate, Alter, and Vacate] Streets in or near [State] **Public** Parks.* Subdivided for clarity. This rewritten section, which tracks the Second Class Township Code, clarifies that the board of commissioners may contract with the Commonwealth, a county or a municipal corporation owning and operating parks inside the township to establish, relocate, alter or vacate public streets inside or contiguous to the parks. The board of commissioners may not take any action in regards to the streets without the written agreement of the Commonwealth, county or municipal corporation owning and operating the parks. After any street is altered or relocated under this section, it shall be maintained the same as other township streets. Subsection (b) provides that the

agreement must be adopted by ordinance and within 30 days, the street becomes a public street of the township. Subsection (c) provides that the owner of land through which any public street may be located or relocated may apply by petition to the court of common pleas for the assessment and payment of damages pursuant to the Eminent Domain Code.

[Section 2031. *Agreement to Be Filed in Court; Effect of Filing.*] Repealed. A similar section was repealed in the Second Class Township Code in its 1995 rewrite. Section 2030 addresses the agreement between the parties.

[Section 2032. *Altered and Relocated Streets Declared Township Streets.*] Repealed. Now in section 2030(a).

[Section 2033. *Assessment of Damages.*] Repealed. Now in section 2030(c).

#### **[(e) Elimination of Curves]**

[Section 2035. *{No Title.}*] Repealed. The substance of this section is now combined with section 2040.

#### **[(f) Acquisition of Unobstructed Views at Curves and Intersections]**

Section 2040. **Elimination of Curves and Acquisition of Views.** A title is added to this previously untitled section. This rewritten section is now subdivided and combines the substance of this section and now repealed section 2035. Reference to easements is now added along with the existing reference to lands as to what a township may acquire to eliminate dangerous curves, widen streets or provide an unobstructed view for the safety of the traveling public. Editorial and conforming amendments.

#### **[(g) Changing or Altering Streets by Agreement with Property Owners]**

Section 2045. *Improving or Vacating Streets by Agreement.* Subdivided for clarity. The title to this section makes reference to vacating streets but the substance of this section did not previously reference vacating streets. This has now been remedied in subsection (a). Subsection (b) is new and replaces now repealed language in this section. The new language in subsection (b) tracks the Second Class Township Code and requires that a copy of the agreement along with a map or draft of the street to be constructed, changed, widened, relocated, vacated or altered must be recorded in the office of the recorder of deeds. Previously, the petition for the improvement or vacation needed to be presented to the court for approval before any change was actually made. Subsection (c) has conforming amendments.

#### **[(h) Grading, Draining, Curbing, Paving, Macadamizing Streets or Highways on Petition, and Assessment of Benefits by Viewers]**

Section 2050. *Proceedings [on] With or Without Petition.* This section is rewritten to track language in the Borough Code that authorizes the improvement of streets, portions of streets or a

particular width, with or without the assistance of the Federal Government, the Commonwealth, the county or a corporation occupying the thoroughfare and provides for the assessment and collection of the cost.

[Section 2051. *Grading Restrictions.*] Repealed, as this section prohibited the raising of the street above the ordinary grade if a drain or culvert is constructed under the street. Most townships raise streets over culverts. If an existing street has flooding, it may be necessary to raise the street profile to eliminate the street flooding.

[Section 2052. *Notice.*] Repealed. This section on notice by handbills is similar to section 2011 which is also being deleted. But see section 2007.2 relating to petition action and handbills being posted prior to enactment of an ordinance.

[Section 2053. *Contents of Notice.*] Repealed as unnecessary since section 2007 relates to procedures.

[Section 2054. *Appeals from Ordinance.*] Repealed as unnecessary since section 2007 relates to procedures.

[Section 2055. *Assessment of Damages and Benefits by Viewers.*] Repealed. The substance of this section is now in new Article XXV-A (relating to assessments for public improvements).

[Section 2056. *Assessments to Bear Interest; Collection.*] Repealed. The substance of this section is now in new Article XXV-A (relating to assessments for public improvements).

**[(i) Grading, Draining, Curbing, Paving or Macadamizing Streets or Highways, and Collection of Costs by Foot Front Rule]**

[Section 2060. *Proceedings With or Without Petition.*] Repealed. Improvements are added to earlier sections in regards to authorization and procedures.

[Section 2061. *Grading Restrictions.*] Repealed for reasons similar to the repeal of section 2051.

[Section 2062. *Notice of Assessments.*] Repealed. The substance of this section is now in new Article XXV-A (relating to assessments for public improvements).

[Section 2063. *Collection of Assessments.*] Repealed. The substance of this section is now in new Article XXV-A (relating to assessments for public improvements).

**[(j) Road Material, Ditches, Drains and Watercourses]**

[Section 2065. *Power to Enter Lands.*] Repealed. This section authorized the board of commissioners to enter land to dig up and carry stones, sand or gravel to repair streets if the material could not be conveniently obtained by contract. A similar section was repealed from the Second Class Township Code in its 1995 rewrite.

[Section 2066. *Viewers to Fix Damages.*] Repealed. A similar section was repealed from the Second Class Township Code in its 1995 rewrite.

[Section 2067. *Ditches, Drains, and Watercourses; Approval of Plans.*] Repealed. A similar section was repealed from the Second Class Township Code in its 1995 rewrite.

Section 2068. **Power to Open Drains and Ditches.** This new section tracks the Second Class Township Code and authorizes the board of commissioners to enter lands to cut, open, maintain and repair drains or ditches through property when necessary to carry water from streets. A person who damages or diverts a drain or ditch commits a summary offense and is liable for costs to restore the same.

#### **[(k) Trees, Shrubbery, and Obstructions within Limits of Streets or Highways]**

Section 2070. **Trees and Shrubbery Within Right-of-Way.** A title is added to this existing section. Subdivided for clarity. Editorial amendments.

