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# City Government in Pennsylvania



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for Local Government Officials*

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# I. An Historical View of City Government

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Throughout history cities have been the central point for housing, transportation, commerce, arts, culture, and recreation. From ancient Greek city-states to our modern day cities people have gathered in places that offer the ability to live, work, and play in one place. Today, more than half of the world's population lives in urban areas.

There are 56 cities in Pennsylvania. Of the state's 67 counties, 34 have at least one city, and those cities are found from Philadelphia in the southeast, to Scranton and Wilkes-Barre in the northeast, to Erie on the lake shore in the northwest, and Pittsburgh in the west.

In Pennsylvania, cities are surrounded by other municipalities that have ties to that city. People who live near cities often depend upon them for places to work. They also travel to the city for entertainment, cultural events, and parks. For instance, the City of Pittsburgh with its 300,000 residents is the largest municipality in Allegheny County. But when the surrounding communities with ties to Pittsburgh are included the population of the Pittsburgh area rises to about 1.2 million residents.

In addition to being in a county, every bit of land in the commonwealth is also in a municipality and a school district. Unlike some other states, there is no unincorporated territory in Pennsylvania.

How did this system come to be? Why are there only 56 cities out of so many governmental units? What differentiates a city from a borough or township? What are some of the fundamental characteristics of cities? These are complex questions for a society largely ignorant of local government matters. They are also complex for political activists who take the present governmental framework as a given, with little reflection on such "impractical" questions. Despite popular disinterest these are the types of questions that have to be addressed by actors in our American federal system who are concerned with making local government work, especially our cities. As never before, many cities are facing political, social, economic and physical problems that are challenging accepted ways of thinking and doing business. To explore the types of questions stated and examine the role of cities in Pennsylvania's state and local government system, one ought to know something about the background of city government.

The story of the evolution of city government in Pennsylvania logically begins with Philadelphia, the first city. William Penn incorporated Philadelphia as a city in 1691. It remained the only city in Pennsylvania until 1816 when the Borough of Pittsburgh received a city charter. Re-chartered in 1701 following a royal dispute with Penn, Philadelphia took on the form of a "close corporation" wherein only certain appointed officers were part of the government; and the mayor, recorder, clerk, justices of the peace and 12 council members were designated a "body politic and corporate." The Charter of 1701 remained in use until the American Revolution when "democratic" reforms were instituted.

Aside from the City of Philadelphia only 11 boroughs were incorporated in Pennsylvania by the year 1800. During the 18th century, and for some time afterward, the predominant form of local government was the county. Counties performed nearly all the governmental services that existed at that time. Townships, patterned after the traditional subdivision of the English county, were literally part of county government for the administration of roads, taxes, poor relief and justice.

Sizeable towns were few and far between. Only a few had as many as several thousand people in the 18th century. Most were not far removed from the frontier stage. Philadelphia was distinctive. With nearly 30,000 people by the end of the century, it was comparable to large European cities, as an international trade center and a center of government and culture.

Most of the boroughs created during the 18th century eventually became cities. They include Chester (1701), Lancaster (1742), Sunbury (1797), Greensburg (1799), and Pittsburgh (1794). The charters received by these boroughs at first took on the "close corporation" pattern of Philadelphia's charter where specific people were named as corporate officials. These charters were patterned after the English municipal charters that townspeople had finally won from land barons

and the crown. Heavy emphasis was given in the charters to regulation of trade and keeping of markets in recognition of their importance as centers of trade and commerce. Other functions relating to public safety, health and highways were included as well.

The incorporation of cities and boroughs in Pennsylvania naturally kept pace with settlement. Population expansion tapered off after the Revolutionary War, only to gain new momentum in the era of canal and railroad building. The Civil War, the fundamental impetus of town building, energized further economic activity, as did the industrial boom that followed the war in steel-making, natural resources extraction, textile manufacturing and other industries. By the end of the 19th century, mass migration-- much of it in the form of contract labor-- was swelling into many areas of the commonwealth, causing the building of new towns and the enlargement of others that were strong magnets for economic activity. New counties were created in line with this settlement and townships were erected within each county. As towns were laid out and sought self-government, they petitioned for and received charters. By 1900, the Pennsylvania local government system, as we see it geographically structured today, was essentially in place.

A chronological charting shows that 6 cities-- Pittsburgh, Lancaster, Reading, Erie, Carbondale and Harrisburg-- were incorporated between 1800 and 1806.<sup>1</sup> Between 1865 and 1880, another 18 cities were chartered, among them the boom towns of Williamsport, Titusville, Oil City, Wilkes-Barre and Scranton. Only 5 additional cities were incorporated between 1880 and 1910. Another rash of city incorporations occurred from 1910 to 1930 when a new city was incorporated almost every year. Four additional city incorporations took place in the 1930s. Two more cities were created in the 1950s, Shamokin in 1950 and Lower Burrell in 1958. No additional cities were incorporated until the 1980s, when voters in Hermitage (1983), Aliquippa (1985) and Warren (1988) agreed to change their municipal classifications to cities. Hermitage previously had been a township; Aliquippa and Warren had been boroughs. Finally in 1991, voters approved the consolidation of Benzinger Township and St. Marys Borough into the new City of St. Marys.

The commission form of local government stipulated for cities became less and less attractive as a government structure and discouraged some city incorporations. Three of the four new cities incorporated since 1960 operate under home rule charters, with only Aliquippa choosing to use the commission form found in the Third Class City Code.

## **The Structuring of City Government**

Until 1874, city government was structured through the granting of a specific charter pertaining to one city. With the Constitution of 1874, special legislation pertaining to one city or local government was forbidden because of prior legislative misuse and growing impracticality. Since that time, the practice of classification of local governments has given rise to bodies of statutory law, called municipal codes that serve as the "charter" for a whole class of municipalities. In addition, cities and other local governments may draft and adopt their own home rule charters. There are also general municipal laws that pertain to all or several classes of cities or local governments.

Prior to 1874, a city charter would set forth the boundaries for the city, the makeup and duties of its elected and appointed officials, the conduct of elections and the powers of the city government. The state legislature, essentially and realistically had the power, and still does, to create, change or abolish local governments. City charters tended to be patterned after Philadelphia's charter or modified versions of prior borough charters. The latter emphasized one or more burgesses and a council, with officers such as assessors and market keepers. Adoption of the federal Constitution popularized separation of powers and with it the bicameral legislative body. Philadelphia followed this route in 1796, and the bicameral body was commonly used in cities until the early 1900s. Elective terms were short and both the ballot and government were made more complex by the plenitude of elected officials. These problems arose from Jacksonian Democracy which popularized the idea of many elective offices within the administrative area of government?

Development of the office of mayor can best be traced by its changing status in Philadelphia. In the City's 1789 government, the mayor was elected from the aldermen. A major function of the mayor was to conduct the Mayor's Court for the enforcement of ordinances. Under the 1796 charter, the council elected the mayor who then lost any legislative power and became more a promulgator and enforcer of city ordinances. By 1799, the mayor was given appointive power

over many city administrative offices, including its Board of Commissioners who became responsible for streets, public safety, markets, nuisances and finance. In 1838, the office of mayor was made elective by popular vote, although council retained some administrative functions. But after the 1854 act consolidating Philadelphia and its environs, the mayor was given, along the modern form, the power of sheriff, charge of police and the veto power. However, council retained the appointive power over department heads.

City government assumed its basic shape by 1860. A great deal of similarity could be found within the individual charters which were amended as new needs were recognized and new powers granted by the legislature. Cities ventured into the operation of water and gas systems and even became involved in canal and railroad building. Boards of Commissioners were established to administer various functions. The main trademark of the city charter, distinguishing cities from boroughs and townships in the 19th century and well into the 20th, was the broad grant of powers, authority and functions that could be exercised by city government. By 1874, these charters contained everything that eventually would go into the general, codified acts for city governance

## **A New Departure - The Constitution of 1874**

Local government gained recognition for the first time in the Constitution of 1874. Earlier constitutions were silent on the subject. As noted, the special act was prohibited, county government was structured and local debt limits were set. The constitutional revision was intended to offset or prevent corruption and malpractices that characterized earlier state and local government.

Responding to the prohibition against special or local acts, the General Assembly came up with the ingenious idea of classification — categorizing cities, counties, townships and school districts. For cities, there followed a series of acts that by 1927 gave us the current four class system based upon population. First was the Wallace Act of 1874 which established three classes, created a common structure for all cities and gave special charter cities the option to come under its provisions. It provided for a Mayor-Council (bicameral) system with election by wards. The Act gave uniformly broad administrative powers to cities over a multitude of subjects. These included many of the current aspects of city government and some new ones such as sewerage, mayoral appointment of the police chief, offices of city treasurer and city controller and boards of health. The new Act also contained provisions for incorporation of cities and annexation.

## **Third Class Cities**

This new concept of city classification was controversial for some time. Actions were quickly taken to modify it, first to five classes in 1876 and then seven classes in 1887. Both changes were found to be unconstitutional attempts to circumvent the ban on special legislation. By 1889 cities were involved in the new system and their officials, in an early version of the Pennsylvania Municipal League, were partly responsible for the first Third Class City Code.<sup>3</sup>

Act 247 of 1889 brought about several modifications in third class city government. In general, the Code expanded all powers, functions and offices of cities incorporated under the act. This included detailed provisions relating to eminent domain, annexation and budgeting. It compiled the best portions of earlier city charters. Many older cities accepted the new City Code, but some continued with their original special charters. All new third class cities however had to adopt the Code.

Third class city government changed little until 1913. Following a trend sweeping the country, the legislature passed the Clark Act and instituted the commission form of government instead of the mayor-council form in The Third Class City Code. This occurred during the Progressive Era, a time when reform and efficiency in government movements were in vogue. Originating as an organizational means for dealing with the Galveston Flood of 1901 and popularized and modified by the City of Des Moines, the commission plan was adopted for use in many states by the second decade of the 20th century.

Instead of the traditional separation of powers between executive and legislative branches of government, the new commission form featured the at-large election of five council members (commissioners) who, in a dual role, also administered one of five city departments. One council member, the mayor, presided. A controller and treasurer were also legislated. Once again, older cities had to decide whether to go under a new system or stay with the old mayor-council form. Lancaster was the last city to "capitulate" when it came under the Act in 1926. Mayor Frank Musser in his transitional inaugural address reflected a sense of inferiority when he said the city had felt handicapped with its antiquated charter, in existence 107 years. Through the new charter, he noted, Lancaster would get a, "Commission form of government similar to that of most of the progressive cities of modern times..."<sup>4</sup>

After numerous amendments to the Clark Act, codification of the law became desirable. This resulted in adoption of the current Third Class City Code in 1931, later reenacted in 1951. Basically, this Code continued the modified commission form of government with the mayor designated as Director of the Department of Public Affairs. The Code contains some 47 major sections, several of which are now superseded by state law.

The Code provided the only framework of government for third class cities until the Optional Third Class City Charter Law was adopted in 1957. The Charter Law afforded a procedure whereby third class cities, and municipalities becoming cities, could adopt one of two optional forms of government, strong mayor form or council-manager form. Under the Home Rule and Optional Plans Law of 1972 third class cities received broader discretion to frame and adopt home rule charters establishing a form of their own choosing.

## The Second Class City

Under the classification system established in 1887, the cities of Pittsburgh and Allegheny were categorized as cities of the second class. They had a mayor-council (bicameral) system with the mayor in charge of the prescribed city departments. Scranton qualified for second class city status in 1900. The year 1901 provided a blatant illustration of how the General Assembly can use a local classification system to continue the practice of special legislation. In a reform related amendment, the legislature and governor substituted the office of "recorder" for that of mayor in Pittsburgh. However, the city soon had the office of mayor restored. In 1907, Pittsburgh and Allegheny were consolidated into Pittsburgh.

In 1911, a dramatic and fundamental change took place in second class city government — a more streamlined mayor-council structure was established. This occurred by eliminating the bicameral council and setting the pattern of Pittsburgh and Scranton government that has continued to the present day. The change emanated from Pittsburgh where a model charter was debated, partly over the bicameral body with 100 members from 45 wards. The General Assembly approved a compromise mayor-council system that included nine salaried council members, designation of a Department of Planning, property tax modification and a single court-appointed school district.

After consolidation of the City of Allegheny with Pittsburgh, Scranton was the only other second class city. Following several statutory population changes, the General Assembly finally in 1927 created a new class, Second Class A, for Scranton. It originally ranged from a population of 135,000 to 500,000. Scranton's population has been dropping since the 1930s and was recorded at 76,415 in the 2000 census. Having dropped into the third class city category, Scranton has been given several legislative reprieves to retain its status. The latest, in 1992, provided that cities of 80,000 to 250,000 could elect by ordinance to become a city of the second class A. The law also dropped the minimum population for a second class city to 250,000 from 500,000 so Pittsburgh's classification would remain unchanged. All cities presently under 250,000 not choosing second class A status constitute a third class city. Allentown and Erie are the only other cities qualifying to select second class A status, but have never done so.

The special status of second class A has allowed enactment of special laws for Scranton, but it has not been without its drawbacks. By law, cities of this class are to have all the powers of a city of the second class and essentially the same mayor-council system. Nevertheless, the General Assembly has enacted numerous laws that apply only to Pittsburgh, and a fewer number that include Scranton or relate to it exclusively. As a consequence, "gray areas" and uncertainty have appeared in some aspects of government action and decision-making



Under Act 62 of 1972 the electorates of both Pittsburgh and Scranton approved new home rule charters for their cities. These charters continue the basic mayor-council form of government. Their practical effect is to supersede most laws pertaining to second class cities with charter provisions.

## Cities of the First Class

Because of the high population minimum, Philadelphia is the only city that has met the class specifications. Consequently, the General Assembly, as with Pittsburgh and Scranton, has been able to deal legislatively with the City on a special basis-although not in the infinite detail of pre-1874 special or local laws. This tendency of the General Assembly to detail or interfere with Philadelphia government was greatly lessened by the First Class City Home Rule Act of 1949 and the resultant Philadelphia Home Rule Charter of 1951.

Much about the evolution of Philadelphia city government has already been covered in illustrating the impact of the City on local government in the commonwealth. This section concentrates on the post-1874 evolution of Philadelphia government, but first a comment should be interjected about the consequences of the Consolidation Act of 1854. This Act consolidated the original mile square city with the other 28 local governments in Philadelphia County. Prompted by concern for more urban services, improved public safety and fighting between volunteer fire companies, the consolidation resulted in some revamping of city government, such as ward representation and the designation of county commissioners as city commissioners. Under the Constitution of 1874, the city commissioners, treasurer and controller were again made county officers by constitutional listing.<sup>5</sup>

The Bullitt Act of 1885 instituted changes in the Philadelphia city structure toward a stronger executive role for the mayor. But, the dual council continued to dominate the administration through a strong committee system. The practice of electing many departmental officials continued fragmentation. The Fairmount Park Commission, then as now, was separate and the Board of Education was court appointed. The Bullitt Act provided for one of the first municipal civil service systems under the mayor. This civil service system was opposed or undermined in various ways by succeeding administrations practicing the patronage politics of the era. But it helped establish a merit system tradition that later found expression in the Home Rule Charter of 1951.

Philadelphia's next major charter revision came in 1919, following creation of an independent school district and for the main purpose of improving financial administration. This charter did little to change the City's way of doing things, but it did terminate the largest city council in the nation which had grown to 145 members in a bicameral body. A single body of 21 council members elected from 8 districts replaced it. The mayor also could appoint heads of 8 of 12 principal agencies, with council appointing the civil service commission. Council interference in administration continued to be practiced, resulting in a weak mayor-council system. The 1919 government has been described "as an agglomeration of offices and agencies, some city, some county, some under the mayor, some not, some under civil service, some not."<sup>6</sup>

Philadelphia's city structure and the tendency of council to remain dominant in city affairs reflected the control of city government by a prodigious political machine which ruled unchallenged in Philadelphia from the Civil War until 1951. Like many city governments of that era, it was geared less to aims of efficient government than to practical political requirements for perpetuating power.

A 1922 constitutional amendment allowing legislation for city home rule charters generated interest and activity in Philadelphia, including interest in the council-manager plan of government. However, it took dramatic scandal disclosures in 1948 and growing recognition of the 1919 charter's weaknesses to move the General Assembly to finally pass the First Class City Home Rule Act of 1949.

The election of a bipartisan charter commission quickly followed. In 1951, following one of the best organized civic campaigns in history, the report of the charter commission was approved in a light vote, 259,000 to 140,000. The new city charter became effective on January 7, 1952. The new charter had a mayor-council system unlike anything that had been seen in Pennsylvania local government. A reform-oriented government ushered in a new period of excellence in city government.

The Home Rule Charter of 1951 is still in use in Philadelphia, and over the years the General Assembly has limited its first class city legislation largely to financial matters. In January 1973, the mayor and council formed an eleven-member Charter Revision Commission. Continuing satisfaction with the 1951 charter was indicated when the commission recommended only several minor changes.

## **References**

1. See Appendix for a chart showing incorporation dates, population and area size.
2. Harold F. Alderfer, *Pennsylvania Local Government 1681-1974*, Penns Valley Publishers, State College, Pennsylvania, 1975.
3. *Proceedings of the Third Annual Convention of the Pennsylvania League of Cities of the Third Class*, Reading, Pennsylvania, 1902.
4. Frederic Kline, *Lancaster County Since 1841*, Lancaster County National Bank, 1955, pp. 166-167.
5. Pennsylvania Economy League, *History of Philadelphia City Government*, Philadelphia, Pennsylvania, 1975, p. 3. This work is used extensively throughout sections of this book as a source of reference information on Philadelphia.
6. Pennsylvania Economy League, *op. cit.* pp. 4-8.

## II. The Structure of City Government

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Fundamentally, the structure of city government is nothing more than a democratic framework for conducting the business of government through legislation and the execution of legislation. Four basic city structures or forms have emerged in Pennsylvania. They are commonly termed weak mayor-council, strong mayor-council, and commission and council-manager forms. The weak mayor-council form emphasizes strong policy and administrative influence on the part of council committees and a mayor with little or no executive prerogatives. Under the strong mayor-council plan, the council is restricted to legislative policymaking and the mayor is in charge of all or most administrative functions and appoints department heads. The commission plan includes a mayor, but only as one of five “commissioners” who combine the legislative and executive roles by acting as department heads. Under council-manager government, the council hires an administrator, preferably a professional, to execute its policies and administer city affairs. These are the basic forms, but occasionally aspects of one form are found in another.

### Third Class City Government

There are 53 third class cities in Pennsylvania. Under current law a third class city may be created from any borough, town or township with a population of at least 10,000 at the last federal census. To attain city status, the voters must approve the issue in a referendum.<sup>1</sup> Cities whose populations drop below 10,000 do not lose their classification; in the 2000 Census, 17 third class cities reported populations under 10,000.

The 53 Pennsylvania cities of the third class operate either under the commission form, the strong mayor-council form or the council-manager plan. The weak mayor-council system was replaced when the commission form became the only form of third class city government. The only exception is Parker City, which was created by special legislation in 1873. It continues to operate under a weak mayor-council system of government similar to that of a borough.

Until 1957, third class cities were governed almost entirely according to the Third Class City Code, aside from certain general laws. The Code, as modified in 1931, features a commission form of government with a mayor and four additional council members. City officers are elected at-large for four-year terms. Council terms overlap. The mayor presides over the commission when it acts as the city council. Every two years the council reorganizes and assigns its members to head the respective departments. The required departments are: public affairs, accounts and finance, public safety, streets and public improvements, and parks and public property. Except for public affairs, council can put almost any function in any department. On occasion, unusual pairings may occur because of politics or individual capabilities. Council also has discretion to create additional departments.

The Code requires the mayor to serve as director of the department of public affairs. In this capacity the mayor is head of the police department, appoints its major officers and makes appointments to such city bodies as the planning commission and the redevelopment authority. This appointment power has traditionally given the mayor a great deal of influence in the operation of these agencies. Additional powers of the mayor under the Code include supervising the conduct of council meetings, the power to enforce and execute laws and the power of a sheriff in a riot.

Since the mayor of a commission form city is one of five council members, the position is not that of a strong mayor. This statement may confuse citizens of many cities. Residents of Pennsylvania cities traditionally have looked upon the mayor's office as one of power and influence—the focus of credit and blame for most of what happens in a city. Because popular opinion has looked upon the mayor in this way, many third class cities have opted for the strong mayor-council plan by adopting optional or home rule charters.

