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## MEMORANDUM

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TO: Ryan O'Donnell, City Council President  
CC: Mayor David J. Narkewicz; Laura Krutzler, Administrative Assistant  
FROM: Alan Seewald, City Solicitor  
RE: Procedures for Laying Out Ways  
DATE: January 31, 2018

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With the abolishment of the Board of Public Works, an issue has arisen as to the procedures for laying out city ways. Based upon my research, the following steps are set forth by statute for the laying out of public ways by cities.

The laying out of public ways is controlled by c. 82 of the General Laws. That chapter deals expressly with state highways, county ways and town ways. As to town ways, the process laid out in c. 82 states that those procedures do not apply to cities. Rather, the legislature provided in c. 82, §1, as follows:

Sections 1 to 13, inclusive, shall apply to a city council or aldermen when authorized by city charters to lay out, alter, relocate, order specific repairs, discontinue or discontinue maintenance of highways, so far as applicable, and any hearing under said sections required to be held before a city council or board of aldermen so authorized may be held before a duly authorized committee thereof.

While the City Charter does not specifically refer to the laying out, etc., of ways, § 1-4 of the Charter provides for comprehensive incorporation of "all of the powers it is possible to secure as fully and as completely as though each power were specifically and individually enumerated in this charter." In my opinion, this provision would include the power to lay out public ways as provided in c. 82, § 1. Thus, the procedures to be followed are as follows:

1. The process begins with a petition to lay out a public way filed with the council. The council may require private petitioners to post a bond.
2. The council must refer the petition to the Planning Board, and the council may not proceed to lay out the way until it receives a report from the Planning Board or 45 days has elapsed from the referral without such report.

3. The council, or an authorized committee thereof, must hold a hearing to adjudicate whether convenience and necessity require the laying out of the way. The council may, if it deems it expedient, take a view of the proposed way, and it must take a view if any interested party so requests. The hearing may take place at the view or at a regular or special meeting of the council.
4. Prior to the hearing and/or view, the council must give notice to the city clerk with a copy of the petition at least 15 days prior to the hearing. Notice must be posted in two public places and published in the newspaper at least 7 days prior to the hearing and/or view. Notice must be mailed by regular mail to “recorded owner of land subject to a taking” at least 7 days prior to the hearing and/or view.
5. If at the hearing “no person interested objects” the council may proceed to lay out the way within twelve months of the hearing. If there is an objection from an interested party, the council must hold another hearing with statutory notice set forth in the preceding paragraph.
6. If the council determines that “common convenience and necessity” would be served by the laying out of the way, the council must make the necessary takings to acquire the easements needed for the way.