#### **[(l) Protection of Streets or Highways from Snowdrifts]**

Section 2078. **Protection of Streets or Highways from Snowdrifts.** A portion of this section is repealed since the substance appears in other subsections. Similar language was deleted in the Second Class Township Code 1995 rewrite. The portion of this section that is retained is subdivided for clarity. Editorial amendments.

#### **[(m) Guideposts and Index Boards]**

[Section 2080. *Duty to Erect.*] Repealed as outdated. A similar section was repealed in the Second Class Township Code 1995 rewrite.

Section 2080.1. **Naming of Streets.** The first sentence of this new section on naming streets is from existing section 1502(XXII). The last sentence on signing maintained by the Department of Transportation tracks a similar section in the Second Class Township Code.

Section 2080.2. **Street Lighting, Ornamental Lighting and Traffic Control Signals and Devices.** Authorization for street lighting in this new section is from existing section 1502(XII) and authorization for ornamental standards and assessment of street lighting is from section 1502(XIII). Language referencing traffic control signals and devices are to be in accordance with the Vehicle Code is similar to other municipal codes.

Section 2081. *Penalty for Destroying Signs.* A person who violates this section may now be required to pay the costs of labor in addition to the costs of prosecution and the value of destroyed signs. Subdivided for clarity. Editorial amendments.

#### **[(n) Streets Crossing Railroad; Special Uses of Streets]**

Section 2083. *Railroad Crossings.* Subdivided for clarity. Editorial amendments.

Section 2084. *Street Permits.* Reference is added to driveway connections and to facilities of non-public utility communication providers. Editorial amendments.

**[(o) County-aid in the Improvement of Township Streets]**

Section 2086. *County Aid in the Improvement of Township Streets.* A titled is added to this existing section. Subdivided for clarity. Editorial amendments.

**[(p) Penal Provisions]**

[Section 2088. *{No Title.}*] Repealed as outdated.

**[(q) Opening, Making, Amending, and Repairing Streets and Bridges by Contracts with Taxpayers]**

[Section 2090. *Taxpayers' Rights.*] Repealed. The entire subdivision is repealed as contracts must be advertised and bid, not simply awarded to a taxpayer in the township.

[Section 2091. *Petition to Court.*] Repealed. See comment to section 2090.

[Section 2092. *Bond of Petitioner.*] Repealed. See comment to section 2090.

[Section 2093. *Notice to Commissioners and Auditors.*] Repealed. See comment to section 2090.

[Section 2094. *Contracts; Stipulations.*] Repealed. See comment to section 2090.

[Section 2095. *No Street Tax to Be Levied.*] Repealed. See comment to section 2090.

[Section 2096. *Inspection.*] Repealed. See comment to section 2090.

Section 2097. *Boundary Streets.* This section and the remaining sections in this article are moved from a now repealed Article XXI on boundary streets. Thus, all sections on streets, whether boundary streets or otherwise, are now contained within Article XX (relating to streets). This new section 2097 incorporates the substance of now deleted sections 2101, 2105 and 2130.

Section 2098. *Streets, the Center Line of Which is the Boundary Between a Township and Another Municipal Corporation.* See comments to section 2097. This new section 2098 incorporates the substance of now deleted section 2110.

Section 2099. *Streets Having More Than Half of Their Width Within Township.* See comments to section 2097. This new section 2099 incorporates the substance of now deleted section 2120.

Section 2099.1. *Assessment for Improvements on Property Outside Limits Where Street Entirely Within Township.* See comments to section 2097. This new section 2099.1 incorporates the substance of now deleted section 2120.

[**Article XXI. BOUNDARY ROADS AND STREETS**] Repealed. The substance of this article is moved into Article XX (relating to streets).

**[(a) Opening, Repairing and Improving Streets on Division Line of Townships]**

[Section 2101. {*No title.*}] Repealed. Now in section 2097.

**[(b) Maintenance of Streets between Township and Cities or Boroughs]**

[Section 2105. {*No title.*}] Repealed. Now in section 2097.

**[(c) Street, the Centre Line of which is the Dividing Line between Townships and Boroughs or Cities in the Same County]**

[Section 2110. {*No title.*}] Repealed. Now in section 2098.

**[(d) Street, the Centre Line of which is the Dividing Line between Townships and Cities in an Adjacent County]**

[Section 2115. {*No title.*}] Repealed. Now in section 2098.

**[(e) Improvement of Street where more than One-Half of Width is in Township; Assessment of Property outside Limits]**

[Section 2120. {*No title.*}] Repealed. Now in section 2099.

**[(f) Assessment of Property outside Limits of Township for Street Improvements]**

[Section 2125. {*No title.*}] Repealed. Now in section 2099.1.

**[(g) Grading, Curbing, Paving, Macadamizing Boundary Street or Highway, Et Cetera]**

[Section 2130. {*No title.*}] Repealed. Now in section 2097.

**Article XXII. BRIDGES [AND VIADUCTS]** Reference to viaducts is removed throughout the article since a viaduct is a type of bridge and included within the definition of “bridge.”

**[(a) As Part of Street]**

Section 2201. *Construction and Acquisition of Bridges.* This existing section is given a title. The section is reworded and combines the substance of this section along with sections 2205

and 2210. In subsection (a), reference to “purchase” and “wholly or partly” are from section 2205. Subsection (b) tracks the Borough Code although current language in sections 2201 and 2211 also cross-reference streets for damages awarded and benefits assessed. Subsection (c) clarifies that the powers or duties of the Public Utility Commission are not affected. Now deleted section 2205 had cross-referenced the Public Utility Law. Subsection (d) is derived from sections 2210 and 2222, although these sections also mentioned canals which are deleted here. In subsection (e), the definition of bridge is derived from sections 2205 and 2210 although “valley” and “street” are new which tracks the Third Class City Code where those terms were added in its 2014 rewrite. Current language in the First Class Township Code includes “canal” which is not specifically included in the definition of bridge as it seems outdated. However, a canal is an artificial waterway for navigation or irrigation so it would fit within the definition under “any other body of water or physical obstacle.” Viaduct is included within the definition of bridge as it eliminates the need to keep referring to bridges *and viaducts* throughout the article.