Under the Third Class City Code, council appoints a city clerk, city solicitor and city engineer. For years, these were the main staff professionals a city employed. Occasionally, the city clerk's office approaches the role of a city manager. The city solicitor advises on the legal constraints in council's policymaking. The city treasurer and city controller are separately elected under both the Code and the Third Class City Optional Charter Law. Both are elected at-large for

terms of four years. The treasurer and controller must be accountants. The treasurer is also tax collector, responsible for city, school district and, in some cases, county taxes. The director of accounts and finance has major responsibility for accounting and budgeting. The independently elected controller is responsible for examining and auditing city accounts and expenditures. This tradition of dividing financial responsibility has been brought into question. A study of the effects of organizational change in third class cities found that changes brought by home rule charters improve the financial condition and fiscal health of cities.<sup>2</sup> Home rule is found to be beneficial because it is the driving force behind improved financial management, the chief source of benefit being identified as the functional consolidation of financial management under a single officer.

If anything characterizes a third class city in Pennsylvania, it is the breadth of services and functions performed. Some of this stems from tradition, but it also relates to community size, population density, economic diversity and the provisions found in the Third Class City Code. The authority of cities to carry out their many functions came early through their special charters and later through the Third Class City Code. The Code is replete with functions, powers and procedures to be exercised by cities. It contains 47 major sections covering everything from incorporation to streets, sewers, nuisances, charities and personnel practices. A few sections are archaic, such as those on acquiring toll bridges and electing water and lighting commissions. Others, such as annexation, eminent domain and zoning, have been superseded by general state laws.

In addition to the above, the Code also has a large listing of specific and general powers of cities. One general provision states a city may adopt all ordinances, not in conflict with the Constitution and laws, necessary to exercise local self-government. With this broad grant of power, it is strange that Dillon's Rule has played such a large role in interpreting third class city powers. Dillon's Rule is the municipal law principle, long in vogue, that a municipality can exercise only those powers that are clearly expressed or necessarily implied. Because of this principle, city solicitors generally relied on specific authorizations for a city to do anything. (This explains in part why the Third Class City Code is so voluminous.) Even with adoption of optional charters this practice continued in most places. The key element remains, however, that commission form cities have the powers to undertake almost any municipal function and these powers are well used.

In a fuller sense, the Third Class City Code is a compilation of authorizations and empowerments. It is the basic charter of all commission form cities. Detailed are: the property tax, license tax and other taxes; extensive provisions on police and firefighter working conditions; retirement plans; procedures for public works projects; provisions for recreation, health and other boards.

When made the primary form of third class city government in 1913, the commission form was the idol of government reformers along with the council-manager plan. In recent years, however, its reputation has fallen. With the modern governmental emphasis on efficiency and accountability, the commission form has received low scores. Cities subsequently are moving away from the commission form of government. In 2000, only 20 Pennsylvania cities had commission forms of government under the Third Class City Code. Two additional cities operate as modified commission forms under home rule charters. The commission form has been criticized for encouraging five separate governments within a city. Critics also contend the commission form discourages professionalism. Having council members serving as department heads has made the hiring and retention of professional managers difficult. In addition, because council members are the ultimate authority over their own departments, cooperation and coordination are not always present. As a result, blunders sometimes occur, such as the streets department repaving a street, only to have the water bureau dig up the street to replace water lines several weeks later. However, incumbent council members, with a stake in the status quo, point to the need for members of council to be fully involved and express the fear of one person assuming too much power. Nevertheless, the trend away from the commission form continues.

## **Optional Third Class City Charter Law**

In 1957, for the first time, third class cities were given the authority to study and adopt optional forms of government. The Optional Charter Law of 1957 set forth procedures for the election and operation of charter commissions. It contains the fundamental powers for cities adopting systems of government under this Law. Where the Optional Charter Law is silent, the Third Class City Code still applies. The Optional Charter Law provided a framework for the operation of two optional forms of government— a strong mayor-council or a council-manager plan.

Between 1957 and 1972, cities could adopt either plan under this Law through a referendum. As of 2000, 13 cities still operate under the Optional Charter Law. Nine cities have a mayor-council system and 4 a council-manager plan. Any of the 13 cities currently operating with charters adopted under the 1957 law may vote to abandon its charter and revert back to operation under the Third Class City Code. The change must be approved by the voters in a referendum.<sup>3</sup>

Under the Optional Charter Law, the mayor-council form has a 5, 7 or 9-member council, elected at-large for overlapping four-year terms. A mayor, treasurer and a controller are also elected for 4 years. The mayor is the chief executive of the city and enforces the ordinances of council. The mayor supervises the work of all city departments and submits the annual city budget to council.

In the council-manager form, all authority is lodged with council, composed of 5, 7 or 9 members, elected at-large for four-year overlapping terms. The mayor may be chosen directly by the voters or by council from among its members. A city treasurer and controller are also elected. The city manager is appointed by council. The manager is the chief administrative officer of the city and is responsible for executing the ordinances of council. The manager appoints and may remove department heads and subordinates.

Many have failed to appreciate the grant of powers in the 1957 law and the departure it makes from the Third Class City Code. The powers cited in Section 305 of the Optional Charter Law leave little question that its provisions are to be the organic law of the city. This was substantiated by a 1968 ruling of the Pennsylvania Supreme Court. On a question of adhering to minimum salaries in the Third Class City Code, the Court ruled the optional charter powers of Bradford were essentially the same as those of Philadelphia under the First Class City Home Rule Act. The Court noted that the language in Section 305 was identical to that for first class cities and that related Philadelphia court cases were applicable. The Court noted that both acts derived from the 1922 constitutional provision for home rule (replaced in 1968 by the new local government article). Bradford's position was sustained on the basis of "broad powers of self-government and local autonomy."<sup>4</sup> However, this case has not been followed with similar rulings.

## Home Rule and Optional Plans

Home rule for all local governments was an issue in the studies of various commissions leading up to the Constitutional Convention of 1967-68. Home rule was one of the central points of the new local government article adopted in 1968 which read in part: "Municipalities shall have the right and power to frame and adopt home rule charters. . . . A municipality which has a home rule charter may exercise any power to perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time."<sup>5</sup>

The General Assembly met the constitutional mandate to enact implementing legislation within four years by adoption of the Home Rule Law on April 13, 1972.<sup>6</sup> The (then) Pennsylvania League of Cities and Municipalities played an instrumental role in the development and adoption of the Law. The League has continued its interest in furthering home rule through the sponsorship of a Home Rule Network, a group of home rule municipalities interested in sharing information and presenting joint positions on judicial and legislative issues.

The Home Rule Law establishes the procedure for adoption of a home rule charter. The voters of a local jurisdiction elect a government study commission, charged with studying the existing government, exploring alternatives and deciding whether or not to recommend change. If the commission decides to recommend home rule, it drafts a charter which is presented to the voters for their decision. Adoption of a home rule charter comes only with the approval of a majority voting in a referendum.

The concept of home rule is relatively simple. The basic authority to act in municipal affairs is transferred from state law, as set forth by the General Assembly, to a local charter, adopted and amended by the voters. A home rule charter has been likened to a local constitution for the municipality. The home rule municipality can exercise any power or perform any function not denied by the United States or Pennsylvania constitutions, the General Assembly or its own home rule

charter. It is not subject to the municipal codes. General legislation in specified areas still applies, as do all laws uniform and applicable in every part of the commonwealth. In other words, local governments without home rule can only act where specifically authorized by state law; home rule municipalities can act anywhere except where they are specifically limited by state law.

The Home Rule Law has been amended 14 times. In most cases, the amendments clarify procedures, but one significant amendment in 1974 placed home rule municipalities under the provisions of the Pennsylvania Municipalities Planning Code.<sup>1</sup>

Twenty years of experience in Pennsylvania has shown home rule to be neither a panacea nor a bane for local governments. Home rule has proven to be an effective tool for reorganizing local governments for improved effectiveness and increased citizen participation and has enabled a modest local initiative in procedural and substantive matters. On the other hand, home rule has not revolutionized local government operation, nor has it entangled municipalities in undue legal difficulties or imprudent activities.

As of 2000, 19 Pennsylvania cities have adopted home rule charters. Except for Philadelphia, which adopted home rule in 1951 under special legislation, all cities adopting home rule have done so under authority of the Home Rule Law, Act 62 of 1972. The forms of government in these 18 cities vary greatly. Eight cities have mayor-council forms, 8 have council-manager forms and 2 have modified commission forms of government.

The General Assembly chose to implement the constitutional mandates for home rule and for optional plan forms of government in a single piece of legislation.<sup>8</sup> Optional plan forms of government under this legislation are open to all classes of local government. Adoption of an optional plan is through the same government study commission process as home rule, except the government study commission merely selects one of the optional plans provided in Sections 2971 through 3171 of the Law. These include a council-manager plan, an executive-council plan with three variations and a plan for small municipalities where the elected executive doubles as president of council. Adoption of an optional plan alters a municipality's structural form and administrative organization. However, municipalities gain no home rule powers; they remain subject to the provisions of their municipal code, except where it is superseded by provisions of the optional plan as set forth in the Law.<sup>9</sup>

The optional plans have not proven very popular with Pennsylvania cities. As of 2000, only three cities have adopted optional plans under Act 62. Altoona and Dubois have adopted council-manager optional plans; Hazleton has adopted a mayor-council optional plan.

## Forms of Government in Pennsylvania Cities

### HOME RULE CHARTER MUNICIPALITIES

<u>Commission</u>	<u>Council-Manager</u>	<u>Mayor-Council</u>
Chester	Clairton	Allentown
Greensburg	Coatesville	Altoona
	Farrell	Carbondale
	Franklin	Easton
	Hermitage	Lebanon
	Johnstown	McKeesport
	Nanticoke	Philadelphia
	Pittston	Pittsburgh
	St. Marys	Reading
	Warren	Scranton
		Sharon
		Wilkes-Barre

### OPTIONAL PLANS UNDER ACT 62

<u>Council-Manager</u>	<u>Mayor-Council</u>
DuBois	Hazleton

### OPTIONAL THIRD CLASS CITY CHARTER LAW

<u>Council-Manager</u>	<u>Mayor-Council</u>
Lock Haven	Bethlehem
Meadville	Erie
Oil City	Harrisburg
Titusville	Lancaster
	New Castle
	Williamsport
	York

### THIRD CLASS CITY CODE

<u>Commission</u>	
Aliquippa	Lower Burrell
Arnold	Monessen
Beaver Falls	Monongahela
Bradford	New Kensington
Butler	Pottsville
Connellsville	Shamokin
Corry	Sunbury
Duquesne	Uniontown
Jeannette	Washington

### SPECIAL LEGISLATION

Parker City operates under a weak mayor-council form of government established by Act 184 of 1873

## Pittsburgh and Scranton Government

The previous chapter pointed out that Pittsburgh and Scranton are designated under state law as cities of the second class and second class A respectively. The Second Class City Law which has applied to Pittsburgh, with some exceptions, has also applied to Scranton.<sup>9</sup> The statutory organization of second and second class A cities was mainly shaped in 1901 with modifications coming in later years, especially in 1911. Both classes have featured a strong mayor-council plan. Under these laws, the mayor has veto power, formulates the budget and appoints department heads with the advice and consent of council. The city controller is elected in both classes. At-large councils of five to nine members are permitted. Like the Third Class City Code, the law for second class cities contains detailed sections on personnel matters, such as the provisions for police, firefighters, civil service and retirement. It also contains many similar procedural powers.

In 1974, voters in both Pittsburgh and Scranton approved new home rule charters under Act 62 of 1972. Therefore, the formal classifications of second class and second class A have little effect. Much of the impetus for home rule in Pittsburgh was to free the City from extensive state legislative interference, especially with employee working conditions. Scranton voters were particularly concerned about some weaknesses in the mayor-council relationship, especially in budgeting. Mainly, however, both cities were concerned with modifying a system that had operated for half a century. Nevertheless, both cities adopted home rule charters with structures similar to what they already had.

The Pittsburgh Home Rule Charter provides for a strong mayor system, where the mayor makes most of the appointments and directs the administration of city government. The mayor has veto power over legislation, but may be overridden by a two-thirds majority of council. The city council consists of nine members elected by districts for four-year terms. A controller is also elected to a term of four years. An innovative community advisory board system is called for in reviewing zoning, social and physical plans and a merit personnel system is mandated by the charter. The charter does not provide for initiative and referendum or for recall of elected officials.

The Scranton Home Rule Charter also provides for a strong mayor system of government. The mayor has broad appointive and removal powers, responsibility for budget preparation and veto power over legislation. Scranton has five council members elected at-large for four-year terms. The council appoints a city clerk. A controller is independently elected to a four-year term. As with Pittsburgh, the charter mandates a merit personnel system. There is no provision in the charter for recall of elected officials. However, the charter authorizes direct legislative action by voters through initiative and referendum.

## Philadelphia Government

Philadelphia adopted a home rule charter in 1951. The charter provides for a strong mayor system. The mayor is elected to a four-year term, but is limited to two successive terms which run concurrently with city council terms. The mayor appoints a managing director, director of finance, solicitor, city representative and director of commerce, a civil service commission and members of various boards and commissions. Boards and commissions include the planning commission, human relations commission, trustees of the Free Library and the pension and retirement board. The managing director supervises 10 major departments, including police, fire, streets, water, recreation, public health, public welfare, public property, licenses and inspections and records. The director of finance oversees the departments of collections, procurement and treasury. The mayor has broad budget powers and may veto appropriation ordinances in whole or in part.

City council consists of 17 members, one elected from each of 10 council districts and seven elected at-large. Each political party may nominate one candidate for each of the 10 district positions, but only five for the seven at-large positions. This allows the minority party to elect at least two members. Council terms are concurrent and last four years. The council elects a president, who serves as the acting mayor in the absence of the mayor or in case of a vacancy. The council is required to hold hearings on all ordinances. Council may override a mayor's veto by a two-thirds vote. The charter gives city council power to conduct inquiries and investigations, subpoena power, and the authority to employ personnel to complete the task.



A city controller is independent of the mayor and council. The controller is responsible for auditing all city expenditures. The controller must appoint a CPA as deputy for auditing and auditors are to be CPAs or college graduates majoring in accounting.

The vast majority of city employees come under a civil service or merit system. The mayor appoints a three-member civil service commission from names submitted by a panel of civic organizations. The civil service commission in turn appoints a personnel director. The appointment, promotion, transfer and separation of civil service employees are subject to the personnel regulations of the charter. The civil service commission is the policymaking, supervisory and quasi-judicial agency. The personnel departments prepares and maintains the position classification and pay plans, recruits applicants, prepares eligible lists and refers those eligible to city government departments having vacancies. Department heads and a limited number of their deputies and chief assistants are excluded from the civil service system. Employees of the Philadelphia courts are also excluded. Political activity is prohibited for employees within the merit system.

The Philadelphia Home Rule Charter contains a provision allowing for recall of elected officials. However, in a 1976 ruling, the Pennsylvania Supreme Court voided the charter's recall provisions in a campaign to recall Mayor Frank L. Rizzo. In a much divided opinion, the Court held recall was unconstitutional by violating Article VI, Section 7 of the Pennsylvania Constitution." Because the Constitution says elected officials shall hold office on good behavior, they can only be removed for cause after having been found to be in violation of some law or other rule.

Philadelphia has been troubled with major financial problems in recent history. The City's tax base has eroded, caused in part by a substantial drop in population, an exodus of business and the loss of tens of thousands of jobs. In 1950, Philadelphia had a population of 2,071,605; by 2010, the population had declined to 1,526,006.

In 1991, the General Assembly enacted special legislation designed to help Philadelphia with its financial problems. The law authorized a one percent sales tax for the City. Philadelphia developed a financial plan to restore fiscal health. In addition, the law created the Pennsylvania Intergovernmental Cooperation Authority.<sup>12</sup> This agency was established to assist the City in solving its fiscal dilemma and to help maintain access to financial markets. The Authority has the power to borrow money and issue bonds. Progress to restore financial stability was rapid and the City achieved a balanced budget by 1993.

## References

1. 53 P.S. 35202; Third Class City Code, Section 202.
2. David W. Davarre. *An Analysis of the Effect of Home Rule on the Fiscal Health Variables and Financial Management Practices of Pennsylvania Third Class Cities*. Doctoral dissertation, University of Pittsburgh, 1990. Ann Arbor: University Microfilms International, 1991.
3. 53 P.S. 41231; Optional Third Class City Charter Law, Section 231.
4. *Greenberg v. Bradford City*, 248 A. 2d 511, 432 Pa. 611, 1968.
5. Pennsylvania Constitution, Article IX, Section 2.
6. 53 Pa. C.S.A. 2901-2984; Home Rule and Optional Plans Law.
7. 53 Pa. C.S.A. 2962(a)(10); Home Rule and Optional Plans Law.
8. Pennsylvania Constitution, Article IX, Section 3.
9. 53 Pa. C.S.A. 2971; Home Rule Charter and Optional Plans Law.
10. 53 P.S. 22181 *et seq.*; Second Class City Code.
11. Citizens Committee to *Recall Rizzo v. Board of Elections of the City and County of Philadelphia*, 367 A.2d 232, 470 Pa. 1, 1976.
12. 53 P.S. 12720.101; Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class; 1991 P.L. 9, No. 6.

## III. City Offices

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Describing the forms of government for Pennsylvania third class cities is difficult and can lead to considerable confusion. There are four sets of authorizing laws establishing the structure of city governments: home rule charters adopted since 1972, optional plans of government since 1972 under the Home Rule Charter and Optional Plans Law, optional third class city charters adopted between 1957 and 1972 and the Third Class City Code itself.

### Elective Officers

The elective officers for cities operating under the Third Class City Code or the Optional Third Class City Charter Law are the mayor, council members, controller and treasurer.<sup>1</sup> City officers are elected at-large by the voters at the regular municipal election held in odd-numbered years. They serve a term of four years from the first Monday in January after their election? All elective officers must be at least 21 years of age. This age requirement is found in the Code and was not changed when the voting age was lowered to 18. City officers must have resided in the city for one year prior to their election and must continue to reside in the city during their term of office. The city controller and city treasurer must be competent accountants to qualify for office.<sup>3</sup> Cities operating in accordance with home rule charters or optional plans under Act 62 of 1972 may have officers and qualifications for officeholders different from those established by the Code.

### Mayor

A person running for mayor must be at least 18 years of age and is elected at large by the electors of the city. The candidate provides an affidavit to the city clerk showing residency in the city for at least one year.

The mayor is the chief executive of the city, though the role of the mayor varies with the form of government operating in a city. In the commission form of government, the mayor serves a dual role as one of five commissioners. The five elected members of council combine the legislative and executive roles by acting as heads of city departments. The mayor presides over the commission when it acts as city council. In the mayor-council form, the mayor is the chief executive of the city and supervises the work of all city departments. In a council-manager form, authority is lodged with council and the appointed manager. The mayor is the presiding officer of council and performs ceremonial duties as the chief elected officer.

The mayor is normally elected at-large by the voters. However, in council-manager cities operating under the Optional Third Class City Charter Law, the mayor may be chosen by council from among its members. Moreover, home rule and optional plan cities operating under Act 62 of 1972 may select the mayor from among the council. On occasion, home rule cities do not even have a mayor.

Cities operating under the Third Class City Code or the Optional Third Class City Charter Law ordinarily do not have term limits for a mayor. However, in a case involving a city operating under the optional charter law, the Pennsylvania Supreme Court upheld a city ordinance limiting a mayor to two consecutive four-year terms. The Court deemed the ordinance a valid exercise of municipal authority pursuant to the charter law.<sup>4</sup> Cities with home rule charters sometimes impose limits on the number of terms for the mayor.

In cities operating under the Third Class City Code, the director of the department of accounts and finance serves as acting mayor during the absence or inability of the mayor to function. This person is the vice president of city council. In case of the absence or inability of the director of accounts and finance to function, the council designates one of its other members to act as mayor.<sup>5</sup>

Under the Optional Third Class City Charter Law, the mayor designates a department head or the city clerk to act as mayor when the mayor is unable to attend to duties. If the mayor is unable to attend to the duties of office for 60 consecutive days, the city council appoints one of its members to serve as acting mayor.<sup>6</sup> Similar provisions exist in the optional plans under Act 62 of 1972.<sup>7</sup>

## City Council

As with the mayor, the role and powers of city council vary with the form of government. In the commission form, each member of council administers one of five city departments. The council appoints other city officers and employees. In a mayor-council form, the mayor serves as chief executive officer and operates separately from council. The council elects one of its own to serve as council president. The council appoints a chief clerk, who works for city council. Council members have no administrative role. In a council-manager city, the council might select one of its own members as mayor to preside over council meetings, but have no veto power. The council appoints a city manager who serves as the chief administrative officer of the city. The manager enforces the ordinances of council, participates in council meetings, but has no vote, makes recommendations to council and prepares the budget. The manager appoints and may remove department heads. No member of city council heads an administrative department.

