

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2798 Session of
2004

INTRODUCED BY NAILOR, RUBLEY, ARGALL, DeWEESE, BALDWIN, BUNT,
CAPPELLI, CAUSER, CREIGHTON, GRUCELA, HARHART, HARRIS,
HERSHEY, HESS, JAMES, KILLION, LEDERER, LYNCH, MACKERETH,
R. MILLER, NICKOL, PHILLIPS, ROSS, SAYLOR, SCAVELLO,
SCRIMENTI, SHANER, B. SMITH, R. STEVENSON, E. Z. TAYLOR,
HARPER, GINGRICH, DENLINGER, GABIG AND VANCE, JULY 3, 2004

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, NOVEMBER 17, 2004

AN ACT

1 Amending the act of February 1, 1966 (1965 P.L.1656, No.581),
2 entitled "An act concerning boroughs, and revising, amending
3 and consolidating the law relating to boroughs," further
4 providing for GENERAL POWERS OF MAYOR AND FOR borough powers <—
5 to convey land.

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

8 ~~Section 1. Section 1201 of the act of February 1, 1966 (1965 <—~~
9 ~~P.L.1656, No.581), known as The Borough Code, amended December~~
10 ~~14, 1989 (P.L.626, No.73) and May 7, 1998 (P.L.347, No.54), is~~
11 ~~amended to read:~~

12 SECTION 1. SECTION 1028 OF THE ACT OF FEBRUARY 1, 1966 (1965 <—
13 P.L.1656, NO.581), KNOWN AS THE BOROUGH CODE, AMENDED JULY 10,
14 1980 (P.L.425, NO.100), IS AMENDED TO READ:

15 SECTION 1028. GENERAL POWERS OF MAYOR.--(A) THE MAYOR SHALL
16 HAVE POWER:

17 (1) TO ADMINISTER OATHS AND AFFIRMATIONS IN MATTERS

1 PERTAINING TO BOROUGH AFFAIRS.

2 (B) IN ADDITION TO THE POWER GRANTED TO MAYORS BY PART V OF
3 TITLE 35 OF THE PENNSYLVANIA CONSOLIDATED STATUTES (RELATING TO
4 EMERGENCY MANAGEMENT SERVICES) AND IN ORDER TO ENABLE HIM
5 EFFECTUALLY TO PRESERVE THE PUBLIC PEACE WITHIN THE BOROUGH, ALL
6 THE POWERS WHICH ARE DEVOLVED BY THE LAWS OF THIS COMMONWEALTH
7 UPON SHERIFFS, TO PREVENT AND SUPPRESS MOBS, RIOTS AND UNLAWFUL
8 AND TUMULTUOUS ASSEMBLIES, ARE HEREBY CONFERRED UPON THE MAYOR.
9 IN THE EVENT THAT A STATE OF EMERGENCY EXISTS, A MAYOR SHALL
10 HAVE THE AUTHORITY TO REQUEST AID AND ASSISTANCE FROM LAW
11 ENFORCEMENT OFFICERS AND AGENCIES FROM A NEIGHBORING
12 MUNICIPALITY. IN RESPONSE TO A REQUEST OF A MAYOR MADE IN
13 ACCORDANCE WITH THIS SUBSECTION, A MUNICIPAL POLICE OFFICER
14 SHALL, WITHIN THE BOROUGH FROM WHICH THE REQUEST WAS MADE, HAVE
15 THE POWER AND AUTHORITY TO ENFORCE THE LAWS OF THIS COMMONWEALTH
16 OR OTHERWISE PERFORM THE FUNCTIONS OF THAT OFFICE AS IF
17 ENFORCING THOSE LAWS OR PERFORMING THOSE FUNCTIONS WITHIN THE
18 TERRITORIAL LIMITS OF HIS OR HER PRIMARY JURISDICTION, SUBJECT
19 TO THE LIMITATIONS AND CONDITIONS SET FORTH IN 42 PA.C.S. §
20 8953(B) THROUGH (E) (RELATING TO STATEWIDE MUNICIPAL POLICE
21 JURISDICTION). WHEN THE MAYOR CONSIDERS THAT A STATE OF
22 EMERGENCY EXISTS, HE MAY ISSUE HIS PROCLAMATION, WHICH SHALL BE
23 IN WRITING AND THE CONTENTS OF WHICH SHALL BE MADE AVAILABLE TO
24 ALL NEWS MEDIA, DECLARING A STATE OF EMERGENCY FOR A PERIOD NOT
25 TO EXCEED SEVEN DAYS, UNLESS SOONER RESCINDED, MODIFIED OR
26 RATIFIED OR EXTENDED BY RESOLUTION OF COUNCIL. IN HIS
27 PROCLAMATION HE MAY PROHIBIT, FOR ALL OR ANY PART OF THE
28 BOROUGH:

29 (1) ANY PERSON BEING ON THE PUBLIC STREETS OR IN THE PUBLIC
30 PARKS OR AT ANY OTHER PUBLIC PLACE DURING THE HOURS DECLARED BY

1 HIM TO BE A PERIOD OF CURFEW.

2 (2) THE ENTRY OR DEPARTURE OF PERSONS INTO OR FROM ANY
3 RESTRICTED AREA.

4 (3) THE SALE, PURCHASE OR DISPENSING OF ANY COMMODITIES OR
5 GOODS, AS DESIGNATED BY HIM.

6 (4) THE TRANSPORTATION, POSSESSION OR USE OF GASOLINE,
7 KEROSENE OR OTHER COMBUSTIBLE, FLAMMABLE OR EXPLOSIVE LIQUIDS OR
8 MATERIALS, EXCEPT IN CONNECTION WITH THE NORMAL OPERATION OF
9 MOTOR VEHICLES, NORMAL HOME USE OR LEGITIMATE COMMERCIAL USE.

10 (5) ANY OTHER SUCH ACTIVITIES AS HE REASONABLY BELIEVES
11 SHOULD BE PROHIBITED TO HELP PRESERVE LIFE, HEALTH, PROPERTY OR
12 THE PUBLIC PEACE.

13 THE PROCLAMATION SHALL DESCRIBE ANY RESTRICTIVE AREA WITH
14 PARTICULARITY AND SHALL SPECIFY THE HOURS DURING SUCH
15 RESTRICTIONS ARE TO BE IN EFFECT.

16 ANY PERSON VIOLATING SUCH PROCLAMATION OF EMERGENCY SHALL BE
17 GUILTY OF A SUMMARY OFFENSE AND SHALL, UPON CONVICTION, BE
18 SENTENCED TO PAY A FINE NOT TO EXCEED THREE HUNDRED DOLLARS
19 (\$300) AND COSTS OR TO UNDERGO IMPRISONMENT NOT TO EXCEED THIRTY
20 DAYS.

21 SECTION 2. SECTION 1201 OF THE ACT, AMENDED DECEMBER 14,
22 1989 (P.L.626, NO.73) AND MAY 7, 1998 (P.L.347, NO.54), IS
23 AMENDED TO READ:

24 Section 1201. General Powers.--A borough may:

25 (1) Have succession perpetually by its corporate name.

26 (2) Sue and be sued, and complain and defend in the courts
27 of the Commonwealth.

28 (3) Make and use a common seal, and alter the same at
29 pleasure.

30 (4) Purchase, acquire by gift, or otherwise, hold, lease,

1 let and convey, by sale or lease, such real and personal
2 property as shall be deemed to be to the best interest of the
3 borough, subject to the following restrictions, limitations or
4 exceptions:

5 (i) No real estate owned by the borough shall be sold for a
6 consideration in excess of fifteen hundred dollars (\$1500),
7 except to the highest bidder after due notice by advertisement
8 for bids or advertisement of a public auction in one newspaper
9 of general circulation in the borough. Such advertisement shall
10 be published once not less than ten days prior to the date fixed
11 for the opening of bids or public auction, and such date for
12 opening bids or public auction shall be announced in such
13 advertisement. The award of contracts shall be made only by
14 public announcement at a regular or special meeting of council
15 or at the public auction. All bids shall be accepted on the
16 condition that payment of the purchase price in full shall be
17 made within sixty days of the acceptance of bids. The borough
18 council shall have the authority to reject all bids if such bids
19 are deemed to be less than the fair market value of the real
20 property. In the case of a public auction, the borough council
21 may establish a minimum bid based on the fair market value of
22 the real property. Real estate owned by a borough may be sold at
23 a consideration of fifteen hundred dollars (\$1500) or less
24 without advertisement or competitive bidding only after council
25 estimates the value thereof upon receipt of an appraisal by a
26 qualified real estate appraiser.