#### **[(b) Over Railroads]**

[Section 2205. *Power to Construct.*] Repealed. The substance of this section is moved to earlier sections in this article.

Section 2206. *Maintenance.* Subdivided. Existing language now comprises subsection (a). Subsection (b) is new and is derived from section 2225, although “municipalities” is changed to “municipal corporation.”

#### **[(c) Over Marshy or Swampy Grounds Creeks, Rivulets, Gullies, Canals and Railroads]**

[Section 2210. *Power to Make and Maintain.*] Repealed. The powers in this section are generally transferred to section 2201(a), (d) and (e).

[Section 2211. *Damages.*] This repealed language is also being repealed in current law section 2201. Section 2201(b) is new and says the proceedings for laying out and opening a bridge shall be the same as for laying out and opening a street.

#### **[(d) Over Streams, Railroads and Canals on Township Boundaries]**

Section 2220. ***Boundary Bridges [on Division Line of Townships]***. Subdivided. Subsection (a) includes the current language of this section along with the substance of section 2221. Subsection (b) is new and tracks new subsection (c) in section 2097 (relating to boundary streets) regarding if an amicable agreement on the proportionate share of costs cannot be reached, a governing body may petition the court of common pleas for a determination of the rights and responsibilities of the parties.



[Section 2221. *Bridges between Townships and Municipalities.*] Repealed. Now in section 2220 which was virtually identical to this section except one section related only to townships and the other section to other classifications of municipalities.

[Section 2222. *Bridges over Railroad or Canal.*] Repealed. Now in section 2201(d).

**[(e) Maintenance, Repair, and Rebuilding of Bridges Built by County]**

[Section 2225. *{No title.}*] Repealed. Now in section 2206(b).

**Article XXIII. SIDEWALKS**

Section 2301. *Power to Lay Out[, Ordain] and Establish Grades.* Clarifying that the laying out and establishing of sidewalks is by ordinance. The insertion of “curbs, gutters and surface water drains” after reference to sidewalks tracks both the Borough Code and Third Class City Code. Consent information is moved from the end of section 2303 to this section.

Section 2302. *Width.* Editorial amendment.

Section 2303. *Paving and Curbing Sidewalks.* Subdivided and reorganized. Reference to “grade” is not new but moved within the section. Removing reference to materials and instead using “specifications.” In subsection (b), reference to “by contract” tracks the Third Class City Code. Subsection (c) is clarified that a lien exists *pursuant to notice* to do the work and failure to do so and the lien includes not only costs, but a ten percent penalty and charges and expenses. A lien exists from the *commencement* of the work but typically a lien is filed within six months of the *completion* of the work per section 7143 of the Municipal Claim and Tax Lien Law. The township engineer certifies the date of commencement of the work with the township secretary in accordance with section 1305 (relating to certificate of commencement and of completion of municipal improvements). A new sentence is added that if the township pays in part (which is authorized in current language), the remaining costs shall be collected as provided in this section.

Subsection (d) is new and tracks the Borough Code. This section provides for notices to be served on the owner. The notice must specify a period of time of not less than 60 days for the owner to complete the specified work. If the work has not been completed by that time, the owner is deemed to have failed to comply.

Section 2304. *Repair of Sidewalks.* Subdivided. Section 5507 (relating to obstructing highways and other public passages) in the Crimes Code also relates to obstructing sidewalks, but this existing section is retained here in the First Class Township Code. The specifics on notice are deleted here in this section and a cross-reference is added to section 2303(d)(1). The period of time for which *repair* work must be completed in this section is 30 days (compared to 60 days in section 2303 which relates to paving and curbing sidewalks).

Section 2305. **Emergency Repairs.** This new section tracks the Third Class City Code. A township may make emergency repairs to sidewalks upon a determination by an officer or designated individual that a substantial and immediate danger exists to public health, safety and welfare. Similar to section 2304, a cross-reference is made to section 2303(d)(1) in regards to notice requirements. No penalty is authorized for failure of a property owner to make emergency repairs due to the short turn-around time (within 48 hours of service of the notice and report), although a claim may be filed for the cost of the repairs.

**Article XXIV. SANITARY SEWERS AND DRAINS**

(a) Establishing and Constructing Sewer and Drainage Systems; Sewer Connections and Rates; Disposal of Sewage; Assessment of Cost of Construction

Section 2401. *Power to Establish and Construct Sewers and Drains; Require Connections; Sewer Rentals.* Subdivided. “Right-of-way” is substituted for “in the center of the street or on either side of the cartway.” A right-of-way includes the cartway which is the paved and travelled portion of the street, the berm or shoulder which is the paved portion to either side of actual travelled portion, plus any additional area needed for street purposes. The Borough Code changed cartway to right-of-way in its 2012 rewrite.

Language in subsection (c) is new and authorizes the board of commissioners to make regulations by ordinance for the use and maintenance of the sanitary sewer system and treatment works.

Subsection (d) clarifies the frequency of billing. Also new is the initial imposition of the rate is to be established by ordinance and any subsequent rate adjustments may be by resolution provided that the ordinance establishing the rate allows for future rate adjustments by resolution adopted at a public meeting. “Due process of law” is clarified to mean an action in assumpsit or by a filed lien.

Subsection (h) is new and tracks the Borough Code. Specifies from which entities a township laying out and constructing a sanitary sewer and treatment works must obtain consent and permit.