Cities operating under the Third Class City Code have four council members plus the mayor, who serves as council president. Optional charter cities may have five, seven or nine council members. Members of council are elected at-large. In home rule cities and optional plan cities under Act 62 of 1972, the number of council members and the method of election are established by the charter or the plan adopted. They could be elected at-large, by district or a combination of both. There are 18 home rule cities in Pennsylvania. Thirteen of these cities elected council members at-large, one solely by district and five had a combination of district and at-large council seats. The three cities with optional plans under Act 62 of 1972 elect council members at-large.

**Ward Redistricting.** Unlike boroughs, wards in cities are no longer the areas from which council members are elected. They do remain the basis for election precincts, however. State law provides two separate procedures for redrawing ward lines in cities, one for third class cities and a separate procedure for Philadelphia. Wards in third class cities may be created, divided or realigned by petition to the Court of Common Pleas by city council or 100 registered voters for creation or division or 25 registered voters for realignment. Any new ward must contain at least 300 qualified voters.<sup>8</sup> The Court appoints a commission of five voters not residing in the affected wards to draw proposed new lines. After the commission reports, the Court places the question on the ballot. The question appears on the ballot only in the wards affected. If a majority votes in favor, the Court realigns the wards by decree. If defeated, the question cannot be raised again for two years.

Philadelphia wards may be created, divided, realigned or consolidated by the Court of Common Pleas upon petition of at least 100 registered voters of the ward or wards affected, or of the city council.<sup>9</sup> The Court appoints a commission to prepare a realignment plan on which four of five commissioners must agree. A question calling for approval of the plan is placed before the voters at the next primary election. If the plan affects less than half of the City's wards, it is put on the ballot only in the wards affected; if it affects more than half, it is submitted to the voters of the entire City. Any plan must be approved by the voters before it takes effect.

The amended local government article of the Pennsylvania Constitution, adopted by the voters in 1968, requires governing bodies elected by districts to realign their district lines after each decennial census. This procedure is set forth in the Municipal Reapportionment Act.<sup>10</sup> This Act applies to home rule cities because it is uniform and applicable in every part of the commonwealth, it implements a specific constitutional mandate and it expressly includes home rule municipalities within its terms. This Act requires city council to reapportion districts from which members are elected in the year following the official report of any decennial or special federal census. If the governing body fails to act, any one or more registered voters may petition the Court to realign the council districts. Any reapportionment plan approved by council may be appealed to the Court by a petition of at least 10 registered voters.

Third class cities may, with or without a petition as subject to approval by the registered voters, create new wards, divide a ward or wards, or detach part of a ward and attach to another ward. However, no new ward can have less than 300 registered voters according to the last general or municipal election. Further, all wards in the city shall be numbered and composed of compact and contiguous territory as nearly equal in population as practical.

## City Treasurer

The city treasurer must be an accountant, be at least 21 years of age, and have been a resident of the city for at least one year. The treasurer must present a fidelity bond covering the full term of office; this bond may be provided by the city. This bond covers all duties including duties of the treasurer as tax collector for the city, county, institutional district, and school district. The salary of the treasurer is fixed annually and provided by ordinance, and the treasurer may appoint assistants and others in the treasurer's office.

As tax collector, the city treasurer maintains an office for the purpose of receiving taxes, often similar to those of the city treasurer. Additionally, receipts and expenditures of the city, their sources, and purpose of distribution are kept and reported periodically to the council.

The treasurer serves as collector of taxes for the city, school district and often the county. The treasurer must possess a bond to cover all monies received in the capacity as treasurer and collector of taxes. The amount of the bond is set by city council, but any taxing district may petition the court to increase the amount of the bond.<sup>12</sup> The city treasurer must pay all warrants countersigned by the director of accounts and finance and the city controller. The treasurer is also responsible for keeping public funds in such financial depositories as city council directs. The treasurer may appoint assistants and employees, but the number and compensation are determined by city council.

In home rule cities and those operating under optional plans established by Act 62 of 1972, the charter or plan designates how the treasurer is selected and the duties of the office. In 2000, only three of the 19 cities with home rule charters had elected treasurers. The City of St. Marys' Home Rule Charter provides for an elected tax collector. DuBois, one of the three optional plan cities, has an elected treasurer. Other cities have appointed treasurers or directors of finance.

## City Controller

Under the Third Class City Code and the Optional Third Class City Charter Law, the controller is an elected officer, who serves a four-year term. The controller must be a competent accountant. The controller must also be bonded in an amount directed by city ordinance. The controller is responsible for examining, auditing and settling all city accounts.<sup>13</sup>

The controller countersigns all documents authorizing the payment of moneys out of the city treasury when satisfied of the legality of the payment.

The Code gives the controller subpoena power. The controller is required to provide city council with an annual audit report. The Code mandates that the controller countersign all warrants for payment of funds out of the city treasury. The controller may appoint a deputy controller, who serves as acting controller in the absence of the controller.

Home rule cities and those with optional plans under Act 62 of 1972 have varying approaches to the office of controller. Some cities elect a controller or auditor, others elect a controller and also appoint an accounting firm and others solely appoint an independent accounting firm. The duties are established by charter and administrative code.

## City Engineer

City council appoints and sets the compensation for the city engineer who then serves at the pleasure of the council. The council may choose to designate an engineering firm in lieu of a city engineer. No other department of the city can employ or retain an engineer without permission of the council.

The engineer must be a registered civil engineer.<sup>14</sup> The engineer is responsible for controlling and directing the engineering matters of the city. The engineer performs those duties prescribed by council relating to the construction, reconstruction, maintenance and repair of streets, pavements, sewers, bridges and culverts.

The engineer prepares plans, specifications and estimates of all engineering work undertaken by the city. Assistants and employees in the office of city engineer are appointed under civil service provisions.

In home rule and optional plan cities the method of selection and the duties of the engineer are determined by the charter or administrative code.

## City Solicitor

City council appoints a solicitor to address the legal matters of the city. The council may choose to hire a law firm in lieu of a city solicitor.<sup>15</sup> City council also appoints assistant solicitors whose terms are concurrent with that of the solicitor. Special counsel may be appointed for particular proceedings. The Code requires the solicitor to maintain an office in the city. Moreover, the Code requires the solicitor be bonded in an amount set by ordinance. The courts have ruled city council may remove the solicitor or assistant solicitors at any time prior to expiration of the four-year terms for which the appointments were made.<sup>16</sup>

The city solicitor oversees preparation of all bonds, obligations, contracts, leases, conveyances and assurances to which the city is party. A primary responsibility is providing written opinions in response to requests from the council, mayor, and other elected or appointed city officials as directed by the council. The solicitor also defends the city against suits and actions and prosecutes all suits and actions brought by the city.

In optional charter cities, the council provides the manner of appointment of the solicitor! A court determined that city council in a mayor-council optional charter city did not have the exclusive right to appoint a solicitor where an ordinance provided for appointment by the mayor with the advice and consent of the council.<sup>18</sup>

In home rule cities the charter or administrative code provides the method of appointment and the duties of the city solicitor.

## City Clerk

The Third Class City Code requires the city council appoint a clerk on the first Monday in May for a term of four years.<sup>19</sup> The clerk has the power of a notary public to administer oaths pertaining to city business. The clerk is responsible for keeping council minutes, compiling ordinances and resolutions and maintaining other records and documents of city council. In council-manager cities operating under the Optional Third Class City Charter Law, the city manager and city clerk may be the same person.<sup>20</sup> Optional plan cities have a clerk or secretary with the manner of appointment provided for in their administrative codes; home rule cities may provide for the appointment of a clerk in their charters.

## City Manager

City managers are found in cities operating under the Optional Third Class City Charter Law and the Home Rule Charter and Optional Plans Law. The list of duties below is taken from the Optional Third Class City Charter Law.<sup>21</sup> This list, however, is also typical of city manager duties in home rule and Act 62 optional plan cities. Aside from the duties established in statutory or charter provisions, administrative ordinances and other city regulations assign specific duties to the manager in more detail.

City council chooses a manager based on his or her executive and administrative qualifications. The manager holds office for an indefinite term and may be removed by a majority vote of council. However, council has the option of signing an employment contract for a specified period of time. The manager may designate a qualified administrative officer of the city to perform during his or her temporary absence or disability. The manager is responsible for preparing the city budget. In addition, under the Optional Third Class City Charter Law the manager shall:

- Be the chief executive and administrative officer of the city.
- Execute all laws and ordinances of the city.
- Appoint and have power to remove a deputy manager, all department heads, all other officers, subordinates and assistants.
- Negotiate contracts for the city subject to the approval of city council.

- See that all terms and conditions imposed in favor of the city or its inhabitants in any statute, public utility franchise or other contract are faithfully kept and performed, and upon knowledge of any violation, call the same to the attention of city council.
- Attend all meetings of the city council with the right to take part in the discussions, but without the right to vote.
- Recommend to city council for adoption such measures as the manager may deem necessary or expedient, keep the council advised of the financial condition of the city and make reports to council as requested.
- Investigate the affairs of any officer or department of the city under the manager's jurisdiction.
- Perform such other duties as may be required of the city manager by ordinance or resolution of city council.

The city manager shall be responsible to the council for carrying out all policies established by the council.

## **Independent Auditor**

The council provides, by resolution, appointment of an independent auditor. The auditor may be a certified public accountant or a firm of such accountants. The independent auditor provides an annual audit of all account of city officers, departments, and offices which collect, receive and expend public funds. The auditor may also examine accounts at the request of the city controller. The independent auditor shares subpoenas power similar to those of the city controller.

The independent auditor provides a report to city council at its first meeting in March of each year. Within 90 days of closing the books on the fiscal year the auditor files a copy of the annual report to city council and to the clerk of the court or the prothonotary. All reports of the independent auditor are public under the Right to Know law.

## **Oath of Office**

All officers of a city, whether elected or appointed, must take an oath or affirmation of office before assuming their duties.<sup>22</sup> The oath can be administered by a judge, district justice, notary public or city clerk. The officer must swear to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform his or her duties with fidelity. Officers refusing to take such an oath forfeit their offices. Home rule charters generally require elected officials to take and file an oath of office.

## **Incompatible Offices**

City Officers. Except as otherwise provided in the Third Class City Code, membership on the Board of Health is incompatible with every other city office.<sup>23</sup> When a nonprofit corporation acts as the Board of Health in a city, not more than two members of council and one member of the school board may serve as members of the board.<sup>24</sup> No city officer, official or employee is eligible for appointment to any civil service board.<sup>25</sup>

Council members are prohibited from serving on authority boards. It is also inadvisable for other city officers to be members of municipal authority boards created by council. No member of an authority or officer or employee of a city may either directly or indirectly be a party to any contract or agreement with the authority for any matter. This would create a conflict of interest.<sup>26</sup>

Members of a zoning hearing board can hold no other office in the municipality?<sup>27</sup> In addition, the zoning officer may hold no elective office in the municipality.<sup>28</sup>

No city officer may serve as an election officer during his or her term of office or within two months after leaving office. No election officer is eligible for any civil office listed on the ballot at any primary or general election where he or she is serving.<sup>29</sup> City officers may not serve as school director during their term of office." No elected county officer may serve as city council member or treasurer.<sup>31</sup>

Council member. No officer of the United States or of the commonwealth (except notaries public or officers of the militia), no officers of a school district or county and no officers or employees of a city or municipal authority may serve as a council member.<sup>32</sup> It is unlawful for any member of the legislature to hold or exercise the office of council member in an incorporated city of the commonwealth.<sup>33</sup> Council members are ineligible for any city or county offices while serving as a member of council.<sup>34</sup> These prohibitions apply to mayors under the commission form since they are also members of council, but not to separately elected mayors under optional charters or optional plans.

Many of these prohibitions are found in the Third Class City Code, but do not apply to all cities. Home rule cities, however, are subject to incompatible offices listed in the Pennsylvania Municipalities Planning Code and those laws found to be uniform and applicable in every part of the commonwealth.

## Vacancies

Vacancies in the office of council member or mayor in commission and council-manager forms of cities must be filled by the remaining members of council within 30 days. Appointees serve until the first Monday in January after the next municipal election occurring at least 30 days after the vacancy occurs, when a successor is elected. The successor serves for the remainder of the original term.

In cases where a majority or more of the positions on council become vacant, the remaining members fill the vacancies one at a time. Each new appointee is given reasonable notice of his or her appointment as to enable him or her to meet and act with the then qualified members in making further appointments until a majority of council members have qualified. The remaining vacancies are then filled at once.

If council has not filled a vacancy within 30 days, 10 or more qualified voters can petition the Court of Common Pleas to fill the vacancy. If vacancies occur in the entire membership of city council, the Court of Common Pleas appoints a city council, including a mayor, who serves until the next municipal election.<sup>35</sup>

Vacancies in the office of controller, treasurer or mayor in mayor-council cities must be filled by council within 30 days. This applies if the elected city controller or city treasurer has failed to qualify prior to taking office. The appointee serves until the first Monday in January after the next municipal election occurring at least 200 days after the vacancy occurs, where a successor is elected. The elected successor serves for the remaining two years of the original term. In commission cities, the person elected to fill a vacancy for controller or treasurer takes office immediately after the election. If the vacancy is not filled by council within the time limit, the Court of Common Pleas, upon petition of 10 or more qualified voters, fills the vacancy.<sup>36</sup>

A vacancy also occurs when a person elected or appointed to fill an office for which a bond is required fails to post such bond within fourteen days of the date that person is scheduled to take the oath of office.

Any city official who resigns from office is ineligible for reappointment to that office during the remainder of the term or for a period of one year, whichever is less, if reappointment would increase their salary.<sup>37</sup>

Statutory vacancy provisions do not apply to home rule cities. Each charter has its own provisions for filling vacancies in elective office.

## Compensation

City officers receive annual salaries fixed by ordinance.<sup>38</sup> In third class cities, the compensation of the mayor and council members may not be increased or decreased after their election. Succeeding councils may change the compensation, but the change is not to affect those currently in office or those taking office within six months of passage of the ordinance.<sup>39</sup> Council has the power to prescribe by ordinance the compensation of employees of the city. However, no person, elected or appointed, can receive compensation unless that position is established by ordinance and that person appears at the City Council's organizational meeting.

Cities are authorized to provide insurance benefits for elected officers and employees that cover life, health, hospitalization, medical and accidents and to provide pensions for officers and employees." Cities may also provide insurance for elected officers and employees for legal liability arising from the performance of their duties.<sup>41</sup> This is commonly known as errors and omissions insurance.

Cities are authorized to join municipal leagues and city officials may attend league conventions. Each delegate to a convention should submit an itemized account of expenses to the controller for reimbursement.<sup>42</sup> City officials can receive a mileage fee for use of a personal vehicle when traveling on official business. A uniform mileage fee for all officers and employees is to be set by city council.<sup>43</sup>

Home rule cities have their own charter and administrative code provisions for compensation of city officers. Power to set compensation for elected officers is usually lodged in city council. Frequently charters stipulate any increase in salaries cannot take effect until the current term of the officer expires.

## **Conflicts of Interest**

City officials must be careful to avoid the possibility of conflict between their personal and private interests and their roles as public officers. The Ethics Act states that people have a right to be assured the financial interests of public officers do not conflict with the public trust.<sup>44</sup>

In any issue brought before city council where an individual member has a conflict of interest, or there is an appearance of a conflict of interest, that council member should refrain from voting on the issue. Pennsylvania courts have long upheld as a fundamental public policy principle the rule that members of a governmental body cannot vote on any matter where they have a direct personal interest.<sup>45</sup>

Specific legal prohibitions governing personal interest in contracts and purchases appear both in the Ethics Act and in the Third Class City Code. These provisions must be read together, and the most restrictive provision followed.

Under the Ethics Act, no public official can enter into a contract valued at \$500 or more with the governmental body with which the official is associated, unless the contract is awarded through a public process, including prior public notice and subsequent public disclosure. Moreover, this prohibition extends to any subcontract valued at \$500 or more with the governmental body with which the public official is associated, unless the contract is awarded through a public process. In such case, the public official cannot have any supervisory responsibility for administration of the contract.<sup>46</sup> The Third Class City Code requires elected officials to notify council of any personal interest in a contract over \$300 and to refrain from voting on it.<sup>47</sup> A similar provision exists in Act 62 of 1972 governing cities with optional plans.<sup>48</sup> The Code includes specific penalties for violation of the personal interest prohibition. Any official facing the possibility of a conflict of interest under the Ethics Act may request an advisory opinion from the State Ethics Commission. Alleged violations can be reported to the Commission for further investigation.

Any contract, purchase or appointment a city wishes to make where a city official has a personal interest should be closely scrutinized as to its legality. In all cases, the appearance of honesty and impartiality is as important as fulfilling legal requirements.

The Ethics Act requires local elected and appointed officials to file financial interest statements by May 1 of each year in office and for one year after leaving office. The statements are open for public inspection.

Cities with home rule charters frequently have conflict of interest provisions in their charters. A review of the 19 home rule cities found 15 with such provisions in their charters. Home rule cities are subject to the Ethics Act, including the requirement of filing financial disclosure statements.



## Removal from Office

The Constitution of Pennsylvania provides three methods by which elected civil officers, including city officers can be removed from office: (1) by impeachment in the General Assembly; (2) by the Governor for reasonable cause after due notice and full hearing on the address of two thirds of the Senate; or (3) by the courts after conviction of misbehavior in office or of any infamous crime.<sup>49</sup> The Third Class City Code makes no special provision for removal from office.

Recall is a method of removing an elected official from office through an electoral process. Home rule charters in 5 of 19 home cities provide for recall of elected officials. However, the recall provisions in the Philadelphia Home Rule Charter were declared unconstitutional in 1976 by the Pennsylvania Supreme Court. This decision placed in doubt the legality of recall provisions in other home rule charters. Then again in 1995, the Pennsylvania Supreme Court ruled in a unanimous opinion that recall is unconstitutional.<sup>50</sup>

## Official Liability

The Judicial Code defines a strictly limited set of conditions where a city can be held liable for damages because of injury to a person or property.<sup>51</sup> City officers and employees are exempted from official liability if the acts or omissions in question are held to be within the policymaking discretion granted to them by law. If an action is brought against a city officer or employee for an act or omission claimed to be within the scope of official duties, the city must defend the action when requested by the officer or employee. Home rule cities fall under the coverage of the Judicial Code. A city is authorized to purchase liability insurance for itself and its officers or employees or to initiate a risk management program.

## References

1. 53 P.S. 35701; Third Class City Code, Section 701; 53 P.S. 41402, 41502, 41504; Optional Third Class City Charter Law, Sections 402, 502, 504.
2. 53 P.S. 35701; Third Class City Code, Section 701; 53 P.S. 41403, 41503, 41404, 41504; Optional Third Class City Charter Law, Sections 403, 503, 404, 504.
3. 53 P.S. 36001, 36201, 36401, 36701; Third Class City Code, Sections 1001, 1201, 1401, 1701.
4. *City Council of Bethlehem v. Marcincin*, 515 A.2d 1320, 512 Pa. 1, 1986.
5. 53 P.S. 36209; Third Class City Code, Section 1209.
6. 53 P.S. 41414; Optional Third Class City Charter Law, Section 414.
7. 53 Pa.C.S.A. 3013(a); Home Rule Charter and Optional Plans Law.
8. 53 P.S. 35401; Third Class City Code, Section 401.
9. 25 P.S. 2742; Pennsylvania Election Code, Section 532.
10. 53 Pa.C.S.A 901; Municipal Reapportionment Act
11. *In re Conte Nomination Petition*, 49 Del. Co. 115, 1962.
12. 53 P.S. 36402; Third Class City Code, Section 1402.
13. 53 P.S. 36704; Third Class City Code, Section 1704.
14. 53 P.S. 36501; Third Class City Code, Section 1501.
15. 53 P.S. 36601; Third Class City Code, Section 1601.
16. *Naef v. City of Allentown*, 227 A.2d 888, 424 Pa. 597, 1967; *Young v. Scarazzo*, 30 D.& C.2d 324, 22 Law. L.J. 26,1964.
17. 53 P.S. 41410(b), 41510; Optional Third Class City Charter Law, Sections 410(b) and 510.
18. *Pfuhl v. Kleinmeyer*, 75 D.& C.2d 337, 1976.
19. 53 P.S. 36301; Third Class City Code, Section 1301.
20. 53 P.S. 41510; Optional Third Class City Charter Law, Section 510.
21. 53 P.S. 41516; Optional Third Class City Charter Law, Section 516.
22. 53 P.S. 35905; Third Class City Code, Section 905.
23. 53 P.S. 37301; Third Class City Code, Section 2301.
24. 53 P.S. 37331; Third Class City Code, Section 2331.
25. 53 P.S. 39402; Third Class City Code, Section 4402.
26. 53 P.S. 312(D); Municipality Authorities Act, Section 10D.
27. 53 P.S. 10903; Pennsylvania Municipalities Planning Code, Section 903.
28. 53 P.S. 10614; Pennsylvania Municipalities Planning Code, Section 614.
29. 25 P.S. 2672; Pennsylvania Election Code, Section 402.
30. 24 P.S. 3-322; Public School Code, Section 322.
31. 16 P. S. 402(a); County Code, Section 402(a).
32. 53 P.S. 36001; Third Class City Code, Section 1001.
33. 65 P.S. 11; 1874 P.L. 186, Section 10.
34. 65 P.S. 14; 1874 P.L. 186, Section 14.
35. 53 P.S. 35801; Third Class City Code, Section 801; 53 P.S. 41406; Optional Third Class City Charter Law, Section 406; *DiGiacinto v. City of Allentown*, 406 A.2d 520, 486 Pa. 436, 1979.