27 (ii) Except as otherwise hereinafter provided in the case of
28 personal property of an estimated fair market value of less than
29 one thousand dollars (\$1,000), no borough personal property
30 shall be disposed of, by sale or otherwise, except upon approval

1 of council, by ordinance or resolution. In cases where council
2 shall approve a sale of such property, it shall estimate the
3 fair market value of the entire lot to be disposed of. If
4 council shall estimate the fair market value to be one thousand
5 dollars (\$1,000) or more, the entire lot shall be advertised for
6 sale once, in at least one newspaper of general circulation in
7 the borough, not less than ten days prior to the date fixed for
8 the opening of bids or public auction, and such date of opening
9 of bids or public auction, shall be announced in such
10 advertisement, and sale of the property so advertised shall be
11 made to the best responsible bidder. Council may reject any bids
12 received if the bids are believed to be less than the fair
13 market value of the property. Council shall, by resolution,
14 adopt a procedure for the sale of surplus personal property,
15 either individual items or lots of items, of an estimated fair
16 market value of less than one thousand dollars (\$1,000) and the
17 approval of council shall not be required for any individual
18 sale that shall be made in conformity to such procedure.

19 (iii) The provisions of this clause shall not be mandatory
20 where borough property is to be traded in or exchanged for new
21 borough property.

22 (iv) The provisions of this clause requiring advertising for
23 bids or sale at public auction and sale to the highest bidder
24 shall not apply where borough real or personal property is to be
25 sold to:

26 (A) a county, city, borough, town, township, institution
27 district, school district, volunteer fire company, volunteer
28 ambulance service or volunteer rescue squad located within the
29 borough;

30 (B) a municipal authority pursuant to the Municipality

1 Authorities Act of 1945;

2 (C) a non-profit corporation engaged in community
3 development or reuse only upon entering into a written agreement
4 with the non-profit corporation that requires the property to be
5 used for industrial, commercial or affordable housing purposes.
6 This exemption shall not apply to property on which existing
7 governmental functions are conducted;

8 (D) where real property is to be sold to a person for his
9 exclusive use in an industrial development program;

10 (E) where real property is to be sold to a non-profit
11 corporation organized as a public library for its exclusive use
12 as a library;

13 (F) where real property is to be sold to a non-profit
14 medical service corporation as authorized by clause (76) of
15 section 1202;

16 (G) where real property is to be sold to a non-profit
17 housing corporation as authorized by clause (77) of section
18 1202; [or]

19 (H) where real property is to be sold to the Commonwealth or
20 to the Federal Government[.]; or

21 (I) where real property is to be sold to a non-profit museum
22 or historical society FOR ITS EXCLUSIVE USE AS A NON-PROFIT ←
23 MUSEUM OR HISTORICAL SOCIETY.

24 (v) When real property is to be sold to a non-profit
25 corporation organized as a public library for its exclusive use
26 as a library or to a non-profit medical service corporation or
27 to a non-profit housing corporation, council may elect to accept
28 such nominal consideration for such sale as it shall deem
29 appropriate.

30 (vi) Real property sold pursuant to this clause to a

1 volunteer fire company, volunteer ambulance service or volunteer
2 rescue squad, non-profit medical service corporation or to a
3 non-profit housing corporation shall be subject to the condition
4 that when the property is not used for the purposes of the
5 company, service, squad or the corporation the property shall
6 revert to the borough.

7 (vii) The exemption granted under subclause (iv)(C) shall
8 not apply to property owned and operated by the borough or
9 subcontracted or operated on the behalf of the borough in order
10 to conduct existing governmental functions.

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

18 Section 2 3. This act shall take effect in 60 days.

<—