Section 2401.1. [*Sewer and Drainage Systems; Constructed by any Municipality Authority; Connection by Owners; Enforcement*] **Required Connection; Fees.** Subdivided. Mandatory connection is now required to a township sanitary sewer system, not just a municipal authority system. Also new is the requirement that a property owner use a sanitary sewer system, not just connect to the system. Requires connections of property whose principal building is within 150 feet from the sewer which tracks the Second Class Township Code. References other fees that may be imposed such as a tapping fee which is moved from section 1502(LXXVII).

- Section 2401.2. **Notice of Contemplated Construction.** This publication requirement of an ordinance prior to construction of a sanitary sewer system is moved from section 2436, although publication now need only be once in a newspaper of general circulation rather than once a week for three successive weeks.
- Section 2402. Location of **Sanitary** Sewers on Private Property. Editorial amendments.
- Section 2403. *Treatment Works and Facilities [Therefor].* A cross-reference to section 206 of the Eminent Domain Code is added. Editorial amendments.
- [Section 2404. *Entry on Lands to Mark Sewer Routes; Damages.*] Repealed, since the subject matter is covered by the Eminent Domain Code. Current language in section 2402 authorizes the exercise of eminent domain. A similar section in the 2012 rewrite of the Borough Code was also repealed.
- [Section 2405. *Enforcement of Judgment for Damages.*] Repealed. The Eminent Domain Code provides for the awarding of damages.
- Section 2406. *Cost of Construction; How Paid.* Editorial amendments.
- Section 2407. *Sewer Districts.* Subdivided for clarity. Editorial amendments.
- Section 2408. *[Manner of Assessment] Assessments.* Similar to the 2012 rewrite of the Borough Code, the specifics on assessments are transferred to the new assessments article, and only a general cross-reference to that article is made in this section.
- [Section 2409. *Procedure for Assessment of Benefits.*] Repealed. The substance of this section is now in the new Article XXV-A (relating to assessment for public improvements).
- [Section 2410. *Lien for Assessments; Costs of Proceedings.*] Repealed. The substance of this section is now in the new Article XXV-A (relating to assessment for public improvements).
- [Section 2411. *Assessment of Property Outside Limits of Townships for Sewers.*] Repealed. The substance of this section is now in the new Article XXV-A (relating to assessment for public improvements).

**(b) Acquisition of Sewer System from Private Interests; Distribution of Costs**

- Section 2415. **Power to Acquire Community Sewage Collection or Disposal Systems.** This existing section now has a title. Changes to this section track similar changes in the 2012 rewrite of the Borough Code. A new reference to an ordinance in subsection (a) in regards to an ordinance empowering the township commissioners to acquire ownership of a community sewage collection or disposal system is derived from current language elsewhere in this section. Subsection (b) is streamlined and now references viewers who shall assess the costs and expenses of the system acquired by the township in eminent

domain proceedings. Subsection (c) is repealed and the substance moved to new subsection (e) on definitions. Current subsections (d) and (e) are changed to new subsections (c) and (d). New subsection (f) provides that nothing in this section may supersede the requirements of the Pennsylvania Sewage Facilities Act. Editorial amendments throughout.

**(c) Contracts with Individuals or Corporations for Construction and Maintenance of Sewer and Drainage Systems**

Section 2420. *Contracts for Sewer and Drainage Systems.* This existing section now has a title. Subdivided. Editorial amendments.

**(d) Sewers and Drains in Streets or Highways, or over Private Property; Assessment of Cost of Construction According to Benefits**

Section 2425. *Cost of Construction.* This existing section now has a title. Much of this section has been moved to the new Article XXV-A (relating to assessment for public improvements). Editorial amendments in the remaining portion of the section.

**(e) Sewers under State and County Highways**

Section 2430. *State and County Highways; Consent Necessary.* Subdivided. Editorial amendments.

**(f) Connecting with Adjoining Sewer [of Adjoining Municipality]**

Section 2435. *Connection by Agreement or Petition; Appointment of Viewers.* Subdivided. Reference to municipality is changed to municipal corporation or municipal authority in regards to a township connecting with an existing sewer. Subsection (c) is new and provides that viewers shall report on their investigation to the court which shall confirm the report within 30 days unless exceptions are filed.

[Section 2436. *Notice of Contemplated Construction; Protests by Property Owners.*] Repealed. A portion of this language is moved to section 2401.2 although the language on a written protest by 60% of total property owners is not carried over.

**(g) Joint Sanitary Sewers and Drains**

Section 2440. *Building Joint Sewers.* Subsection (a) is rewritten, with mostly editorial changes, and tracks changes in the 2012 Borough Code rewrite. A new sentence is added that townships may contract with municipal authorities for the purposes of this section. Subsections (b) through (d) are further enumerated for clarity. Language in what is now subsection (b)(4) removes reference to compensation for the joint sanitary sewer board not to exceed \$250 per year. A cross-reference to 26 Pa.C.S. § 206 (relating to extraterritorial takings) is added to subsection (d)(2).

[Section 2441. *State Permit.*] Repealed. An identical section was repealed in the 2012 Borough Code rewrite. At that time, the Department of Environmental Protection (DEP) did not comment on the deletion of that section, although other language in the Borough Code provided that if required by other law, a borough must obtain the consent and permit of DEP for the laying out and construction of a sanitary sewer and treatment works. Similar language was added here in the First Class Township Code in section 2401(h) regarding consent.

#### **[(h) Non-debt Revenue Sewer Bonds]**

#### **[Article XXV. COLLECTION BY INSTALMENT OF THE COST OF STREET, CURB, SIDEWALK AND SEWER IMPROVEMENTS]**

Repealed. All sections within this repealed article are moved to new Article XXV-A (relating to assessments for public improvements).