36. 53 P.S. 35802; Third Class City Code, Section 802; 53 P.S. 41406, 41506; Optional Third Class City Charter Law, Sections 406 and 506.
37. 65 P.S. 79; 1982 P.L. 1354, No. 309.
38. 53 P.S. 36016, 36208; Third Class City Code, Sections 1016, 1208; 53 P.S. 41607; Optional Third Class City Charter Law, Section 607.
39. *City of McKeesport v. Popovich*, 119 P.L.J. 317, 1971.
40. 53 P.S. 37403; Third Class City Code, Section 2403(53).
41. 53 P.S. 37403; Third Class City Code, Section 2403(57).
42. 53 P.S. 35916; Third Class City Code, Section 916.
43. 65 P.S. 371; 1979 P.L. 156, No. 51.
44. 65 Pa.C.S.A. 1101.1; Public Officials and Employee Ethics Act.
45. *Consumers Education and Protective Association v. Schwartz*, 432 A.2d 173,495 Pa. 10, at 17, 1981.
46. 65 Pa. C.S.A. 1103(f); Public Officials and Employee Ethics Act.
47. 53 P.S. 36905; Third Class City Code, Section 1905.
48. 53 Pa.C.S.A. 3101; Home Rule Charter and Optional Plans Law.
49. Constitution of Pennsylvania, Article VI, Sections 6 and 7.
50. In re Petition to Recall Reese; 665 A.2d 1162, 1995.
51. 42 Pa. C.S.A. 8541; Judicial Code, Section 8541.

## IV. Legislative Powers

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### General Powers

Election to the governing body of any Pennsylvania municipality conveys a great deal of authority and responsibility. This authority is granted by various laws and codes vesting certain corporate and specific powers in the council. Corporate powers legalize the actions of a municipality and provide elected officials authority to act on behalf of their municipality.

General municipal corporate powers include the right to sue and be sued, to complain and defend in the courts of the commonwealth, the right to make and use a common seal and the right to purchase, acquire, hold, lease, let and convey by sale, real and personal property in the best interests of the municipality.<sup>1</sup> The Third Class City Code invests the corporate power of the municipality in the mayor and council.

The Code further delineates other powers enabling council to function in the best interests of the city. Specific powers provide council the authority to enact legislation covering governmental functions such as health, taxation, and fire and police protection. Specific powers granted to the city are intended to provide the elected official with the capability needed to legislate for the benefit of the municipality. The Third Class City Code lists 69 specific powers granted to city council in Section 2403 of the Code. Many additional grants of authority are scattered throughout the Code and other state laws.

The Code also includes an especially important power- an authorization to the governing body to make and adopt all ordinances, bylaws, rules and regulations deemed necessary for the proper management and control of the city in order to maintain good government and protect the safety and welfare of the citizens.<sup>2</sup> A municipality is forbidden, however, to enact any legislation in conflict with the Constitution and the laws of the commonwealth. This general grant of power authorizes any legal action on the part of council to maintain the peace, good government and welfare of the city and to protect the health, safety, morals and general welfare of its inhabitants. However, the full scope of this general grant of powers has never been realized or used in Pennsylvania cities operating under the Code.

A general grant of powers is found in the charters of all home rule cities. It usually authorizes the home rule city to exercise any power not prohibited by the Constitution, by the legislature, or by the charter itself. Detailed grants of power are not found in home rule charters. They assign the exercise of residual home rule power to the elected governing body, giving that body authority to define the powers of the city within the limits listed above.

### Types of Legislative Action

A governing body can only take official action as a body. Directions of a single member have no legal standing. Different types of actions are available to the council to be used for different purposes. The most commonly used types are ordinances, resolutions, motions and regulations. The specific type of action used may be determined by a statutory mandate or by the written or unwritten policy of the governing body.

**Ordinance.** An ordinance is a local law of general or permanent nature. As a local law, an ordinance stands until amended or repealed by another ordinance enacted by a later council. Penalties may be attached and enforced in the courts for failure to obey ordinances.

Various sections in the Code and pertinent general legislation require adoption of an ordinance for specific actions. Procedures for adopting ordinances are more complex, involving the expense of advertising and recording in a permanent manner. Some municipalities are tempted to bypass these procedures by adopting resolutions instead of ordinances, but if they wish their actions to have permanent effect and be enforceable with penalties, they cannot shortcut the ordinance adoption procedures.

**Resolution.** A resolution is an official statement of the will of the governing body. It lacks the permanent nature and the enforceability of an ordinance. Resolutions are particularly useful for actions of a temporary nature, such as governing investments and awarding contracts. These actions are not intended to be permanent and do not require penalties for enforcement.

**Motion.** A motion is the method of submitting issues to the council for formal deliberation and decision. All ordinances and resolutions are submitted by motion. Motions are also used to determine the will of the governing body on any issue presented to it. A motion is a parliamentary tool, not a legislative form.

**Regulation.** A regulation is an administrative, rather than legislative instrument. It is used to order the internal administrative affairs of the municipality. Regulations can include such matters as the governing body's own rules of procedure, personnel policies, regulations to govern administration of certain taxes or regulations governing sewer hookups. Regulations provide specific procedures to implement general policy statements established by ordinance or statute.

Some confusion exists over when to use ordinances or resolutions. Some code provisions specifically require an ordinance. Other laws state either ordinance or resolution. The governing body, with the help of its solicitor, should carefully consider the nature of its action and be aware that most municipalities mistakenly use a resolution when they should enact an ordinance.

## Ordinance Adoption Procedures

The solicitor should prepare ordinances in final form. Members of council can submit oral or written proposals concerning the desired measure, but the proposals should be finally drafted for consideration solely by the solicitor.

The Third Class City Code contains specific and detailed requirements for consideration of legislative proposals.<sup>3</sup> In cities, all proposed ordinances must be presented or introduced by a council member in the form of a written bill. The bill is then serially numbered by the clerk for each calendar year. Except for appropriations, no bill may include more than one subject as expressed in the title. Upon introduction, every bill must be read at length, as must all amendments or revisions prior to final adoption. The bill may not be finally passed on the same day it is introduced. At least three days, not including the day of introduction or the day of passage, must intervene. The measure is finally acted on after a second reading by a title only, except for changes in the original bill.

All proposed ordinances and resolutions of a legislative character must be published in a newspaper of general circulation within the municipality not more than 60 days or less than seven days prior to passage.<sup>4</sup> Publication must include the full text or the title and a brief summary prepared by the solicitor. The summary must include all provisions in reasonable detail and indicate a place within the municipality where the complete proposed ordinance can be examined. Full texts are to be supplied to the newspaper and filed in the county law library or other designated county office. If substantial amendments are made in the proposed ordinance, the proposal, including a summary of the ordinance and the amendments, must be re-advertised before the final enactment.

City ordinances, with certain exceptions such as the budget ordinance, become effective 10 days after passage. Every ordinance must be signed by the mayor and attested by the city clerk. The city clerk must place ordinances in an ordinance book. Ordinances and resolutions of a legislative nature are proved by certification by the city clerk, under the corporate seal, and when printed in book or pamphlet form under authority of the governing body, are to be read and received as evidence in all courts.<sup>5</sup>

In cities governed under the Optional Third Class City Charter Law, no ordinance can take effect less than 20 days after passage, except for the budget ordinance.<sup>6</sup> In optional plan cities, ordinances cannot take effect less than 10 days after final passage except for the budget ordinance.' In home rule cities, the effective date of ordinances is determined by charter. Home rule charters usually contain procedures for the adoption of ordinances. In mayor-council forms, the mayor exercises a veto power over legislation, subject to override by council.

## Initiative and Referendum

Voters in third class cities have a limited initiative and referendum power over ordinances. The voters may propose ordinances to city council by petition. The petition must be signed in the city clerk's office during a period of 15 days by registered voters equal to at least 20 percent of all votes cast for the office of mayor at the preceding mayoral municipal election. Council may either pass the proposed ordinance or submit it to the electorate at the next primary, municipal or general election occurring at least 90 days later.<sup>8</sup> The question is to state the nature of the proposed ordinance followed by the words "yes" and "no." If a majority of voters approve, the ordinance becomes effective. If defeated, the same subject matter cannot be voted on again for three years.

An initiated ordinance approved by the voters cannot be repealed or amended within 2 years, except through another referendum. Council can submit a question for repeal or amendment of any initiated ordinance enacted by the voters at any succeeding municipal, primary or general election.<sup>9</sup> The action of council must be submitted to the board of elections at least 90 days before the election.

Voters can protest ordinances passed by council. A petition must be signed in the city clerk's office within 10 days of final passage by registered voters equal to at least 20 percent of those voting for mayor at the preceding mayoral municipal election. If sufficient signatures are obtained, the ordinance is suspended from going into effect and council must reconsider the ordinance. If the ordinance is not repealed, council must place the question before the voters at the next primary, municipal or general election occurring at least 60 days later.<sup>10</sup> The question is to state the nature of the referred ordinance followed by the words "yes" and "no." If a majority of voters approve, the ordinance becomes effective from the date the results are certified. If defeated, the ordinance is lost and of no effect.

The Code lists six subject areas excluded from the initiative and referendum powers of the voters. These include ordinances required by state law or the courts, tax levies or appropriations, eminent domain, the exercise of police powers, incurring debt, and construction and maintenance of public works. Courts have interpreted the law in a manner restrictive of the exercise of the initiative and referendum powers. Such issues as fluoridation of water,<sup>11</sup> municipal salary ordinances,<sup>12</sup> and public housing policies<sup>13</sup> have been excluded from initiative and referendum power.

Many of Pennsylvania's home rule charters authorize direct legislative action by the voters through provisions for initiative and referendum. Of the 19 cities with home rule charters, 14 provide for initiative and referendum. Generally, the voters can propose ordinances or require reconsideration of ordinances adopted by the governing body through a petition process. Should the governing body fail to enact a proposed ordinance or repeal a protested adopted ordinance, the issue is then framed into a ballot question and presented to the voters as a referendum. The outcome of the voting will determine enactment of the initiated ordinance, either sustaining or nullifying the referred ordinance.

Requirements for number of signatures and filing dates for petitions vary from charter to charter, as do time limits for governing body action after presentation of a petition. Often there are limitations on the initiative and referendum powers. Areas commonly excluded from this activity include budget matters, the capital program, emergency ordinances, and ordinances levying a special assessment, appropriations, salaries of officers and employees and borrowing. The number and extent of exclusions varies from charter to charter. Since home rule municipalities are subject to the Pennsylvania Municipalities Planning Code, planning and zoning activities are excluded from the initiative and referendum process in home rule jurisdictions.

## Meetings

The Council meets on the first Monday of January following the regular municipal election. The meeting is held at the usual place of meeting for the purpose of organizing. The mayor will serve as president of the council and as a member of city council with the same rights and duties of other members. The vice president is a member of city council.

The Third Class City Code requires council to meet at least once a month. Only the date of the organizational meeting is set by code as the first Monday in January of each even-numbered year. The mayor may call a special meeting of council.

If requested by two council members, the mayor is required to call a special council meeting. Members of council must be given 24 hours' notice of special meetings. The code requires council meetings be open to the public, but exclusions to the public meeting requirement found in the Sunshine Act are incorporated by implication in the Third Class City Code.<sup>4</sup>

A quorum is the minimum number of members of a legislative body required to be present to conduct the business of the body. The Code states three members of council constitute a quorum. Each member is required to vote on all questions coming before council, except when a member has a personal interest in an issue.<sup>15</sup> In such case, the member must abstain from voting or even discussing the issue. An affirmative vote of three members is required to pass any ordinance, resolution, rule or regulation. Although council members are prohibited from voting on any issue where there is a personal conflict of interest, they sometimes abstain from voting on issues where they have no personal interest. Local government is based on the concept of representative democracy. Governing body members are elected to represent their constituents in making decisions for the community. Refusing to vote because a matter is contentious or may cause personal resentments is not acceptable. Council members refusing to vote are violating their sworn duty to represent the voters in helping to decide matters before the governing body. In cities operating under the Code, an abstention is the same as a "no" vote since a measure must receive three affirmative votes to pass. The city clerk must record the vote on each measure before council. The mayor in a commission city has no veto power.

Cities with optional plans under Act 62 of 1972 have meeting requirements similar to cities governed by the Third Class City Code.<sup>16</sup> Home rule cities are able to adopt their own requirements for meetings and voting in their charters or by local legislation. However, the Sunshine Act requirements apply to all cities.

## Conduct of Meetings

The Third Class City Code, Optional Third Class City Charter Law and the Home Rule Charter and Optional Plans Law do not set forth rules of conduct or procedure for municipal meetings. Each city is free to establish its own order of business and rules for conduct and procedure! Most cities have procedures for their meetings set by ordinance, resolution or perhaps tradition. Rules of procedure are always within the control of the majority and may be changed at any time by majority vote.

An effective chair will ensure an agenda is prepared for each meeting. This is necessary for several reasons: (1) the agenda provides a guide for the chair to keep the meeting on track; without an agenda or an ordered sequence of events it is too easy for extraneous issues to disrupt the meeting; (2) an agenda assures all relevant points concerning the business at hand will be discussed; and (3) an agenda allows all the participants in the meeting know exactly when they will be expected to make their contribution.

An agenda also serves another useful purpose by enabling a city to inform the public and news media in advance of relevant topics to be discussed at a meeting. The news media in turn helps encourage citizen participation in a city's decision making process.

The following is an example of a city meeting agenda which, with minor variations, follows the general pattern used by many municipalities in Pennsylvania.

## Meeting Agenda

1. **Call to Order** - The presiding officer of council calls the meeting to order. A roll call is conducted to determine if a quorum is present.
2. **Minutes of the Previous Meeting** - Minutes from the previous meeting or meetings are presented for approval. To expedite the procedure, minutes of the previous meeting should be typed and mailed to council members for their review prior to the meeting. Minutes are reviewed for possible corrections, deletions or additions. Changes to the minutes or approval of the minutes can be made without a motion if there are no objections.

3. **Financial Report** - The director of accounts and finance (or finance officer) gives a report of expenditures and revenues since the previous council meeting. Once again, a typed report mailed to officials prior to the meeting could expedite action on financial matters.
4. **Correspondence** - Letters or verbal communications requiring the attention of council received since the last meeting should be noted and acted upon.
5. **Persons to be Heard** - Any individual or representative of any organization may request to appear before council to present any matter they feel is of municipal concern. Some cities require persons wishing to participate in the meeting to be placed on the agenda prior to the meeting. Most cities set a reasonable time limit on citizen presentation. It is a good policy to have the presentation early in the meeting so persons requesting to be heard will not be inconvenienced by a lengthy meeting.
6. **City Reports** - Standing committees, special committees, the city manager, administrative officers and consultants are usually required to give reports on current projects in which they are involved. Cities not having managers usually require monthly or special reports from department heads.
7. **Unfinished Business** - Items of city concern not completely resolved are discussed in the unfinished business category until council takes some conclusive action.
8. **New Business** - Once all topics of unfinished business included on the agenda are covered, the meeting should be open to new business. It may include such items as bid openings, consideration of new ordinances or discussion of new public works programs. During this portion of the meeting, council may discuss any appropriate subject or make announcements of importance to other officials or those in attendance.
9. **Public Participation** - This allows residents of the city in attendance to be recognized even though they had not previously been placed on the agenda by the manager or clerk. A time limit is usually placed on an individual's presentation and any resulting discussion.
10. **Adjournment** - A meeting may be adjourned once business is completed.

## Parliamentary Procedure

Rules of parliamentary procedure expedite business and preserve order. The presiding officer of council is the one person primarily responsible for seeing rules and procedures are followed. However, too intricate a system of parliamentary procedure has often caused undue delay of business and frustration among elected officials. Rules and procedures should be followed to the extent necessary to transact business in an adequate, expedient manner

The most commonly used standard code on parliamentary procedure is *Robert's Rules of Order* by Henry M. Robert. *Jefferson's Manual* and *Cushing's Manual* also contain legislative procedures. Municipalities tend to adopt their own unwritten procedural rules over the years. Failure to document these rules can lead to problems in the future.

## Sunshine Act

The Sunshine Act requires all public agencies to take all official actions and conduct all deliberations leading up to official actions at public meetings.<sup>18</sup> The Act covers all actions by council and its committees and by all boards and commissions of the city. Official actions include making recommendations, establishment of policy, decisions on municipal business, and votes taken on any motion, resolution, ordinance, rule, regulation, proposal, report or order.

Notice must be given of all public meetings. Notice of regularly scheduled meetings may be given once a year by advertising in a newspaper of general circulation at least three days before the first meeting. Notice must also be posted at the city's principal office. For rescheduled or special meetings, notice must be published in a newspaper of general circulation at least 24 hours in advance, plus posting.

Executive sessions, or meetings from which the public is excluded, may be held only for a limited number of enumerated purposes. These include discussing personnel matters relating to a specific individual, strategy sessions and negotiations for collective bargaining agreements, purchase or lease of real estate, consultation with the solicitor in connection with ongoing or pending litigation, or to discuss any municipal business which, if conducted in public, would violate a legal privilege or protected confidentiality. Since the Act contains the legislative declaration of public policy as ensuring the right of citizens to attend meetings of public bodies, any use of the executive session should be limited to situations clearly falling within the list of enumerated purposes.

Executive sessions may be held during a public meeting or announced for some other time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. Any official action taken on the basis of discussions held at an executive session must be taken at an open meeting.

Public notice is not required for emergency meetings, but these must still be open to the public. Emergency meetings are defined as those called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property. City council members are permitted to attend conferences, training programs or seminars to gather information on their responsibilities. These sessions are not required to be open to the public. However, city business may not be discussed at such gatherings.

City councils are required to provide an opportunity for public comment at each advertised regular or special meeting. The right of citizens to make comments is limited to matters of concern, official action or deliberation which are or may be before the governing body. A 1998 amendment to the Act requires that public comment occur prior to council taking official action on an issue. The amendment also gives the council the option of accepting all public comments at the beginning of a meeting.<sup>19</sup> A council may also limit the right to speak during this period to residents and taxpayers of the city.

The Sunshine Act applies to home rule municipalities as uniform legislation applicable in every part of the commonwealth. Moreover, many home rule charters include provisions similar to those found in the Sunshine Act. Some charters go further than the Sunshine Act, requiring publication of meeting agendas.

## **Minutes and Records**

A city council must keep minutes of its proceedings and official actions. The Sunshine Act requires a minimum of four items be included in the minutes for each meeting.<sup>20</sup> These include the following:

- The date, time and place of the meeting.
- The name of members present.
- The substance of all official actions and a record by individual member of the roll call votes taken.
- The names of all citizens who appeared officially and the subject of their testimony.

In addition to the Sunshine Act, the Third Class City Code requires “ayes” and “nays” be recorded for every vote, as well as the reason for a member excused from voting recorded in the official minutes. Every motion, resolution and ordinance is to be reduced to writing before a vote is taken.<sup>21</sup> The minutes must be available for public inspection. They must be transcribed in a bound book. Cities operating under the Optional Third Class City Charter Law or optional plans under Act 62 of 1972 also require the city clerk to keep minutes of every council meeting.<sup>22</sup> Minutes are valid if typewritten, printed, Photostatted or microfilmed and may be stapled, glued or taped to the pages of such books, if the municipal seal is impressed upon each page to which the pages of minutes are attached. The seal impression must cover both a portion of the attached page of minutes and a portion of the page of the book to which it is attached.<sup>23</sup>

Minute books are permanent records of the city; they may never be discarded. Creation of a backup copy of each volume of minutes, either by photocopy or microfilm, is recommended. Original minute books should be stored in the vault where the most valuable records of the city are kept.



The Right to Know Law guarantees citizen access to certain defined public records of local governmental agencies.<sup>24</sup> Any citizen has a right to examine, inspect and make copies of public records under this law. If a citizen requests information and is denied access, the citizen may appeal this decision to the courts.