[Section 2501. *Ordinances for Instalment Payments.*] Repealed. Now in section 2508-A(a),(b).

[Section 2502. *Issue of Bonds.*] Repealed. Now in section 2502-A(c).

[Section 2503. *Sale of Bonds; Interest.*] Repealed. The Local Government Unit Debt Act addresses sale of bonds.

[Section 2504. *Entry of Liens.*] Repealed. Now in section 2508-A(d)(2).

[Section 2505. *Assessments, Where Payable.*] Repealed. Now in section 2509-A(b)(5).

[Section 2506. *Default in Payment of Instalment.*] Repealed. Now in section 2508-A(d)(1)-(2).

[Section 2507. *Payments in Full; Subdivisions of Property.*] Repealed. Now in section 2508-A(e).

#### **Article XXV-A. ASSESSMENTS FOR PUBLIC IMPROVEMENTS**

The structure of this new article is similar to corresponding chapters in the Borough Code and Third Class City Code.

Section 2501-A. **Definitions.** Definitions are added for “front foot” and “public improvement.” The enumerations within “public improvement” are culled from sections throughout the First Class Township Code.

Section 2502-A. **Authority to assess.** Costs of public improvements may be assessed against properties benefited on the front foot method or benefit conferred method. Alternatively, a township may pay for the cost in whole or in part from the general fund or from a special fund dedicated to that purpose. If indebtedness is incurred to fund the cost of public improvements, payments on the assessments must be applied to pay the debt service. If property that is benefited improved or accommodated by a public improvement is located outside the township but no more than 150 feet from the public improvement, the

property may be assessed for the cost in the same manner as if it was located within the township.

Section 2503-A. **Method of assessment.** The board of commissioners shall by ordinance establish the method and procedure by which assessments shall be made. The assessment shall result in fairly allocating all or a portion of the costs among all properties benefited in reasonable proportion to the benefits conferred upon each property which may be either by the front foot method or benefits conferred method. Provides for a certificate of assessment which needs to state the method of assessment used.

Section 2504-A. **Petition for viewers by board of commissioners.** Authorizes the board of commissioners to petition the court of common pleas for viewers to assess the total cost of an improvement, or as much of the costs as just and reasonable, on benefited properties.

Section 2505-A. **Petition for viewers by taxpayers.** Taxpayers whose property is assessed may petition the court of common pleas stating that the assessment insufficiently represents the benefits accruing to the properties. The petition may request the appointment of viewers if at least 50% of the taxpayers whose parcels are affected join the petition or if taxpayers whose property valuation is at least 50% of the total property valuation of the properties being assessed join the petition. Procedures are provided for the appointment of three disinterested viewers.

Section 2506-A. **Notice of assessment.** The substance of this section is derived from various sections within the First Class Township Code although the requirement that a certificate, if otherwise required to be filed, must accompany the notice tracks language in the Borough Code.

Section 2507-A. **Benefits and damages.** The substance of this new section is from section 1925.

Section 2508-A. **Payment of assessments in installments.** Authorization for installments is derived generally from section 2501 although specifics are derived from various sections throughout the First Class Township Code.

Section 2509-A. **Collection of assessments.** The specifics of this new section are derived from various sections throughout the Code.

**[Article XXVI. REVOLVING FUND FOR STREET AND SEWER IMPROVEMENTS]**

[Section 2601. *Special Tax; Bond Issue.*] Repealed. The substance of this section is moved to section 1708(a)(8).

[Section 2602. *Repayments into Revolving Fund.*] Repealed. The substance of this section is moved to section 1708(a)(8).

**Article XXVII. WATER SUPPLY [AND WATERWORKS]**

Reference to waterworks is changed to water system throughout the article.

**(a) Acquisition, Construction and Maintenance**

- Section 2701. *[Contract with Water Companies and Municipality]* **Contracts for Water Supply; Development of Own Water Supply.** Subdivided. Reference is added to municipal authorities. Authorities are mentioned in existing section 2707 regarding mandatory connection, but not elsewhere. In subsection (c), the phrase on a township constructing, maintaining and operating its own water system is implied from the last phrase in existing section 1502(XIV) in the corporate powers article.
- Section 2701.1. **Public Utility Law Saved.** This new section tracks language in the Second Class Township Code. Provides that nothing in this article repeals or supersedes any provisions of the Public Utility Law.
- Section 2701.2. **Rates.** This new section expressly provides for rates to be charged for water supplied by the township. If users are outside the township, the rates are subject to applicable law and regulations of the Pennsylvania Public Utility Commission. Similar to rates imposed for sanitary sewer service, the initial imposition of the water rate must be established by ordinance. Any subsequent rate adjustment may be by resolution if the ordinance establishing the rate allows for future rate adjustments by resolution adopted at a public meeting.
- Section 2702. **Distribution System; State Permit.** Editorial amendments.
- Section 2703. *Occupation of Highways.* Subdivided. Editorial amendments.
- Section 2704. *Property Damages[, Bond by Township].* The majority of this section is deleted since the Eminent Domain Code is now cross-referenced.
- [Section 2705. *Appointment of Viewers.*] Repealed. This section is not needed in light of the cross-reference to the Eminent Domain Code in section 2704.
- Section 2706. *Water Districts[; Application of Taxpayers].* Rephrased for clarity. Reference to pumping stations is added.
- Section 2707. *Connection to Water [Supply] System.* Subdivided. Specifically requiring that mandatory connections shall be by ordinance. Language on connecting to a water system by a municipal authority is from section 2708. Now requiring that mandatory connection may be for those properties with its nearest property line located within 150 feet of a water system or any part or extension of the system or if the property has no supply of water that is safe for human consumption. This is similar to requirements in both the Borough Code and Second Class Township Code. Provides exceptions for mandatory connection.