Many home rule charters include specific provisions guaranteeing citizen access to public records. However, the Right to Know Law applies to all municipalities in the state, including home rule municipalities.<sup>25</sup> Courts have found that the right to inspection of public records is a substantive matter of statewide concern. Access to records under the Right to Know Law overrides more restrictive limitations found in any home rule charter.

## Intergovernmental Cooperation

Throughout the United States and Pennsylvania, elected local government officials are being confronted with problems which lend themselves to regional solutions. Citizens are requesting additional services in such diverse areas as new recreation facilities, increased police protection, code enforcement, planning and management of growth and library services. At the same time, these citizens are demanding increased services not be funded by increased taxes. State governments are also making demands by insisting local elected officials solve problems of solid waste disposal and sewage, air and water pollution. These actions are frequently being demanded without regard to a community's ability to pay for the solutions.

Furthermore, because of modern transportation systems, we now have citizens living in one political jurisdiction, working in another, and enjoying their recreation in yet another. These people expect to find (and in most cases, are willing to support) adequate services and facilities wherever they are. They are not concerned with jurisdictional boundary lines. It has become very difficult to draw a meaningful line between urban and rural municipalities, and between cities, boroughs and surrounding townships, especially when considering police protection, refuse collection and disposal, sewage facilities, economic development, housing, flood control and water supply.

Since problems are frequently regional in nature, it is sometimes suggested that municipalities simply consolidate. A procedure allowing municipalities to merge or consolidate is found in the Pennsylvania Constitution.<sup>26</sup> It is accomplished through initiative and referendum. The same process is available to achieve annexations. Any annexation procedures still found in the municipal codes have been invalidated by the courts.<sup>27</sup> Despite the 1968 addition of this procedure to allow voters to consolidate or merge municipalities, it has not proven very popular. Since 1975, 22 proposals for consolidation or merger of municipalities have been placed on the ballot, with only eight of them receiving the approval of the voters. The most spectacular was the consolidation of Benzinger Township and St. Marys Borough to form the new City of St. Marys.

Because complete consolidation or merger has been so difficult to achieve, municipalities have found other ways to address regional issues. One such approach has been the council of governments' concept. Whether officially called a council of governments or some other title, the idea is based on joint discussion and action by elected officials of each municipality in an area as an efficient way to solve regional problems. Local governments already engaged in regional programs through a council of governments' concept have found a way to provide realistic solutions to problems too large and too costly for any one municipality to solve completely on its own.

**Description of a Council of Governments.** A council of governments or COG is a voluntary association of local government units joined together under a written compact to improve cooperation, coordination and planning. The COG is intended to provide an entity for undertaking cooperative municipal activities authorized by the state Constitution and acts of the General Assembly such as the Intergovernmental Cooperation Act of 1972.<sup>28</sup> By mutual agreement, the members seek solutions to mutual problems. Members of a COG realize the future of each of the local governments depends not only on the action of that government itself, but also on the relationships and interdependent actions of each of the municipalities in the region.

A COG is an informal council. It is not a government, but merely a forum of existing governments from each participating community. COGs do not have the power to levy taxes. They are voluntary. No government is required to join and members can withdraw at will. They are flexible and their composition may be tailored to fit the needs of the specific area. Most are multipurpose in scope; and engage in a variety of activities, such as joint purchasing, criminal investigation and regional recreation. After the initial, critical stage of their creation, they are relatively easy to maintain and operate. Most councils act as a forum to identify, discuss, study and reach policy and priority agreements on regional problems and opportunities. They endeavor to:

- Serve as a place for the collection and exchange of information of regional interest.
- Provide the machinery to insure communication and coordination between various local government units is maintained.
- Provide a method for individual municipalities within the region to project a unified voice to state and federal governments, thereby strengthening local government by providing the vehicle for dealing with the larger units.
- Provide an opportunity to minimize conflicts and misunderstandings between individual municipalities.
- Provide an apparatus to perform certain local government activities in a manner promoting effectiveness and efficiency.

## References

1. 53 P.S. 37402; Third Class City Code, Section 2402; 53 P.S. 41303; Optional Third Class City Charter Law, Section 303.
2. 53 P.S. 36006; Third Class City Code, Section 1006.
3. 53 P.S. 36012; Third Class City Code, Section 1012; Lancaster City Ordinance Case, 119 A.2d 307, 383 Pa. 471, 1956.
4. 53 P.S. 36014; Third Class City Code, Section 1014.
5. 53 P.S. 36014; Third Class City Code, Section 1014.
6. 53 P.S. 41608(b); Optional Third Class City Charter Law, Section 608(b).
7. 53 Pa.C.S.A. 3143(b); Home Rule Charter and Optional Plans Law.
8. 53 P.S. 36035; Third Class City Code, Section 1035.
9. 53 P.S. 36040; Third Class City Code, Section 1040.
10. 53 P.S. 36059; Third Class City Code, Section 1059.
11. *Williams v. Rowe*, 283 A.2d 881, 3 Pa.Cmwlth. 537, 1971; *Roth v. Saeger*, 36 Lehigh L.J. 515, 1976.
12. *Catalano v. Swanger*, 60 D.&C.2d 320, 1973.
13. *Bogert v. Kistler*, 38 D.&C.2d 133, 1965.
14. 53 P.S. 36005; Third Class City Code, Section 1005; 53 P.S. 41606; Optional Third Class City Charter Law, Section 606; *Mellin v. City of Allentown*, 430 A.2d 1048, 60 Pa.Cmwlth. 114, 1981.
15. 53 P.S. 36007; Third Class City Code, Section 1007.
16. 53 Pa.C.S.A. 3141,3142; Home Rule Charter and Optional Plans Law.
17. 53 P.S. 36004; Third Class City Code, Section 1004; 53 P.S. 41607(a); Optional Third Class City Charter Law, Section 607(a); 53 Pa.C.S.A. 3142(a); Home Rule Charter and Optional Plans Law.
18. 65 Pa.C.S.A. 704; 1998 P.L. 729, No. 93, Section 1.
19. 65 Pa.C.S.A. 706; 1998 P.L. 729, No. 93, Section 1.
20. 65 P.S. 276; 1986 P.S. 388, No. 84, Section 6.
21. 53 P.S. 36008; Third Class City Code, Section 1008.
22. 53 P.S. 41606; Optional Third Class City Charter Law, Section 606; 53 Pa.C.S.A. 3141; Home Rule Charter and Optional Plans Law.
23. 53 P.S. 37402.2; Third Class City Code, Section 2402.2.
24. 65 P.S. 66.1 et seq.; 1957 P.L. 39, Section 1.
25. *Maak v. Philadelphia Newspapers, Inc.*, 336 A.2d 920, 18 Pa.Cmwlth. 599, 1975.
26. Pennsylvania Constitution, Article IX Sections 8 and 14.
27. *Middle Paxton Township v Borough of Dauphin*, 326 A.2d 342, 458 Pa. 396, 1974.
28. 53 Pa.C.S.A. 2301; Intergovernmental Cooperation Act

## V. Administrative and Appointive Powers

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Local government is becoming more complex every day. Residents are demanding more services and federal and state governments are placing more responsibility at the local level. The administration of local government has reached the point where it is extremely difficult for a governing body to handle all of the day-to-day administrative functions without help. Many cities have delegated extensive administrative powers to appointed officials. Some cities have appointed professional managers; others have business administrators working under the mayor, while more traditional cities rely on the city clerk to perform many administrative tasks.

### Personnel Management

Personnel management is a key to efficient government operation. Many functions of local government are categorized under personnel management: record-keeping, employee hiring policies, affirmative action policies, personnel in-service training plans, employee relations policies, systems for maximizing employee potential, standards for wage and salary administration and providing for employee benefits.

**Hiring Employees.** Hiring employees involves recruiting and selecting the proper personnel. A number of personnel selection tools can be helpful to a municipality. Job descriptions should include a general definition of work to be performed, specific examples of work, required knowledge, skill and ability. A listing of essential functions should be developed for each job. The establishment of a minimum training and experience requirement will help to provide a city with qualified applicants, and will also supply prospective applicants with some details of the responsibilities of a position.

Well-designed application forms can provide a municipality with important background information on an applicant's education, experience and relevant personal information. Personal interviews, tests and reference checks can also aid a municipality in personnel selection. Hiring processes should be carefully reviewed for compliance with federal civil rights laws and the Americans with Disabilities Act.

**Employee Training Program.** Knowledgeable and experienced city officials and staff are essential to the progress of city government in Pennsylvania. Good training is important at all levels. New officials must know their jobs properly. Managers must be able to plan programs, assign responsibilities, and monitor the progress of city projects to ensure that activities are running well. City staff must know how to do their work in the most effective and efficient way possible. A sound training and development plan based on an assessment of city operations and staff knowledge and abilities can be an effective tool to improving city operations. Performance-based training for officials, managers, supervisors and employees should be a routine part of a city's personnel management system.

The Department of Community and Economic Development's Governor's Center for Local Government Services is available to help city officials assess their needs and to design programs to help improve city operations. The Center offers a large variety of specific training courses under the broad areas of general government administration, finance, management, community planning and zoning, and community and economic development. Courses are scheduled throughout the commonwealth and training is provided through contracted municipal training organizations.

**Wage and Salary Administration.** Wage and salary scales are commonly based on job classifications. The classification of a job in accordance with duties and qualifications is a tedious personnel procedure. The presence of an adequate job classification system can be a key element in maintaining stable management-employee relations.

A classification plan groups similar positions into classes to permit common treatment in employment practices and compensation. Basically, a classification system involves classifying positions by nature of work, level of difficulty, degree of responsibility and training and experience requirements.

**Compensation Plan.** The best compensation plans are based on specialized job evaluation systems. For local governments without such systems it may be best to begin developing an employee wage schedule by determining what competing employers are paying for similar positions. The first step is to survey the labor market. Depending on the type of position to be surveyed, the labor market can be as small as the local area or as large as the state.

To be effective, a wage schedule should be based on accurate and current information about compensation provided by other employers for similar jobs in both the public and private labor market. Usually the best indicators of the local labor market are the rates being paid for comparable work in the private sector, because the private sector usually covers the largest segment of the labor force. Municipal officials must look at the total compensation picture. Fringe benefits are an important part of the total compensation picture and should be examined carefully.

**Labor Relations Laws.** The Public Employee Relations Act was established to promote orderly and constructive relationships between all public employers and their employees.' The Act grants employees the right to organize, requires employers to negotiate and bargain with employee organizations representing public employees and to enter into written agreements evidencing the result of such bargaining. It establishes procedures to protect the rights of the public employee, the public employer and the public.

The Act lists a number of activities which may lead to unfair labor practice charges for both employers and unions. It is unlawful for employers or managers to interfere, restrain or coerce employees in their rights to form and administer a union. A union on the other hand may not interfere with an employer complying with the provisions of the Public Employee Relations Act, nor may it restrain or coerce employees to join or not join a union.

A separate act, commonly referred to as Act 111, covers police officers and paid firefighters and authorizes collective bargaining with public employers concerning the terms and conditions of employment, including compensation, hours, working conditions, retirement, pensions, and other benefits? The Act provides for arbitration in order to settle disputes and requires compliance with collective bargaining agreements and findings of arbitrators. Both labor relations laws apply to home rule municipalities.

**Other Personnel Laws.** A number of state and federal laws govern the treatment of employees and job applicants. They prohibit discrimination based on race, religion, national origin, sex, age and disability. They govern who must receive a minimum wage rate and when overtime rates must be paid. They require that certain benefits be paid to employees injured on the job. Cities can be subject to serious penalties for failure to adhere to these laws. The Pennsylvania League of Cities and Municipalities offers a labor advisory service to municipal governments, offering guidance on employment law issues.

## Appointment Powers

The successful operation of a municipality is a complex task requiring the time and effort of many people. Many times the elected officials and employees have insufficient time or expertise to personally become involved in every aspect of city government. The Code and state legislation allow elected officials to enlist the capabilities of citizens of the municipality through creating authorities, boards and commissions. Although some of these entities are mandatory, such as a zoning hearing board, many others are permissive. The concept of authorities, boards and commissions not only allows officials to draw on citizens with particular expertise, but also provides a channel for citizens to become more directly involved in their government.

The members of most authorities, boards and commissions serve without pay and their primary reward is the satisfaction derived from helping the people of a city. When elected officials have the opportunity to recommend appointments to authorities, boards and commissions, such appointments should reflect as many different cross sections of a city as possible. People from different neighborhoods, different occupational backgrounds and with different interests should be appointed.

Since many appointed offices are semi-independent of the governing body, such as the zoning hearing board or municipal authority, it is especially important the persons appointed have certain personal qualifications such as patience, understanding, courteousness, reasonableness and fairness. An attempt should be made to utilize people who can make unbiased judgments in dealing with city concerns.

Municipal governing bodies' appointment powers are limited to filling actual vacancies. Council must wait until vacancies actually exist before making appointments to boards and commissions. Commonwealth Court has ruled that an outgoing governing body lacked the authority to make "midnight" appointments to various boards. The vacancies on the boards were not effective until after the governing body members' terms expired.<sup>3</sup>

Some of the more common boards, commissions and authorities are discussed below. In addition to these formal bodies made up of groups of citizens, council members are also involved in the appointment of individuals to provide a particular expertise to a city such as a solicitor, clerk, engineer and manager.

## Boards and Commissions

**Planning Commission.** Planning commissions or planning departments may be created by cities.<sup>4</sup> A planning commission has from three to nine members appointed to four-year terms. In cities, commission members are appointed by the mayor with the approval of council. At the direction of the governing body, the planning commission may be required to prepare a comprehensive plan for the city, to prepare and make recommendations on an official map and to prepare land use control ordinances including zoning ordinances and subdivision and land development ordinances. In addition, it may be required to prepare building and housing codes, prepare environmental studies and recommend capital improvement programs for the city.

**Zoning Hearing Board.** Any city which has enacted a zoning ordinance must appoint a zoning hearing board.<sup>5</sup> The board is established to hear appeals on the validity of the zoning ordinance or map or any decision of the zoning officer. In addition, the board has the power to grant variances and special exceptions to the ordinance. The zoning hearing board is either a three-member or five-member quasi-judicial board consisting of residents of the municipality who may hold no other elected or appointed position. Members are appointed by city council.

**Recreation Board.** Cities have the power to provide, improve, maintain and regulate public parks, playgrounds, playing fields, swimming pools or recreation centers. Cities may create a recreation board to equip, operate and maintain recreation places.<sup>6</sup> Where created, recreation boards have five to nine members, with two members appointed by the school board. City members are appointed by the mayor with the approval of council. Members serve staggered terms of no longer than five years. Board members receive no compensation.

**Shade Tree Commission.** Cities may enact an ordinance creating a Shade Tree Commission. Commissions are composed of three to seven members appointed by the mayor. Members serve without compensation. The shade tree commission has authority to plant, remove, maintain and protect shade trees on the streets or sidewalks of the city.<sup>7</sup>

**Board of Health.** Cities may create by ordinance a board of health.<sup>8</sup> The board of health is composed of five members appointed by city council for terms of five years. Members serve without compensation. The board has the responsibility for preventing the spread of infectious or contagious diseases, removing nuisances' prejudicial to public health and enforcing the laws of the commonwealth and the rules, regulations and orders of the State Department of Health. The board also appoints a health officer who is responsible for executing the orders of the board.

**Civil Service Boards.** The Third Class City Code requires cities to establish separate civil service boards for appointing police officers, health officers and positions in the engineering and electrical departments and building inspectors.<sup>9</sup> Each board consists of three citizens selected by city council for a four-year term. Board members receive no compensation.

Each civil service board is responsible for adopting rules and regulations to cover the selection and appointment of personnel. The boards must administer examinations to prospective employees and maintain a list of applicants who have passed the required mental and physical examinations.

The Firemen's Civil Service Act governs appointment and promotion procedures in paid city fire departments.<sup>10</sup> This Act mandates the establishment of a three-member civil service commission appointed by city council. Members serve four-year terms. The commission has the authority to adopt rules and regulations concerning appointments and promotions in the fire department. The Act provides detailed procedures covering the suspension, reduction in rank or removal of paid firefighters.

**Human Relations Commission.** State law authorizes cities to establish by ordinance or resolution a human relations commission.<sup>11</sup> City council determines the number, qualifications, and method of appointment and removal of commission members. Members serve without pay. Local commissions have powers and duties similar to the Pennsylvania Human Relations Commission. Commissions may initiate, receive, investigate and pass upon complaints alleging unlawful discriminatory practices.

Home rule municipalities may have different arrangements for appointments to boards and commissions under the terms of their charters. They may also grant different powers or duties to various city entities.

## Municipal Authorities

Cities may form municipal authorities for various purposes.<sup>12</sup> Although the local government plays a role in the creation of an authority and appoints its board members; the authority is not part of the municipal government. An authority is an independent agency of the commonwealth. It is a public corporation engaged in the administration of civil government. An authority is a separate legal entity with the power to incur debt, own property and finance its activities by means of user charges or lease rentals.

The main purpose of an authority is to establish a governmental unit to raise money independently for specified projects. The borrowing capacity depends on its ability to be self-supporting. Generally, authorities finance revenue-producing projects such as sewer and water facilities, solid waste disposal systems, parking garages, auditoriums, incinerators, municipal buildings, parks and swimming pools. The revenues generated by a project must be adequate to operate the project, meet all debt payment obligations and provide for reserve maintenance funds as needed.

**Types of Authorities.** Authorities may be simply financing authorities or they may be financing and operating authorities. A financing authority has the responsibility for obtaining funds, disbursing the funds for engineering, legal fees and construction, and for making scheduled principal and interest payments on the debt. A financing authority generally leases the completed project facilities back to the municipality for operation. As an example of this kind of arrangement, a municipal authority may finance and construct a sewage system and treatment facilities. Upon completion, the system is leased back to the municipality. The municipality collects all sewer rentals from the users and places that revenue in a separate municipal sewer rental fund. Lease payments are made from the sewer rental fund to the authority in amounts adequate to cover the debt service, plus additional amounts for reserve funds or major improvement funds, as appropriate. A portion of the revenue is retained by the municipality to pay for the operations and management of the treatment plant.

In this kind of leaseback arrangement, the municipality and the authority should spell out clearly the responsibilities of each, particularly with respect to capital expenditures for the system. Often the municipality will set aside capital reserves within the sewer revenue fund to provide for capital expenditures such as trucks or other movable equipment. In addition, the authority will usually maintain a capital improvement fund for expansions or major improvements to the system.

A financing and operating authority differs from that described in the preceding paragraph. An operating authority hires the labor and provides materials and equipment to operate the project after completion. The employees work for the authority rather than the municipality. Except to enact enabling ordinances, appoint authority board members and enforce collection of delinquent accounts, the municipality has relatively little to do with the day-to-day operation of the project.

**Forming a Municipal Authority.** An authority can be formed by any county, city, borough, township or school district through passage of an ordinance by the governing body. In addition, two or more municipalities may join together to form a joint authority. A joint authority is a form of intergovernmental cooperation. It is a reflection of the need for municipalities to cooperate to deal with problems which transcend municipal boundaries. Joint authorities are most often used when major capital investments are required. Joint authorities have been formed for sewage treatment, water supply, transit systems, swimming pools and others.

Municipal authorities are governed by a board with members appointed by the governing body of the incorporating local government. Boards may not consist of less than five members, and boards of joint authorities should contain at least one representative from each participating municipality. In 2000, the Municipal Authorities Act was amended to require board members to be residents of the appointing governing body. The term of office is five years. Board members may succeed themselves. The Third Class City Code prohibits members of authority boards from serving on city councils.<sup>13</sup>

In cities governed by optional plans under Act 62 of 1972, the mayor has the power to appoint members of city boards and commissions. However, the Commonwealth Court has ruled boards and commissions in the Optional Plans Law includes only boards and commissions in city government and not boards of municipal authorities.<sup>14</sup> The mayor's appointment power does not extend to boards of municipal authorities. All appointments to boards of municipal authorities are governed by the Municipality Authorities Act which gives that power to the governing body, and not by the municipality's charter, optional plan or municipal code.

An authority can provide valuable service in a municipality. Its capability to finance and operate projects provides many of the benefits of both governmental and private operations. However, since the appointed authority officials do not answer directly to the electorate, it is advisable for elected officials to exercise some degree of control over authority operations. The authority board's role and responsibilities should be clearly defined in the resolution creating the authority. For example, if an authority is formed to finance and construct several sanitary landfills for solid waste disposal in a countywide system, it may be desirable to clearly state the authority is limited to those activities. If no limitation is placed, the authority might choose to extend its activities into collection, recycling or other aspects of the solid waste disposal program, beyond the scope originally intended by the creating municipal governing bodies.

In addition to the appointment power, there are other control mechanisms available to the governing body. Municipalities receive audits of authority accounts and can fix salaries of the authority members, if they are paid. The authority is self-regulating in the sense it must show good evidence of engineering and financial feasibility in order to obtain financing.

## **Housing Authorities stop**

Unlike municipal authorities, housing authorities may only be organized by cities and counties.<sup>15</sup> In third class cities, they are governed by boards of five members appointed by the mayor. In second class cities, the mayor appoints seven members. In first class cities, the mayor appoints two members, the city controller appoints two and the four select an additional member. All serve for five-year terms. Housing authorities can exercise the power to eminent domain to acquire and clear land to provide safe and sanitary dwellings through new construction or rehabilitation of existing structures. Housing authorities act in close relationship with the federal Department of Housing and Urban Development (HUD) to implement federal housing laws.

Housing authorities may issue bonds to be repaid from the revenue of housing projects and state and federal subsidies. The bonds can be backed by a pledge of revenues and mortgages on property owned by an authority. Principal funding for authority operations comes directly from the federal budget with little input from city officials.

In the first few decades of operation, emphasis was on slum clearance and the erection of large public housing projects. By the 1970s, this approach was demonstrated to be of doubtful utility for housing families. New concepts such as scatter-site housing and rent subsidies for public housing tenants in private housing units were a response to the problems of massive projects. Experiments are being made in tenant management and sale of public housing projects to the tenants.

## Redevelopment Authorities

Like housing authorities, redevelopment authorities may be created only by cities and counties.<sup>16</sup> They are governed by a board of five members appointed for five-year terms by the mayor. Redevelopment authorities have the power to condemn properties in designated blighted areas under eminent domain to clear the land and resell it to private interests for redevelopment. Any redevelopment proposal must be approved in advance by city council. Each sale of land within a redevelopment area must also be approved by council.

Authorities may acquire blighted properties located outside a certified redevelopment area. Such properties must be certified to the authority by a blighted property review committee with representation from council, the redevelopment authority, the planning commission and the chief executive officer. Redevelopment authorities also have the power to finance private development projects within the designated blighted area.

In the early years, the emphasis of urban redevelopment was the clearance of land and redevelopment of the area with new construction. In the 1970s, the emphasis changed to conservation and reuse of existing buildings and maintenance of the economic and social fabric of neighborhoods through housing rehabilitation, social service and job creation programs. Community development funding now goes directly to the cities. In many places, the programs of redevelopment authorities have been moved into city development departments, with the authority remaining in place solely for eminent domain purposes.

## Business District Authorities

Business district authorities have been a valuable tool for downtown revitalization efforts in cities. Formation of business district authorities was first authorized in 1980. These authorities have power to designate business improvement districts within commercial areas, develop a plan for the improvements and also for administrative services and, with the approval of the governing body, to levy assessments to pay their costs.

Administrative services improve the ability of commercial establishments to serve consumers. They can include free or reduced fee parking, transportation subsidies, public relations programs, group advertising and district maintenance and security services. Business improvements are capital improvements designed to make the district more commercially attractive and functional, including sidewalks, street paving, street lighting, parking facilities, trees and plantings, pedestrian walks, sewers, waterlines, rest areas and rehabilitation or clearance of blighted structures.

## References

1. 43 P.S. 1101.101 *et.seq.*; Public Employee Relations Act
2. 43 P.S. 217.1; 1968 P.L. 237, No. 111.
3. *Ross Township v Menhorn*, 588 A.2d 1347, 138 Pa.Cmwlt. 686, 1991.
4. 53 P.S. 10201; Pennsylvania Municipalities Planning Code, Section 201.
5. 53 P.S. 10901; Pennsylvania Municipalities Planning Code, Section 901.
6. 53 P.S. 38704; Third Class City Code, Section 3704.
7. 53 P.S. 38804; Third Class City Code, Section 3804.
8. 53 P.S. 37301; Third Class City Code, Section 2301.
9. 53 P.S. 39402; Third Class City Code, Section 4402.
10. 53 P.S. 39861; Firemen's Civil Service Act
11. 43 P.S. 962.1; Pennsylvania Human Relations Act
12. Act 22 of 2001 (no Purden's reference as of printing)
13. 53 P.S. 36001; Third Class City Code, Section 1001.
14. *City Council of City of Hazleton v. City of Hazleton*, 578 A.2d 580, 134 Pa.Cmwlt. 174, 1990.
15. 35 P.S. 1544; Housing Authorities Law.
16. 35 P.S. 1704; Urban Redevelopment Law.



## VI. Fiscal Powers

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A significant portion of the management of a city involves raising and spending public money to perform its governmental functions. As a city official you will be involved in the fiscal management of the city. You will be responsible not only for raising the necessary money through taxes, service charges and grants, but also for seeing municipal funds are spent in accordance with the budget and capital program established.

### Revenues

In recent decades, there has been a shift away from taxes as the primary source of city revenues. Cities have experienced a slowing of tax base growth due to a steady population decline, particularly of middle class residents. In 1950, those jurisdictions in Pennsylvania classified as cities had a combined population of 4,529,953; in 1960, 4,281,519; in 1970, 3,992,791; in 1980, 3,469,151; in 1990, 3,260,920; in 2000, 3,076,478; and in 2010, 3,078,653. In the period 1950 to 2010, the combined population of Pennsylvania cities has declined by 32 percent. Tens of thousands of jobs have been lost as economic activity has spread out of cities into neighboring jurisdictions.

At the same time, the demand for services has not decreased. The population of cities has tended to concentrate in sectors needing higher levels of public services, including low-income households, the elderly, the disabled and single parent families. These are the very groups least able to pay for public services. Additionally, cities bear a disproportionate share of tax-exempt facilities which often service a wider urban area.

### Taxes

The Third Class City Code authorizes real estate taxes of up to 25 mills for general purposes.<sup>2</sup> An additional five mills for general purposes can be levied with court approval. In addition to the general purpose levy, cities may levy special real estate millages for such purposes as debt service, recreation, libraries, shade trees, charity support and community colleges. These taxes are authorized by the Code or separate legislation. Some of these special levies carry a maximum millage rate, while others are unlimited, but all revenue from each special levy must be maintained in a special fund and used only for its specified purpose.

Cities adopting home rule charters under the Home Rule Charter and Optional Plans Law are not subject to real estate tax limits established in the Third Class City Code. Individual charters may establish their own rate limits.

The cities of Philadelphia, Pittsburgh and Scranton have no statutory rate limits on real estate taxes for general purposes. Pittsburgh, Scranton and third class cities may impose separate and different real estate tax rates on land and buildings. The usual practice has been to levy substantially higher rates on land to encourage reuse of vacant lots. In 2000, Pittsburgh, Scranton and 14 third class cities levied split rate real estate taxes. In Pennsylvania, real estate assessments are primarily the responsibility of county governments. Under the Code, third class cities have the power to make their own assessments for city purposes.<sup>3</sup> Where cities do their own assessments, council appoints a city assessor and such assistant assessors as may be required. Over the years, cities have eliminated their own assessing operations and accepted the county assessment values. However, if a city is using the county assessment office for to determine the valuation and assessment of properties it must continue to do so. If not, council can appoint and employ staff to value and assess property. This appointment can be done by clause or by ordinance. The council may also, by ordinance, adopt a predetermined ratio different from that used by the county.

Cities have available a wide range of non-real estate taxes. The Code authorizes a \$5 residence tax and a license tax on various occupations and businesses not to exceed \$100 annually.<sup>4</sup>

The primary source of non-real estate taxes for cities is the Local Tax Enabling Act, Act 511 of 1965.<sup>5</sup> A wide range of taxes may be adopted under the authority of this Act. These include earned income, per capita, realty transfer, business gross receipts, amusement, and occupational privilege and occupation taxes. A personal property tax, available only to second class cities under the Act, is levied by Pittsburgh. Philadelphia cannot levy taxes under the Local Tax Enabling

Act, but has similar authority to levy similar taxes under the Sterling Act. The revenue generated from the primary types of taxes is listed below.

In general, jurisdictions adopting income taxes under the Local Tax Enabling Act are limited to one percent. Where both the municipality and the school district levy the tax, the one percent limit must be shared on a 50/50 basis, unless otherwise agreed to by the taxing bodies. State law allows the one percent limit to be exceeded under 3 circumstances: (1) home rule municipalities; (2) municipalities declared financially distressed; and (3) municipalities with financially distressed municipal pension systems.

Home rule cities are restricted to the powers authorized by state law with respect to fixing the subjects of taxation and fixing rates of taxation on nonresidents and assessments. Cities with home rule charters may, however, set their own rates of taxation for property taxes and for personal taxes on residents without regard to the limits established in the Third Class City Code.

More information on the taxes authorized for use by a city can be found in the Taxation Manual available from the Department of Community and Economic Development.

**TAX SOURCES FOR THIRD CLASS CITIES**

<b>Taxing Authority</b>	<b>Legal Limit<sup>6</sup></b>	<b>Citation</b>
<b>General Purpose Tax Levies</b>		
Real Estate	30 mills	53 P.S. 37531
Residence	\$5	53 P.S. 37531
Business License	\$100	53 P.S. 37601
Act 511 Taxes		53 P.S. 6901
Per Capita	\$103	
Occupation (flat rate)	\$103	
Occupation (millage)	no limit	
Occupational Privilege	\$103	
Earned Income	1% <sup>8</sup>	
Deed Transfer	1 percent <sup>3</sup>	
Mechanical Devices	10 percent <sup>3</sup>	
Amusement <sup>9</sup>	10 percent <sup>3</sup>	
Business Gross Receipts <sup>10</sup>	1 mill wholesale <sup>3</sup>	1 1/2 mills retail <sup>3</sup> no limit other businesses
<b>Special Purpose Taxes</b>		
Bonded Debt and Sinking Fund	no limit	53 P.S. 37531
Recreation	no limit	P.L.52, No.22
Street lighting/public lighting	5 mills	P.L.52, No.22
Library	no limit	24 P.S. 4401
Shade Trees	1/10 mill	53 P.S. 38809
Bureau of Charity	10 mills	53 P.S. 39502
Open Space (real estate and earned income) <sup>11</sup>	set by voters	32 P.S.5007.1
Distressed Pension System Recovery Program	no limit	53 P.S. 895.607(f)
Municipalities Financial Recovery Program <sup>12</sup>	no limit	53 P.S. 11701.123

Special purpose taxes are not included in the calculation of the 30 mill limit.

## The Budget

The budget is a plan for spending city money. Its preparation requires informed decisions on the part of city officials to identify the purposes for spending this money, the amount to be spent and revenues necessary to support such expenditures. This allows valuable planning experience and helps assure the fiscal soundness of the next year's operation.

Uniform budget forms have been prepared by the Department of Community and Economic Development with the cooperation of the municipal associations. The budget form is based on budgeting by program. Money is allocated to programs or activities such as police, streets and highways, recreation and parks or similar categories. Municipal working budgets often break down each program area into line items such as salaries and wages, materials and supplies. Through the program budget the municipal official is able to compare and judge the reasonableness of expenditures for each function.

The Third Class City Code designates January 1 as the beginning of the fiscal year.<sup>13</sup> However, cities with home rule charters may alter their fiscal years. Prior to budget adoption, the Code requires advertising and a public inspection period of at least 10 days. The Code requires adoption of a budget by December 31 of each year.<sup>14</sup> In January following a municipal election, a budget may be reopened. Any amended budget must then be adopted on or before February 15.

The Code contains procedures for making supplemental appropriations and transfers during the year. This authority should not be used as a justification for poor planning. But even a carefully prepared budget will need to be changed under certain circumstances. An emergency situation can create needs not apparent during the budget process; realized revenues may be more or less than expected; or an opportunity to obtain favorable loan or grant funds can force a shift in the priority of projects from one year to another.

Home rule charters contain procedures for preparation, proposal, consideration, adoption, reopening and amendment of the municipal budget. Most include requirements for public hearings or public inspection of the budget proposal. Charters also frequently mandate capital budget components or multiyear capital programs.

For more information on working with the budget, refer to the *Fiscal Management Handbook* distributed by the Department of Community and Economic Development.

## The Budget Calendar

A budget calendar is a plan for developing the budget in an orderly manner to avoid last minute panic efforts to adopt a budget before the deadline. The budget calendar is a guide for participation of elected or appointed officials in a time-scheduled adoption of the budget.

A typical budget calendar is illustrated below. You will note specific activities or events leading to the adoption of a budget are identified and the deadline date is indicated. You will find variables are often involved; for example, dates may have to be adjusted depending upon when the county supplies the tax duplicates.

The budget calendar illustrated is a typical example. Your city may want to omit steps shown in the example, or you may wish to add to it; however, excessive detail in the budget calendar is likely to lead to confusion. The main reason for the budget calendar is to provide a plan for developing and adopting a budget. When making a budget calendar for your municipality, point out the activity to be done, schedule a due date for when it must be done and name the person or position responsible for getting it done.

## Typical Budget Calendar

<u>Due Date</u>	<u>Budget Activity</u>
August 15	Department heads submit next year's program priorities and expenditure estimates
September 1	Obtain annual budget forms
September 15	Post current year's expenditure and revenue estimates on form
October 1	Project revenue estimates for next year
October 30	Review departmental priorities and expenditure estimates
November 1	Enter estimates on budget form
November 24	Budget introduced in council
November 25-30	Conduct full review of budget
December 1	First reading of budget bill
December 2	Advertise budget
December 4-24	Budget open to public inspection
December 28	Adopt budget and enact tax ordinance
January 2	Create budget accounts in new ledgers

## Capital Improvements Planning and Budgeting

Sound financial management is principally aimed at securing the most use from available or projected financial resources. The capital improvements program and related capital budget are the primary elements of sound long-range financial planning. Cities are specifically authorized to create capital reserve funds to implement capital improvements.<sup>15</sup> The purpose of the capital reserve fund should be designated by city council when the fund is created.

**Capital Improvements Program.** A capital improvement is a major facility involving a nonrecurring cost which usually requires large capital outlays and brings returns over a long period of time. Programming simply involves deciding what a community needs most in coming years and devising a schedule to pay for these facilities within the bounds of the community's ability to finance them. Nonrecurring, non-capital items such as major engineering studies may also be included for planning purposes.

Advantages of the capital improvements program include:

1. Efficiently implementing the community's goals, objectives and comprehensive plan.
2. Coordinating plans and policies to avoid overlapping projects.
3. Maintaining financial stability through minimizing fluctuations in the tax rate.
4. Lengthening available lead time to avoid last minute delays caused by technical difficulties and scheduling of resources.
5. Increasing the likelihood of an improved credit rating and interest savings.
6. Enhancing opportunities for state and federal grants.

Common elements involved in developing the capital improvements program include determining capital costs, translating capital costs to annual costs, comparing costs with available resources, determining priorities and developing a financial schedule. Cost estimates for capital improvements should be made by an engineer or architect. However, industry standards may be used for rough preliminary estimates. State and federal subsidies may reduce local costs. It is important to translate capital costs into two major elements of annual costs:

annual debt service or borrowing costs (principal and interest) and costs of operating the facility.

Financing these costs may be accomplished through:

- Payment in advance from deposits in a special fund or reserve.
- A pay as you go approach through annual appropriation.
- The sale of general obligation or revenue bonds or notes or short term loans.
- Donations.
- Grants from state or federal sources.
- A combination of the above methods.

Each year, the capital improvements program should be updated by omitting the first year and adding on a new ending year. A city may find priorities have shifted or new funds have been made available. Normally, the first year is used as a basis for the yearly capital budget.

**Capital Budget.** The capital budget is an outgrowth of the capital improvements program because it outlines those capital expenditures the city will be required to make in the coming year. Normally, a capital budget is set up one year at a time. Future planning decisions affecting the capital budget can be incorporated into the program merely by using the capital improvements program to establish priorities and change the budget as resources permit.

## Contracts

There are three general types of contracts a municipality may enter into: negotiated contracts, competitive bid contracts and contracts for professional services. Negotiated contracts are permitted for all purchases and contracts not exceeding \$18,500. Even for purchases less than \$18,500, informal bids are desirable and constitute good business practice. Contracts within certain specified categories for purchases above \$10,000 are exempted from mandatory bidding requirements.

For most purchases or contracts in excess of \$18,500, a municipality must advertise for a competitive bid contract.<sup>16</sup> Basically, there are two types of competitive bid contracts: a lump sum contract and a unit price contract. The lump sum contract obligates the contractor to perform the work according to plans and specifications for a specified amount of money. The purchase of municipal road equipment is a good example of a competitive bid item for a lump sum amount.

The second type of competitive bid contract is the unit price contract. This contract is based on an estimate of unit prices for different types of materials to be supplied and it provides for compensation to the contractor for each actual unit supplied at the agreed upon price. Bids are compared by the estimated quantities needed at the contractor's proposed unit price. Council cannot waive advertising for competitive bids when the amount of the purchase or contract exceeds \$10,000. Likewise, council cannot contract for services on a piecemeal basis. Any council member who knowingly votes in violation of these provisions is subject to a surcharge of 10 percent of the full amount of the contract.

The third type of contract is for professional services. Regardless of the cost, professional services contracts are not required to be obtained through competitive bidding, although it is best to interview a number of applicants or entertain a number of proposals for professional services.

Cities with home rule charters are free to implement their own purchasing procedures. City charters sometimes include a limit above which purchases must be made through a competitive bidding process. Other home rule cities allow council to set a limit by ordinance. In some cases, cities with home rule charters do not establish any limit.

More complete information on purchasing requirements and procedures can be found in the *Purchasing Handbook for Local Governments* available from the Department of Community and Economic Development.

## Officers' Bonds

It is the responsibility of council to designate the elected and appointed officials and employees of a city to be covered by a fidelity bond." The bond serves to protect the city from monetary loss either through dishonesty or willful neglect by officials and employees. Bonds in various amounts are offered by a number of surety companies. The solicitor of the city usually prepares or approves the form of the bond after the persons and the amounts have been determined

The Third Class City Code requires persons holding certain key positions be bonded, for example the treasurer, controller, director of accounts and finance, solicitor and engineer. In the case of other officials, the Code makes bonding permissive. In other words, council may provide for bonding these persons if believed necessary. All officials and employees who handle city funds should be bonded. The amount of the bond should correspond to the amount of money the individual handles. Bonding requirements should be reviewed every year and new bonds obtained on an annual basis. The form of the bond should be reviewed by the solicitor to determine that it does not contain provisions detrimental to the city's best interests.

The city pays the premiums on all bonds for its officers and employees. The premium of the treasurer's bond is shared by all taxing districts served by the treasurer in proportion to the amount shown on their tax duplicates. Some counties have instituted countywide bidding for all tax collector bonds. Cities may participate in joint bidding with all other taxing districts.

## Municipal Borrowing

All city borrowing, including the issuance of tax anticipation notes is governed by the terms of the Local Government Unit Debt Act.<sup>18</sup> Before entering into any borrowing action, the legal and financial details should be worked out with the municipal solicitor, a bond counsel or other financial consultant. Borrowing actions in excess of \$100,000 or 30% of a city's borrowing base must be approved by the Department of Community and Economic Development. The Local Government Unit Debt Act sets the non-electoral debt limit for cities at 250% of average total revenues over the past three years. It establishes important procedural requirements for incurring debt. Major provisions are listed below.

1. No limit has been established on electoral debt.
2. Bond anticipation notes may be issued in order to obtain funds pending the sale of long-term bonds or notes.
3. Bonds or notes may be sold at public or private sales.
4. The maturity date on bonds and notes may not be more than 40 years or not more than the life of the project being financed, whichever occurs first.
5. Debt repaid solely from rents and other user fees (self-liquidating debt) is not subject to the debt limit
6. Temporary indebtedness, such as tax and revenue anticipation loans, may not exceed 85% of the outstanding tax revenues anticipated and must be repaid during the fiscal year incurred.
7. A municipality in financial crisis may be able to issue unfunded debt in order to meet financial obligations.

The Local Government Unit Debt Act specifically states home rule municipalities are subject to the Act's substantive provisions but further states municipalities may adopt the Act's procedural provisions by reference in their charters.

For additional information on municipal borrowing, please refer to the *Debt Management Handbook* available from the Department of Community and Economic Development.

## Municipalities Financial Recovery Program

In 1987, the General Assembly responded to severe financial distress in a number of municipalities by establishing a program of financial and technical assistance to enable them to make a financial recovery. Under the program, the Department of Community and Economic Development has the authority to declare a municipality financially distressed if it meets one of the criteria specified in the Act.<sup>19</sup> After a declaration of distress, a recovery plan is prepared and must be accepted by both the municipality and the Department. Financial assistance includes loans and grants under the program, as well as priority for consideration in other state grant programs. The plan coordinator provides technical assistance to the community in the implementation of the recovery plan. The Department also focuses additional consulting and training assistance on these communities.