Subdivision (d) authorizes a township to require a property owner to install and maintain a backflow prevention device. This provision was added to the Borough Code in 2012 at the recommendation of the Department of Environmental Protection. Subsection (f) clarifies other fees that may be charged and adds a cross-reference to the Municipalities Planning Code. Subsection (g) which is comprised of existing language that authorizes a township to bill for the cost of construction of a mandatory connection, lowers the interest rate for installment payments from 7% to 6% in order to comport with interest rate provisions in sections 2508-A and 2509-A.

[Section 2708. *Connection to Water Supply System of Municipality Authorities.*] Repealed. Reference to connection to a water system of a municipal authority is now part of section 2707.

Section 2709. *Cost of Connection; Where Payable.* Editorial amendment.

Section 2709.1. *Default in Payment of Installment.* Editorial amendments.

[Section 2709.2. *Entry of Liens.*] Repealed. The subject matter is covered in section 2709.1.

**(b) [Construction, Acquisition and Maintenance of Waterworks in Connection with Municipalities]  
Joint Water System**

Section 2710. *Joint Construction, Acquisition or Maintenance [of Works with Municipality].* Editorial amendments.

Section 2711. *[State] Permits.* Deletes reference to the Department of Health and adds reference to other Federal or State entities if required by law.

Section 2712. *Joint Commission [of Waterworks].* Subdivided. Deletes reference to applying to the court of common pleas for the appointment of a commission of water systems since neither the Borough Code nor the Second Class Township Code have anything similar. The basic procedure should be the same among the various municipal codes in regards to a joint commission. New language regarding the purpose of a joint commission is added, i.e., to facilitate the construction, operation and maintenance of the water system, which tracks language from the other municipal codes. Also added is language from the other municipal codes regarding representatives from each of the joining municipal corporations and their terms, election of officers, appointment of an engineer and solicitor and reimbursement of actual expenses.

**Article XXVII-A. MANUFACTURE AND SALE OF ELECTRICITY**

Section 2701-A. *Manufacture and Sale of Electricity.* Editorial amendment.

Section 2702-A. *[May Regulate] Regulation of Use and Prices.* Editorial amendments.

Section 2703-A. *Sale of Hydroelectric Generating Facilities.* Editorial amendments.



Section 2704-A. *Construction or Purchase of Hydroelectric Generating Facilities.* Editorial amendments.

Section 2705-A. *Submission to Electors.* Editorial amendment.

Section 2706-A. *Limitation on Indebtedness.* No changes.

## **Article XXVIII. PUBLIC BUILDINGS**

Section 2801. *[Town Hall] **Township Buildings.*** Although reference to eminent domain is new within this section, sections 1901 and 2804 authorize the exercise of this power for public buildings. Reference to “exchange” is also new but this comports with the addition of this term to section 1501.1(f). Editorial amendments.

Section 2802. *[Unloading] **Garages** and Warehouses.* Editorial amendments.

Section 2803. *Appropriation of Property.* Subdivided. Editorial amendments.

Section 2804. *Ordinance of Commissioners.* Editorial amendments.

Section 2805. *Assessment of Damages.* Reference is added to public property. A cross-reference to the Eminent Domain Code is added.

Section 2806. *Use of Public Lands Acquired for other Purposes.* Now provides that notice is to be given in one newspaper of general circulation pursuant to section 110 rather than in two newspapers of the county. Editorial amendments.

## **Article XXIX. LICENSES AND LICENSE FEES**

### **(a) Transient Retail Merchants**

Section 2901. ***Licensing Transient Retail Business.*** Title added to this untitled section. Subdivided, although subsection (b) is new and relates to license fees shall bear a reasonable relationship to the cost of administering the ordinance. Language that relates to license fees on a monthly or fractional part of a month is deleted. Editorial amendments.

### **(b) Restrictions**

Section 2910. *[Agents for Licensed Dealers not to be Licensed] **Persons Taking Orders by Samples.*** Editorial amendments.

Section 2911. *Insurance [Agents and Brokers not to be Licensed] **Business.*** Adds a citation to the Insurance Company Law of 1921. Editorial amendments.

Section 2912. *License Fees on Residents not to Exceed those on Nonresidents.* Editorial amendments.

**Article XXX. PARKS, RECREATION CENTERS, SHADE TREES AND FORESTS**

**(a) Public Parks, Playgrounds, and Recreation Centers**

Section 3001. *Acquisition of Lands and Buildings.* Subdivided. Cross-references section 1709(a)(9) in regards to special taxes for parks, recreation areas, facilities and programs. Reference to the costs of a jointly owned property is moved to section 3013(b). Editorial amendments.

Section 3009. *Creation of Recreation Board.* Subdivided. Adds language that authorizes the board of commissioners to establish a recreation board by ordinance with those powers and duties delegated to it by ordinance. Thus, the use of a recreation board is not all or none. Language relating to joint agreements is deleted since section 3013 discusses joint agreements. Editorial amendments.

Section 3010. *Composition of Park or Recreation Boards.* Subdivided. Now provides that park or recreation board members shall be residents of or property owners in the township but deletes language that authorized school board members or appointees to be on the park or recreation board. It is presumed that the existing language on school board appointees was applicable only if the school district's and the township's boundaries were the same. Otherwise, school board appointees could be persons who live outside the township. Editorial amendments.

Section 3011. *Organization of Park or Recreation Boards; Delegated Powers and Duties [Delegated to the Board by the Commissioners].* Editorial and comports amendments.

Section 3012. *Maintenance and Tax Levy.* Subdivided. Editorial amendments.

Section 3013. *Joint Ownership and Maintenance.* Subdivided. New subdivision (b) provides that costs and expenses of the joint recreation board shall be paid for by the respective municipalities as specified in the agreement. Section 706 of the Public School Code does not authorize school districts to acquire property for recreational purposes, but does authorize schools to equip, operate and maintain parks, etc. Thus, in order to keep the First Class Township Code in alignment with the Public School Code, the language here in the First Class Township Code maintains a separation between municipalities and school districts. Editorial amendments.

Section 3014. *Issue of Bonds.* Provides a cross-reference to the Local Government Unit Debt Act.

**(b) Shade Tree Commission**

Section 3020. *Right of Establishment.* Editorial amendments.

- Section 3021. *[Personnel of Commission;] Appointment; Terms; Vacancies.* Subdivided. Editorial amendments.
- Section 3022. *Powers may be Vested in Park Commission.* Editorial amendments.
- Section 3023. *General Powers of **Shade Tree** Commission.* A cross-reference to section 2070 is added in the streets article which gives the township commissioners the power to remove trees in the right-of-way.
- Section 3024. *Hiring of Employees; [Legislative Power of Commission] **Regulations.*** Now clarifies that the shade tree commission may *select*, employ and *discharge* persons to perform the duties and directions of the commission. Previously only “employ” was used. This tracks the language used for park or recreation boards. Regulations now need only be published once in a newspaper of general circulation in accordance with section 110 rather than twice in not more than two newspapers of general circulation either published or circulating in the township. Editorial amendments.
- Section 3025. *Report of **Shade Tree** Commission.* Editorial amendments.
- Section 3026. *Notice of [Commission’s Activities; Planting or Removal of Shade Trees] **Work.*** Reference to a park commission is removed since section 3022 already states a park commission may have the powers of a shade tree commission. Publication of any proposed work shall be given once in one newspaper of general circulation rather than in not more than two newspapers either published or circulating in the township once a week for two weeks. All regular meetings of an agency are already published at the beginning of the year. See section 709 of the Open Meetings Law. Thus, the public is already aware of meeting dates of the shade tree commission where work to be performed is discussed. The published notice continues to require details of the proposed work to be done.
- Section 3027. *[Landholders Liability for Costs] **Payment by Owners; Assessment.*** Subdivided. Cross-references Article XXV-A on assessments for public improvements, and provides that if the benefit conferred method of assessment is used, the benefit conferred may be no greater than actual costs.
- Section 3027.1. *Removal of Diseased **or Dangerous** Trees.* Removes specific reference to Dutch elm disease and clarifies that this section applies to any disease which threatens shade trees in the township. Removes specific language on liens and instead cross-references section 3027.
- [Section 3028. *Assessments Liens.*] Repealed. The article on assessments is cross-referenced in section 3027.
- Section 3029. *Maintenance by Township; Funds For.* Subdivided. Editorial amendments.

Section 3030. *Penalties.* Subdivided. Existing language now comprises subsection (a) and the substance of now deleted section 3031 comprises subsection (b). Editorial amendments.

**(c) Forests**

Section 3040. *Right of Acquisition of Forest Lands.* Editorial amendments.

[Section 3041. *Approval of Department of Forests and Waters.*] Repealed. A similar section was repealed in the Borough Code in its 2012 rewrite. During that rewrite, the Department of Conservation and Natural Resources (DCNR) had been contacted to request a review of the applicable subdivision in the Borough Code. DCNR (previously the Department of Forests and Waters) maintained that coordination with DCNR is no longer needed.

Section 3042. *Ordinance and Notice.* Editorial amendments.

Section 3043. *Appropriation for Acquisition.* Editorial amendments.

Section 3044. *[Rules and] Regulations.* Now provides that the board of commissioners may promulgate regulations without the involvement of DCNR. Tracks the Borough Code. Editorial amendments.

Section 3045. *[Appropriation for] Maintenance; Revenue.* Editorial amendments.

Section 3046. *Use of Township Forests.* Removes reference to the rules of DCNR and instead cross-references regulations under section 3044.

Section 3047. *Ordinance of Sale.* Subdivided. The requirement that no ordinance shall be effective until it has been approved by a majority vote of the people at the next election is deleted and instead, a cross-reference is added to the advertising and bidding requirements of section 1501.1. Editorial amendments.

Section 3048. *Appropriation of [Moneys] Money to Forestry Organizations.* Editorial amendments.

**[Article XXX-A. LAND SUBDIVISION]** The title to this article is repealed. All sections under this article were repealed in 1968 upon the enactment of the Municipalities Planning Code.

**[Article XXXI. ZONING]** The title to this article is repealed. All sections under this article were repealed in 1968 upon the enactment of the Municipalities Planning Code.

**Article XXXI-A. UNIFORM CONSTRUCTION CODE, PROPERTY MAINTENANCE CODE AND RESERVED POWERS**

Section 3101-A. *Definitions.* No changes.

Section 3102-A. *Primacy of Uniform Construction Code.* No changes.

Section 3103-A. *Changes in Uniform Construction Code.* Editorial change.

Section 3104-A. *Public nuisance.* No changes.

Section 3105-A. *Property maintenance code.* Editorial changes.

Section 3106-A. *Reserved powers.* Editorial changes.

[**Article XXXII. TOWNSHIP PLANNING COMMISSION**] The title to this article is repealed. All sections under this article were repealed in 1968 upon the enactment of the Municipalities Planning Code.

[**Article XXXIII. ENFORCEMENT OF ORDINANCES**] Ordinance enforcement provisions are now found in new Article XXXIII-A, subdivision (b) (relating to enforcement).

[Section 3301. *Proceedings for Violation of Township Ordinances.*] Repealed. The Rules of Criminal Procedure govern.

[Section 3302. *Arrests on View; Complaints.*] Repealed. The Rules of Criminal Procedure govern.

[Section 3304. *Incarceration of Violators of Township Ordinances.*] Repealed. Now part of section 3322-A.

[Section 3305. *Township's Liability for Costs of Prisoners to County.*] Repealed. Now part of section 3323-A.