## Pension Funding

Third class cities must establish by ordinance a retirement system for their police officers. Likewise, cities must provide annuity contracts or establish a retirement system for paid firefighters. Cities may also establish a retirement system for elected and appointed non-uniformed employees. Home rule cities are free to devise their own pension systems as long as the rights of retired, vested and current employees are preserved. The Municipal Pension Plan Funding Standard and Recovery Act now requires municipalities to fully meet the actuarial funding requirements of their pension plans.<sup>20</sup> Municipalities are now required to include the minimum municipal pension obligation in their budgets. If the municipality fails to make timely payment into the pension fund, it is subject to interest penalties. The Act also provides for state aid for all municipal employees' pensions for the first time. The Act also requires municipalities to fund their unfunded accrued actuarial liabilities over a period of years and provides for state financial assistance to qualifying distressed pension systems. Home rule cities are included within the terms of the Act.

## Civil Service

No person may be appointed to any uniformed position in the police or fire departments (this excludes chiefs) without first passing all the civil service and other examinations set forth in the City Code. Each city must provide a civil service board to oversee the examination process and the promotion of individuals in the fire or police departments. The board consists of three citizens appointed by the council for a term of four years. No city employee can serve on this board.

## Support of Veterans' Organizations and the Pennsylvania National Guard

City council may appropriate annually to organizations of veterans of the United States Armed Services to aid in defraying the expenses of Memorial Day, Veterans Day, or other expenses of these organizations. Such organizations must submit to the city verified accounts of their expenditures. The city may also provide facilities in a public building for meetings.

Council may annually appropriate a sum for the support and maintenance or training of any troop, company, or similar unit of the Pennsylvania National Guard. These funds are used solely for the support, maintenance, discipline and training of the company or other similar unit. Appropriated funds are paid by warrant drawn to the order of the commanding officer.

## References

1. Statistics in this chapter are from the Department of Community and Economic Development's Governor's Center for Local Government Services, May 2001.
2. 53 P.S. 37531; Third Class City Code, Section 2531.
3. 53 P.S. 37504; Third Class City Code, Section 2504.
4. 53 P.S. 37531; Third Class City Code, Section 2531; 53 P.S. 37601; Third Class City Code, Section 2601.
5. 53 P.S. 6901; Local Tax Enabling Act
6. Home rule cities may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects for taxation.
7. Five additional mills with court approval.
8. Maximum rate subject to sharing with school district.
9. For taxes first levied after December 31, 1997, maximum rate is 5 percent

10. Only if enacted before December 1, 1988.
11. Requires approval of voters in referendum.
12. Levied only with court approval.
13. 53 P.S. 36801; Third Class City Code, Section 1801.
14. 53 P.S. 36809; Third Class City Code, Section 1809.
15. 53 P.S. 37403(1.1); Third Class City Code, Section 2403.1.1.
16. 53 P.S. 36901; Third Class City Code, Section 1901.
17. 53 P.S. 35906; Third Class City Code, Section 906.
18. 53 Pa. C.S.A. 8001; Local Government Unit Debt Act
19. 53 P.S. 11701.201; Municipalities Financial Recovery Act, Section 201.
20. 53 P.S. 895.302; Municipal Pension Plan Funding Standard and Recovery Act.



## VII. Municipal Services

The modern municipality serves as a basis for maintaining community order, providing life-sustaining services that individuals cannot perform for themselves and conducting other functions that make a community livable. This is the focus for all city services and laws whether they are for police protection, firefighting, street maintenance, water service or recreation.

Municipal government has come a long way. Little was provided in the way of services in the 18th or early 19th century borough or city. The municipal corporation was aimed largely at fostering and protecting commercial and industrial enterprise. Governmental projects were performed, or protection given - largely on an ad hoc, as needed basis - through use of volunteers or special commissions. Over the past 200 years we have moved from this volunteer, as needed basis, to a highly formalized and organized system of municipal government, particularly in cities. This chapter describes those municipal functions and services now common to the city.

In 2012, 51 Pennsylvania cities had total expenditures of \$2.3 billion.<sup>1</sup> The major areas of operating expenditures for cities in 2012 are summarized in the table below.

### 2012 CITY EXPENDITURES (\$ in millions)

	<u>All Cities</u>	<u>Philadelphia</u>	<u>Pittsburgh</u>	<u>2A &amp; 3rd Class Cities</u>
Total Operating Expenditures	6,294.60	4882.8	440	971.8
General Administration	637.2	469.9	84	91.3
Police	665.3	446.1	61.3	157.9
Fire	271.3	131.1	49.2	91
Other Public Safety	169.3	116.4	20.2	32.7
Public Health	834.8	822.3		12.5
Streets & Roads	388.7	237.8	67.6	83.3
Sewer	80.7			80.7
Water	336.3	295.5		40.8
Solid Waste	47.8			47.8
Other Public Works	181.5	137.6	9.6	34.3
Parks & Recreation	120.7	68.9	8.5	43.3
Libraries	33.8	31.1		2.7
Debt Service	603.9	334.7	140.4	128.8
Planning & Development	255.8	174.3	17.6	63.9
Other Expenditures	2002.1	1706.4	106.1	189.6
<b>Total Expenditures</b>	<b>6699.2</b>	<b>4999.1</b>	<b>599.5</b>	<b>1100.6</b>

## Police

The Third Class City Code authorizes city council to fix, by ordinance, the numbers, grades and compensation of members of the city police force.<sup>2</sup> Police officers are to be appointed according to the civil service provisions of the Code. The mayor is to designate a police chief from the force and may demote the chief without cause. In commission form cities, the mayor is in charge of the police force acting in the capacity as director of the department of public affairs.

The mayor, when deemed necessary for the public safety or to preserve order, may appoint extra police officers to serve for such period as the council may designate, not exceeding thirty days, whose compensation shall be fixed by council.

Cities with home rule charters either provide for a police department in the charter or leave creation of a police department to city council through adoption of an ordinance.

All police officers in Pennsylvania must complete minimum requirements for training set by the Municipal Police Officers' Education and Training Commission prior to receiving power to enforce the Commonwealth's Crimes Code and Vehicle Code and possessing the authority to carry a firearm.<sup>3</sup> The Commission also requires that applicants for police officer positions undergo medical exams, psychological exams and background investigations prior to employment. Annual in-service training is now required for all municipal police officers to remain certified for employment as a police officer. This applies to both part-time and full-time officers.

Home rule cities appear to be covered by the provisions of this law.

The Third Class City Code requires cities to establish, by ordinance, a retirement system for police officers.<sup>4</sup> The retirement system and police pension trust fund are under the direction and control of city council, and council may designate city officers, citizens, or corporations located in the city to have custody of and manage the pension trust fund. The main sources of revenue for the fund are contributions by police officers, contributions by the city, general municipal pension system state aid, and earnings from the investment of fund assets.

## Firefighting

The Third Class Code authorizes the establishment of paid and volunteer fire bureaus in cities.<sup>5</sup> The Code also allows cities to appropriate funds to maintain fire bureaus, prescribe rules and regulations for the government of officers and companies belonging to the bureau and to purchase equipment for the extinguishment, prevention and investigation of fires. When paid fire bureaus are organized the city council may provide, by ordinance, for the appointment of officers and companies in accordance with civil service procedures. The code includes detailed provisions covering working hours, vacation and sick leave for paid firefighters.

As with police departments, home rule cities sometimes establish fire departments in their charters or more frequently allow city councils to create fire departments by ordinance.

Cities may also create, by ordinance, the office of fire marshal.<sup>6</sup> The fire marshal is appointed by the mayor with the approval of city council. The fire marshal and assistant marshals are responsible for conducting inspections of buildings related to fire safety and for investigating the causes, origins and circumstances of fires in the city.

A third class city must provide annuity contracts or establish, by ordinance, a retirement system for its firefighters.<sup>7</sup> All full-time paid firefighters must belong to the system. A firefighters' pension trust fund is under the direction of a board of managers consisting of city officials. The main sources of revenue for the fund are contributions of firefighters, the city, general municipal pension system state aid and earnings from investments.

There is a strong tradition of volunteer firefighting in Pennsylvania. The first volunteer fire department in the country was organized in Philadelphia by Benjamin Franklin in 1736. The first paid fire company was established in Philadelphia in 1871. Pennsylvania currently has more volunteer fire companies than any other state (more than 2,000 companies).

Not all Pennsylvania cities have fully paid fire departments. Only about one third of Pennsylvania cities operate a fully paid fire department. Another third have a partially paid and partially volunteer department, and one third rely solely upon volunteers. Any switch from a paid to a volunteer or from a volunteer to a paid force must be approved by the voters in a referendum.

Cities are responsible for carrying workers' compensation coverage on volunteer firefighters.<sup>8</sup> However, cities are not legally liable for damages caused by actions of volunteer firefighters in performing their official duties.<sup>9</sup>

**Fire Marshal.** A city may, by ordinance, create the office of fire marshal. The marshal is appointed by the mayor with the approval and consent of the council. The fire marshal and any authorized assistants inspect all construction or buildings within the city or upon property owned or controlled by the city. Duties include enforcing the laws of Pennsylvania and of the city for the prevention, containment, or investigation of fire and fire hazards. If a fire is deemed suspicious the marshal has the authority to investigate the event. The marshal provides an annual report to city council.

## Public Buildings and Works

Cities are authorized to provide public buildings that include auditoriums, libraries, memorials, and monuments. The city can acquire land for such purposes by eminent domain, purchase, or gift. Recreation areas include public parks, parkways, playgrounds, playfields, gymnasiums, swimming pools or outdoor areas.

City council can also equip, operate, and supervise public works. Often council will employ recreation directors or other program administrators. Or, as allowed by the Code, council will delegate some or all of its power to an existing body or recreation board.

## Streets

Maintenance of streets is a primary function of city governments.

Cities have the right to open, widen, straighten, extend, improve or vacate streets within their boundaries.<sup>10</sup> These actions must be done by ordinance enacted by city council. Council may authorize and approve a comprehensive map of city streets which can serve as an official map adopted in accordance with the Municipalities Planning Code. If a comprehensive map of city streets is adopted, any street subsequently laid out in accordance with this act shall be deemed an amendment to the comprehensive map.

Costs of improving streets may be paid for entirely by the city or by the owners of abutting real estate. Assessments against abutting property owners can be made by a foot front method or according to the benefits, as determined by ordinance of city council.

The Third Class City Code contains extensive provisions on laying out, opening and repairing streets. A valuable overview of this function is found in *Maintenance Practices for Local Roads* distributed by the Pennsylvania Department of Transportation.

Cities have the power to lay out sidewalks and to compel their construction.<sup>11</sup> All or part of the cost of such sidewalks may be paid by the city. Cities have the power to establish the grade, line and width of the side-walks and also compel the construction of curbs and gutters fronting the property. All these improvements must be kept in repair and in safe condition by the property owners.

Cities can improve streets or roads beyond the limits of the cities to connect improved streets in the city with a highway. These projects may be sponsored by a city or by a group of municipalities that includes the city.

Cities have the power by ordinance to provide and regulate the lighting of streets.<sup>12</sup> Cities may install ornamental street lighting paid for by the city or by abutting property owners or a combination of the city and property owners.

Increasingly cities are addressing bridges and their repair/maintenance. Cities may locate, build, and maintain bridges even if the bridge is not entirely in the city. Bridges can span over a valley, road, railroad track, private property, river, creek, or any other body of water.

## **Utility Services**

Cities may construct sanitary sewers and operate sewage treatment plants.<sup>13</sup> Cities may pay the costs out of local government funds, or may assess the costs of sanitary sewers on the properties benefited by the sewage system. Ordinances may be enacted to require property owners along sewer lines to make connections with the sanitary sewer and a tapping fee may be charged against each owner connecting to the system. Annual rental charges may be levied for use of the system. Storm sewers also may be constructed and maintained.

A city may construct sanitary sewers using general revenues or special funds. The city also has the power of eminent domain to construct needed sewers. By ordinance, the city can require connection to a sewer system provided by the city and to charge a connection fee or other fees as needed.

Cities have the power to furnish water to residents and corporations in the city.<sup>14</sup> The cost of construction of water mains may be assessed against abutting property owners. Property owners can be required to connect to a water main adjoining their property; a tapping fee may be charged. City council is responsible for determining water rates charged to individuals and corporations. Cities may also contract with private companies to furnish water. In addition municipal authorities may be created to provide water service.

Cities have the power to supply electric and gas to residents and may erect appropriate facilities to supply these services.<sup>15</sup> Most cities have long ago given up these services to large public utility companies. However, street lighting continues to be a major service and expense of city government.

Third class cities may create a water and light department governed by a three-member commission elected by city council.<sup>16</sup> Where created, the commission is responsible for managing water, electric and gas functions of the city. The board may fix water and lighting rates with the approval of council.

## **Public Health**

Each city has a board of health. City council may, by ordinance, create a board or council can serve as the board. The board consists of five members who are residents of the city who are appointed without compensation. Two members are licensed or certified health care professionals. In some cases organizations can serve as the board.

Board members take an oath of office and organize each year on the first Monday of January. The board then appoints a president and city council appoints a secretary of the board.

## **Parks and Recreation**

Cities may acquire land and buildings for the purpose of parks and recreation. Generally, such facilities include public parks, parkways, playgrounds, playfields, gymnasiums, public baths, swimming pools or indoor recreation centers. The city can levy taxes necessary to pay for and maintain these facilities.

City council has the power to equip, operate, supervise and maintain recreation sites, to employ recreation directions, and other staff needed for programs and maintenance. Council has the ability to set compensation for employees hired to carry out the provisions of the city's parks and recreation programs (if those employees are employed more than half-time).

The city may delegate all or part of its power to fun parks and recreation programs to an existing body or board, or to a recreation board. This decision is up to the council.

## Pensions

Cities in Pennsylvania must establish, by ordinance, a police pension fund. The fund is maintained by equal and proportionate monthly charges against each member of the police force, but this charge may not exceed four percent of pay to the member. The city pays an amount not to exceed one per cent of the pay of each member.

The fund is under the direction and control of city council, but custody and management of the fund may be designed by the council.

Pension payments are made to members who retire, to spouses (even if remarried), or to the child or children under the age of eighteen years.

Firefighters' pension funds are provided by ordinance of the city council. Contributions to the fund by firefighters and by the city are equal to those of the police department. However, the management of this pension fund is far more complex.

The city cannot fund a firefighters' pension if an existing organization or association for the benefit of fully paid firefighters provides for a pension. However, that pension, upon a two-thirds vote of the organization, may be transferred to the city.

Firefighters' pensions are under the control of a board of managers that consists of:

- Ex officio members that include the mayor, the director of accounts and finance, the director of the fire department, the city controller, and the chief of the bureau of fire
- Two members of the fire department chosen by the members of the fire department.

## References

1. Statistics in this chapter are from the Department of Community and Economic Development's Statewide Municipal Financial Reports for the year of 2012.
2. 53 P.S. 37001; Third Class City Code, Section 2001
3. 53 Pa. C.S.A. 2167; 1996 P.L. 1158, No. 177, Section 1.
4. 53 P.S. 39301; Third Class City Code, Section 4301.
5. 53 P.S. 37101; Third Class City Code, Section 2101.
6. 53 P.S. 37104; Third Class City Code, Section 2104.
7. 53 P.S. 39320; Third Class City Code, Section 4320.
8. 53 P.S. 37108; Third Class City Code, Section 2108; 77 P.S. 1031; Workers' Compensation Act.
9. 42 Pa. C.S.A. 8501, 8541; Political Subdivision Tort Claims Act.
10. 53 P.S. 37915; Third Class City Code, Section 2915.
11. 53 P.S. 38001; Third Class City Code, Section 3001.
12. 53 P.S. 38576; Third Class City Code, Section 3576.
13. 53 P.S. 38201; Third Class City Code, Section 3201.
14. 53 P.S. 38501; Third Class City Code, Section 3501.
15. 53 P.S. 38575; Third Class City Code, Section 3575.
16. 53 P.S. 38580; Third Class City Code, Section 3580.
17. 53 P.S. 38709; Third Class City Code, Section 3709.

## VIII. Community Development, Land Use, and Environmental Regulation

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### Community Development

Cities have allocated a substantial portion of their community development budgets to provide adequate housing for city residents and to maintain water, sewer and other community facilities, such as streets, curbs, side-walks and community buildings. More recently, cities have begun to use community development dollars to promote the creation of jobs for residents and revitalize the local economy. Therefore, city council members are faced with many choices in devising community development programs. They oversee the planning and zoning processes which determine the growth and development of the city. They authorize programs for code enforcement, housing rehabilitation, business development and the provision of community facilities. They may establish the guidelines and boundaries of historic districts and programs for commercial revitalization. Council members work within the constraints of state and federal regulations and tight budgets.

Funding for community development activities in Pennsylvania often comes from the U.S. Department of Housing and Urban Development (HUD) and the state Department of Community and Economic Development. Larger cities, generally those with populations over 50,000, receive money directly from HUD in the form of an entitlement allocation given on an annual basis. Smaller cities receive funds on an entitlement basis through the Department of Community and Economic Development. In addition, the Department also administers housing and community revitalization programs which are designed to assist local governments in repairing existing housing, developing sites for new housing units, providing community facilities and assisting in commercial revitalization activities.

In accordance with state and federal statutes, most community development funds must be used to benefit low and moderate income persons and prevent or eliminate slums or blight. Most state and federal community development programs also require public hearings to gain citizen input and appropriate action by the governing body authorizing the submission of applications.

The competition is stiff for community development dollars. Grant programs frequently demand substantial local effort plus the leverage of private dollars. This means when cities design their community development programs, the following must be considered.

1. Community development projects may need funding from several sources, including local public and private sector revenues. This packaged approach to funding requires careful project planning and administration.
2. Cities must turn to new and creative financing techniques to fund community development activities. This requires a willingness to look at new ways of using and reusing dollars and sometimes assuming more risk than has traditionally been comfortable for city officials.
3. Cities will often have to demand more financial input from participating residents and businesses. Instead of grants, some residents may receive loans to rehabilitate their homes so that cities may recycle funds for additional activities. Business may be expected to repay loans, with interest, to cities offering economic development assistance.

State and federal agencies administering community development grant programs stress the importance of the ongoing management responsibility of the city, regardless of whether or not a consultant has been employed to assist in the grant administration. Knowledgeable and experienced community development staff professionals can be a great asset to the city and its officials in planning, implementing and managing a community development program. To assist in the design, implementation, and management of community development programs, the Pennsylvania Department of Community and Economic Development offers technical assistance and training through its central and regional offices.

## The Planning Code

If community development programs are to be effective, it is important that the municipality also have in place sound planning, zoning and code enforcement programs and regulations. The power and responsibility to plan for land use and its regulation lies exclusively with local government. Local governments have been given the power to plan their own community development through the Pennsylvania Municipalities Planning code. No state agency has been assigned responsibility to administer any of the land use powers in the event a unit of local government fails to exercise a delegated power. The Municipalities Planning Code is a true enabling act giving municipalities great leeway in shaping their own land use programs. If a city misuses any delegated power, a well-formulated article in the Code outlines the steps a landowner or person aggrieved can follow to have his or her day in court.

The Pennsylvania Municipalities Planning Code establishes the basic legislation for a municipality in Pennsylvania to plan for community development through preparing a comprehensive development plan and governing such development through zoning, subdivision and land development ordinances.' The cities of Philadelphia and Pittsburgh are excluded from the Municipalities Planning Code, although other home rule municipalities are covered by it. The Code provides for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards and authorizes these bodies to charge fees, make inspections and hold public hearings. The Code also provides for appropriations, appeals to courts and penalties for violations.

Land use controls may be looked upon as an ounce of prevention as they offer protection against undesirable effects of development or the need for costly correction later. A subdivision with a poorly designed circulation system or inadequate streets will cause traffic problems and higher taxes. Inadequate drainage can be prevented by a subdivision and land development ordinance. Zoning can establish adequate building setbacks, so that later road widening need not wipe out substantial portions of front yards, and it can reduce costs of right-of-way acquisitions or avoid costly relocations.

Copies of the *Municipalities Planning Code* and other publications relating to municipal planning and zoning are available from the Department of Community and Economic Development.

## Comprehensive Planning

Development controls are the tools to implement comprehensive land use plans or master plans as they are sometimes called. Planning is the process of making decisions today for actions to occur in the future. A comprehensive plan for a relatively built up or slowly growing community may need little or no change for a decade. Conversely, any municipality within commuting distance of a growth-inducing facility, such as a new industrial plant, recreation complex or a new access highway, needs to reassess the adequacy of its comprehensive plan frequently.

Comprehensive planning is what local officials and their planning commissions can do as the basis for the regulation of land use and control of development in the city. A zoning ordinance should conform to the comprehensive plan for the municipality. It must, at a minimum, contain a statement of community development objectives. If zoning regulations lack evidence of good planning and a controversy with a developer reaches the courts, they stand a good chance of being rejected or overruled.