## **Article XXXIII-A. ORDINANCES**

### **(a) General Provisions**

Section 3301-A. **Ordinances and resolutions.** The power to generally enact ordinances or adopt resolutions is from current language in section 1502(I)(a). Specifically, the language in subsection (a) (relating to general rule) now tracks the Borough Code. Subsection (b) provides for ordinances and subsection (c) provides for resolutions. Examples of what comprises an ordinance or resolution are given.

Section 3302-A. **Publication.** This section is derived from existing section 1502(I)(a). Subsection (a) provides for publication requirements. Subsection (b) provides procedures to follow if the full text is not included in the publication of the proposed ordinance. Clarifies that the newspaper in which the proposed ordinance is published must request a copy of the full text if it wishes to have this but that the copy shall be provided without charge. Adds language that an attested copy of the full text shall be filed *within 30 days after enactment* in the county law library and that there is no fee for storing an electronic copy of the ordinance.

Subsection (c) relates to notice of amendments. A new provision within this subsection is that a copy of the full text of the amended proposed ordinance shall be retained where township records are kept. Subsection (d) relates to maps, plans or drawings adopted as part of an ordinance.

Section 3303-A. **Recording and proof.** This section is also derived from existing section 1502(I)(a). Subsection (a) relates to recording, subsection (b) to proof, and subsection (c) to prior ordinances.

Section 3304-A. **Codification of ordinances.** This section is derived from existing section 1502(I)(b). Subsection (a) relates to consolidation, codification and revision, subsection (b) to enactment and subsection (c) to subsequent notice.

Section 3305-A. **Appeals from ordinances.** This section is derived from existing section 1502(I)(c). A cross-reference to section 5571.1 (relating to appeals from ordinances, resolutions, maps, etc.) in the Judicial Code is added.

Section 3306-A. **Standard or nationally recognized codes.** This section is derived from existing section 1502(I)(d). Clarifies that upon enactment, a copy of the proposed standard or nationally recognized code, portion of the code or amendment to the code (whatever was enacted as an ordinance), shall be available not only for public use, inspection or examination, but now also for copying. Subsection (a) relates to authority to enact and subsection (b) to time frame. Subsection (c) is not in existing law and provides that an ordinance that incorporates by reference standard technical regulations or code shall be subject to the Pennsylvania Construction Code Act, if applicable, which tracks language in the Third Class City Code.

## **(b) Enforcement**

Section 3321-A. **Fines and penalties.** Fines and penalties for violation of ordinances are authorized in existing section 1502(II). This new section is based on similar language in the Borough Code, and therefore enforcement of ordinances is now bifurcated with violations for certain ordinances to be enforced civilly and others to be enforced as summary offenses. Previously, any violation or failure to comply with any provision of any township ordinance constituted a summary offense. Civil penalties may not exceed \$600 per violation and criminal fines may not exceed \$1,000 per violation and may prescribe imprisonment to the extent allowed by law for punishment for summary offenses. Previously, existing language had provided a cap of \$1,000 for violation of certain listed ordinances, or \$600 for all other violations of township ordinances, but all of which were summary in nature.

New provisions which track similar provisions in the Borough Code provide that a separate violation of an ordinance shall arise for each day of violation and for each applicable section of the ordinance. An ordinance may provide for assessment of court

costs and reasonable attorney fees incurred by the township in the enforcement proceedings. The board of commissioners may delegate the initial determination of ordinance violation and the service of notice to a qualified officer or agent.

For violations of the property maintenance code or ordinance, clarifying language is added that such code or ordinance may also be enforced pursuant to section 3105-A(c) which provides that the township may institute actions for proceedings at law or in equity to prevent or restrain property maintenance violations.

New language in subsection (b)(3) provides that all ordinances enacted prior to the effective date of the section, and except those that remain enforceable as summary offenses, are automatically amended so that they are enforced through civil proceedings. Subsection (c) provides the option of enforcement in equity.

Section 3322-A. **Commitment pending trial.** This section is derived from existing section 3304 although much of section 3304 is not carried over as the Rules of Criminal Procedure would govern. Clarification is provided that if there is no suitable township lockup, an individual who was arrested for the violation of a township ordinance may be committed to a county correctional facility pending hearing or trial.

Section 3323-A. **Township's liability for costs of prisoners to county.** This section is derived from existing section 3305. Cross-references section 3322-A in regards to a prisoner committed to a county correctional facility. Editorial amendments.

#### **Article XXXIV. ACTIONS BY AND AGAINST TOWNSHIPS**

Section 3406. **[Recovery] Collection of Municipal Claims [by Suit].** Subdivided. This section now tracks Act 229 of 1929 which includes the phrase on “water rates, sewer rates and the removal of nuisances.” Both the Borough Code and Third Class City Code include this phrase. Act 229 of 1929 applies to all classifications of municipal corporations except it is repealed for third class cities. Also, now an action in assumpsit shall be commenced within *six* years (rather than *three* years) after the completion of the improvement or within six years after the applicable rates or the cost of abating a nuisance first became payable. This change comports with Act 229 as well as the Borough Code and Third Class City Code.

#### **Article XXXV. REPEALS**

Section 3501. **Repeals.** A title is given to this previously untitled section. Subdivided. Subsections (a) and (b) are from existing language. Subsections (c) and (d) are derived from now repealed section 3502. Three additional freestanding acts are repealed absolutely as obsolete by adding them to subsection (b) as paragraphs (8) through (10) under the list of acts to be repealed. Those acts are Act 20 of 1931 (relating to local tax for municipal debts); Act 588 of 1937 (relating to townships, annexation by cities and boroughs); and Act 381 of 1935 (relating to first class townships, tax collectors must obtain a bond).

[Section 3502.    {*Untitled*}.] Repealed. Now in section 3501(c), (d).