A comprehensive plan need not be overly complicated or expensive, even for a small municipality. Briefly, the Municipalities Planning Code requires a comprehensive plan include:

1. A statement of the city's objectives with respect to future growth and development, including the location, character and timing of future development. These objectives may also serve as a statement of community development objectives required in any zoning ordinance.
2. A land use plan describing the amount and intensity of use appropriate for residential, institutional, industrial and commercial uses taking into account soil conditions, traffic, topography, flood plains, natural resources and similar factors.

3. A plan providing for the character and timing of future facilities and improvements to utilities such as recreation, sewage disposal, water supply and similar services.
4. A plan to meet the housing needs of present residents and of those individuals and families anticipated to reside in the municipality. The plan may include conservation of presently sound housing, rehabilitation of housing in declining neighborhoods and the accommodation of expected new housing in different dwelling types and at appropriate densities for households of all income levels.
5. A transportation plan indicating the future changes in local street and road systems, need for parking facilities and public transportation services.
6. A statement that the city's plan is consistent with other municipalities and the county plan.
7. Presentation and analysis of short-term and long-term implementation strategy.
8. A plan component that protects natural and historic resources.

The preparation of a comprehensive plan requires considerable data collection and analysis with respect to existing development patterns, soil conditions, environmental factors, water availability, traffic, population growth, government services and similar factors. After this study is completed, recommended land uses are determined and illustrated on maps. When the comprehensive plan document is complete, it should be officially adopted by resolution after a public hearing.

A comprehensive plan is the most important technical aid a community can develop for dealing with the problems of growth and change constructively. The plan must give full consideration to physical, economic and social conditions, and must seek to attain the desired goals with minimum financial and social cost.

Once the comprehensive plan is adopted, the next step is to prepare a draft zoning ordinance and map and a subdivision and land development ordinance. However, a subdivision and land development ordinance can be enacted immediately without waiting for the plan to be completed. Your solicitor should review both these documents after completion by the planning commission. When the planning commission is satisfied with the ordinance, public hearings are held by the planning commission and a recommendation is made to council. The ordinance may be adopted after additional public hearings are held by council.

## **The Zoning Ordinance**

Zoning is a method of land use planning where the basic objective is to attain and preserve proper land use. The zoning ordinance specifies the types of activities permitted in various areas of the municipality, such as residential, commercial and industrial. Chronologically, the zoning ordinance should follow the development of the comprehensive plan. As set forth in the Pennsylvania Municipalities Planning Code, council may enact, amend and repeal zoning ordinances to implement city plans.

There are three fundamental rules to consider when preparing a zoning ordinance. First, the zoning ordinance is prepared under the direction of the planning commission based on a comprehensive development plan for the city. The zoning ordinance and zoning classifications should be based on the most accurate information about the municipality's current status and the area where the most probable future development may occur. Second, the comprehensive plan and the zoning ordinance should be drafted under the guidance of a trained planner. This will ensure proper professional planning techniques in the writing of the ordinance and preparation of maps and make certain the zone classifications conform to the comprehensive plan. The third rule is the zoning ordinance must be consistent with the provisions of the Planning Code.



## **The Subdivision and Land Development Ordinance**

Subdivision regulations govern the division of land into lots. Council may regulate land subdivision and redevelopment within the city by enacting a subdivision and land development ordinance. The ordinance shall require all plots of land lying within the municipality to be submitted for approval to council prior to development. A plat is the map or plan of a subdivision or land development.

The subdivision regulations should be based on the protection of equal rights for everyone. In the interest of equity, commercial, industrial or residential tenants or owners must pay their share of the direct costs incurred for them in a new development. Direct costs of development include on-site sewer systems, water systems, street paving, street lighting, storm sewers and parking facilities.

Subdivision and land development regulations assure careful design of lots sites for their specific purpose whether it be residential, commercial or industrial. Through subdivision regulations, a community can maintain quality standards for improvements and coordinate private development with public facilities.

## **Floodplain Regulations**

Municipalities adopt floodplain regulations to help manage their floodplains so damage caused by floods can be avoided or minimized. These regulations are found in zoning ordinances, building codes, subdivision regulations, single-purpose floodplain management ordinances and health regulations.

Federal and state laws require officially identified flood prone municipalities to adopt floodplain regulations. When adopting floodplain regulations, municipalities must address minimum standards for the 100-year floodplain established both by the National Flood Insurance Program Act and the Pennsylvania Floodplain Management Act. Municipalities wishing to adopt regulations exceeding these standards may do so. The Bureau of Planning, Department of Community and Economic Development provides information and assistance on preparation, adoption and administration of floodplain regulations necessary under both laws, as well as information on the National Flood Insurance Program.

The National Flood Insurance Program provides for flood insurance coverage of building and contents within municipalities participating in the National Flood Insurance Program. Municipalities not participating in the program will be denied federal financial assistance including disaster assistance for acquisition and construction activities within identified flood hazard areas. Lending institutions are required to notify borrowers of any possible flood hazards and whether or not federal disaster relief will be available in the event of a flood.

The Floodplain Management Act encourages floodplain management by requiring participation in the National Flood Insurance Program.<sup>2</sup> While the Act allows municipalities to adopt floodplain regulations exceeding minimum flood insurance program standards, the Act requires municipalities to give special consideration to certain obstructions posing special hazards in floodplains. The Act also authorizes the Department of Community and Economic Development to provide both technical and financial assistance to help municipalities administer local floodplain regulations. In addition, the Department is to oversee the coordination of local floodplain management regulations among municipalities and assure their uniform enforcement. The Department of Environmental Protection (DEP) is authorized to regulate those obstructions in floodplains which cannot be regulated by the municipalities.

## **Stormwater Management**

The Stormwater Management Act encourages the local administration and management of the accelerated storm water runoff resulting from land development.<sup>3</sup> The Act requires counties to develop a stormwater management plan for specific watersheds. Each county plan must be submitted to the Department of Environmental Protection for approval. Once approved, the Act requires municipalities to adopt or amend resolutions, codes, subdivision regulations, zoning ordinances and any necessary ordinances to regulate development in a manner consistent with the county plan for each watershed.

Stormwater regulations and planning are a vital component to city ordinances that guide and regulate growth. Plans and regulations should be in effect even if the county has not yet prepared its watershed plan. Stormwater regulations, like floodplain regulations, should include a planning element beyond simple restrictions. The combination of regulations affecting floodplains, stormwater and land use should follow the comprehensive plan and become a tool to guide the city toward a future where streamways contribute to the local quality of life.

An active stormwater management plan will result in the construction of a number of stormwater retention or detention areas. Strict regulations are needed to ensure they do not become a liability. The stormwater management plan should permit and encourage joint facilities for nearby developments and perhaps with the city itself. The plan should provide for construction standards minimizing the negative aspects of basins and require a maintenance plan for stormwater facilities which clearly spells out the responsibility and the means to implement it, as well as tie it in with other ordinances for an overall approach to managing the flow of water.

## **Sewage Enforcement**

The Pennsylvania Sewage Facilities Act provides for planning and regulating both community and individual sewage disposal systems.<sup>4</sup> It requires municipalities to submit plans for sewage systems and requires permits for the installation of all sewage systems. These plans are commonly referred to as "Act 537 Plans" after the Sewage Facilities Act. The Department of Environmental Protection administers Act 537.

In addition to implementing state regulations, municipalities can adopt and administer their own regulations relating to sewage facilities as long as they do not conflict with the Pennsylvania Sewage Facilities Act.<sup>5</sup> Local zoning ordinances dealing with sewage and sewers are not preempted by state law where local legislation is consistent with the terms of the Act. The General Assembly's intent is to combine state and local power into a comprehensive regulatory scheme for sewage disposal.<sup>6</sup>

As part of the planning process, cities have the responsibility to review and submit sewage modules to the Department of Environmental Protection on behalf of anyone developing property or creating a new lot. The developer actually prepares the form, but the city must review the information in each module for conformity with its "Act 537 Plan" and inform the DEP of whether or not the module conforms. The city has to look at whether the property should be served by an individual or community system. If by a community system, then whether there is capacity in the treatment plant and connecting lines and if the development conforms to other city ordinances. The DEP must approve the sewage module before the land development or subdivision can be approved by the city.

## **Solid Waste Management**

The Solid Waste Management Act provides for the planning and regulation of solid waste storage, collection, transportation, processing and disposal systems.<sup>7</sup> The Act requires municipalities with a population density of 300 or more persons per square mile to submit plans for solid waste management and authorizes grants for the preparation of plans. It established rules, regulations, standards, procedures and a permit system for the operation of solid waste processing or disposal systems.

In 1988, the Pennsylvania General Assembly enacted the Municipal Waste Planning, Recycling and Waste Reduction Act, Act 101.<sup>8</sup> This law requires larger municipalities to implement a local recycling program. Recycling programs are voluntary for municipalities under 5,000 in population. Each larger municipality must enact its own recycling ordinance. The local ordinance must designate at least three materials that residents will be required to separate and store until collection. Leaf wastes must also be separated from the waste stream. In addition, Act 101 requires each municipality to develop and implement a comprehensive public information program on recycling and waste reduction.

The Third Class City Code gives council power to regulate and control collections, removal and disposal of solid waste.<sup>9</sup> Courts have held this includes reasonable regulations and zoning ordinances governing sanitary landfills, not inconsistent with the Solid Waste Management Act.<sup>10</sup> Although the Act protects hazardous waste facilities from local prohibition, cities can adopt reasonable regulations to protect the health and safety of residents." But, municipalities

may not regulate solid waste disposal or landfill operation, since these are governed by state regulations.<sup>12</sup> Cities have the power to prohibit nuisances, including accumulations of rubbish and abandoned automobiles, and to require removal of such nuisances at the expense of the owner.<sup>13</sup> Cities also have the power to regulate and license junkyards.<sup>14</sup>

## Building and Housing Codes

Building and housing codes are the avenue municipalities use to exercise their police powers to control construction and maintain the quality of existing structures. Building codes assure the construction of safe structures to protect their occupants and the public from injury resulting from collapse, rapid conflagration or new construction defects. Housing codes provide minimum standards for the use and occupancy of dwelling units and residential structures. Cities may adopt and enforce property maintenance codes to provide standards for building maintenance and to minimize structural hazards and nuisances.<sup>15</sup>

Building codes regulate the erection, construction, enlargement, alteration, repair, moving, improving, conversion and demolition of buildings or structures. Building, plumbing, electrical and fire prevention codes will ensure new buildings are structurally sound. Fire hazards are reduced by controlling the type and use of materials and methods of construction, especially for such potentially hazardous systems as heating and electrical wiring. Sufficient means of egress are provided to allow the occupants of the structure to escape safely in case of a fire. The health of occupants is protected by regulating how water is carried safely away.

The Pennsylvania Construction Code Act and the Uniform Construction Code applies to all construction, alteration, repair and occupancy of all buildings and structures in a city. However, a city may, through ordinance, apply building codes that meet and/or exceed the minimum requirements of the Uniform Construction Code, as long as it also meets the standards of the Pennsylvania Construction Code Act.

Following the Uniform Construction Code a city may enact a property maintenance ordinance.

## Historic Districts

The Historic Districts Act permits municipalities to designate certain areas as historic districts subject to special controls.<sup>16</sup> The boundaries of the district are defined by surveys of local architectural and historic resources. Controls cover demolition or alteration of existing buildings and new construction within the district. Regulations on building spacing, texture and type of materials and architectural details are intended to preserve the exterior appearance of the district. The degree of controls enacted and their ongoing administration are local choices.

Historic district controls are intended to protect the local architectural and historic heritage of the community. Functioning historic districts can stabilize or even increase property values, encourage tourism, foster an increase in civic pride and contribute to the quality of life in the community.

## References

1. 53 P.S. 10101; Pennsylvania Municipalities Planning Code.
2. 32 P.S. 679.101; Flood Plain Management Act.
3. 32 P.S. 680.1; Storm Water Management Act
4. 35 P.S. 750.1; Pennsylvania Sewage Facilities Act
5. *Holland Enterprise, Inc. v. Joka*, 439 A.2d 876, 64 Pa. Cmwlth. 129, at 133, 1982.
6. *Council of Middletown v. Benham*, 523 A.2d 311, 514 Pa. 176, 1987.
7. 35 P.S. 6018.101; Solid Waste Management Act.
8. 53 P.S. 4000.1501; Municipal Waste Planning, Recycling and Waste Reduction Act; 1988 P.L. 566, No. 101.
9. 53 P.S. 37403(6); Third Class City Code, Section 2403(6).
10. *Kavanagh v London Grove Township*, 404 A.2d 393, 486 Pa. 133, at 138, 1979; *Dougherty v. Messner*, 172 A.2d 288, 404 Pa. 235, at 237, 1961; *Lutz v. Amour*, 151 A.2d 108, 395 Pa. 576, 1959.
11. *Sunny Farms, Ltd. v. North Codorus Township*, 474 A.2d 56, 81 Pa. Cmwlth. 371, at 376, 1984.
12. *Monroeville v. Chambers Development Corporation*, 491 A.2d 307, 88 Pa. Cmwlth. 603, at 609, 1985.
13. 53 P.S. 37403(16); Third Class City Code, Section 2403(16); 53 P.S. 39140; Third Class City Code, Section 4140; *Sobocinski v City of Williamsport*, 319 A.2d 697, 13 Pa.Comwlth. 425, 1974; *City of New Castle v. DeRosa*, 4 D.&C.3d 319, 1978.
14. 53 P.S. 37403(63); Third Class City Code, Section 2403(63).
15. 53 P.S. 39130; Third Class City Code, Section 4130.
16. 53 P.S. 8002; 1961 P.L. 282, No. 167.

## Appendix A: Listing of Cities

CITY	2010 CENSUS POPULATION	2012 TOTAL EXPENDITURES*	INCORPORATION AS CITY	AREA (SQ. MILES)
Aliquippa	9,438	6,822,180	1985	4.1
Allentown	118,032	184,912,993	1867	17.7
Altoona	46,320	37,128,004	1868	9.8
Arnold	5,157	4,510,347	1939	0.7
Beaver Falls	8,987	19,824,214	1930	2.1
Bethlehem	74,982	137,573,467	1917	19.3
Bradford	8,770	13,422,767	1879	3.4
Butler	13,757	9,871,605	1918	2.7
Carbondale	8,891	9,452,895	1851	3.2
Chester	33,972	N/A	1866	4.8
Clairton	6,796	7,717,485	1922	2.8
Coatesville	13,100	14,394,519	1914	1.9
Connellsville	7,637	3,869,263	1911	2.3
Corry	6,605	7,197,800	1866	6.1
DuBois	7,794	20,389,006	1914	3.4
Duquesne	5,565	5,258,236	1910	1.8
Easton	26,800	50,048,086	1886	4.3
Erie	101,786	130,392,212	1851	19.1
Farrell	5,111	5,200,769	1932	2.3
Franklin	6,545	5,545,779	1868	4.6
Greensburg	14,892	13,784,487	1928	4.2
Harrisburg	49,528	N/A	1860	8.1
Hazleton	25,340	N/A	1919	6
Hermitage	16,220	26,793,150	1983	29.7
Jeannette	9,654	6,436,678	1938	2.4
Johnstown	20,978	25,409,709	1889	5.8
Lancaster	59,322	129,964,981	1818	7.4
Lebanon	25,477	26,955,849	1885	4.2
Lock Haven	9,772	10,524,194	1870	2.5

## Appendix II

CITY	2010 POPULATION	2012 TOTAL EXPENDITURES*	INCORPORATION AS CITY	AREA (SQ. MILES)
Lower Burrell . . . . .	11,761 . . . . .	7,260,298 . . . . .	1958 . . . . .	11.6
McKeesport . . . . .	19,731 . . . . .	21,037,092 . . . . .	1891 . . . . .	5
Meadville . . . . .	13,388 . . . . .	19,424,155 . . . . .	1866 . . . . .	4.4
Monessen . . . . .	7,720 . . . . .	10,937,013 . . . . .	1921 . . . . .	2.9
Monongahela . . . . .	4,300 . . . . .	2,794,252 . . . . .	1873 . . . . .	1.9
Nanticoke . . . . .	10,465 . . . . .	8,676,151 . . . . .	1926 . . . . .	3.5
New Castle . . . . .	23,273 . . . . .	19,875,306 . . . . .	1869 . . . . .	8.5
New Kensington . . . . .	13,116 . . . . .	9,473,485 . . . . .	1934 . . . . .	4
Oil City . . . . .	10,557 . . . . .	15,085,809 . . . . .	1871 . . . . .	4.5
Parker City . . . . .	840 . . . . .	120,650 . . . . .	1873 . . . . .	1.1
Philadelphia . . . . .	1,526,006 . . . . .	N/A . . . . .	1691 . . . . .	135.1
Pittsburgh . . . . .	305,704 . . . . .	683,762,224 . . . . .	1816 . . . . .	55.6
Pittston . . . . .	7,739 . . . . .	10,359,434 . . . . .	1894 . . . . .	1.6
Pottsville . . . . .	14,324 . . . . .	N/A . . . . .	1913 . . . . .	4.2
Reading . . . . .	88,082 . . . . .	172,214,880 . . . . .	1847 . . . . .	9.8
Scranton . . . . .	76,089 . . . . .	124,668,481 . . . . .	1866 . . . . .	25.2
Shamokin . . . . .	7,374 . . . . .	5,065,706 . . . . .	1950 . . . . .	0.8
Sharon . . . . .	14,038 . . . . .	11,309,094 . . . . .	1916 . . . . .	3.7
St. Marys . . . . .	13,070 . . . . .	16,054,636 . . . . .	1991 . . . . .	99.3
Sunbury . . . . .	9,905 . . . . .	4,469,893 . . . . .	1920 . . . . .	2.1
Titusville . . . . .	5,601 . . . . .	6,160,760 . . . . .	1866 . . . . .	2.9
Uniontown . . . . .	10,372 . . . . .	9,596,324 . . . . .	1913 . . . . .	2
Warren . . . . .	9,710 . . . . .	11,171,762 . . . . .	1988 . . . . .	2.9
Washington . . . . .	13,663 . . . . .	31,235,105 . . . . .	1924 . . . . .	2.9
Wilkes-Barre . . . . .	41,498 . . . . .	60,471,968 . . . . .	1871 . . . . .	6.8
Williamsport . . . . .	29,381 . . . . .	31,452,813 . . . . .	1866 . . . . .	8.9
York . . . . .	43,718 . . . . .	76,900,615 . . . . .	1887 . . . . .	5.2

## Glossary of Terms

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The following glossary contains a number of terms which often arise in the administration of specialized municipal programs. The glossary, while not intended to be all inclusive, does contain terms often used by financial, planning, legal, and technical specialists in their dealings with a municipal official.

**Administrative.** Pertaining to management of functions and activities, as opposed to legislative and judicial.

**Agency and Trust Funds.** Such funds are established to account for cash and other assets held by a municipality as agent or trustee for another party. The two classes of funds are similar because the resources of the funds are not assets of the municipality but, through the operation of law or by agreement, the municipality is responsible for their accountability. An example of the agency fund is the Firemen's Relief Fund whose assets are received with the purpose of being paid to the Firemen's Relief Association. The Police Pension Fund, administered by the municipality, is an example of a trust fund.

**Agenda.** A list of items to be brought up at a meeting.

**Allocation of Funds.** To set aside funds for a specific purpose or program.

**Amendment.** An alteration, addition or deletion which changes the meaning or scope of an original formal document. Often these are laws or regulations. However, plans of specifications can also be amended.

**Appropriation.** A sum of money authorized by a legislative body to be spent for a certain purpose.

**Assessment.** The value placed on an item of real or personal property for property tax purposes. The rate of tax times the value equals the amount of charge levied on property. Also, a special charge levied on each property within a special assessment district for an improvement benefiting the property or for a service provided only within the district.

**Audit.** An examination of the financial activities of an agency and the report based on such examination.

**Bond.** A document issued by a municipality in exchange for money promising to pay back the money to the person who holds the document on a specific date. Bonds normally bear interest. They are a common way of raising money for capital improvements.

**Budget.** A plan for spending and receiving money to sustain municipal operations during a fiscal year together with related explanation. A capital budget is such a plan for financing purchase or construction of items of high cost and long life, such as fire engines, streets and buildings.

**Capital Outlay.** Expenditures made to acquire fixed assets or additions to them are called capital outlays. These expenditures are recorded in the general fund or utility funds where the assets are to be used. Ultimately, under good property accounting, such assets acquired through the general fund should be reflected in the general fixed assets group of accounts.

**Capital Program or Capital Budget.** A schedule of purchase or construction of needed items of high cost, such as fire engines, streets and buildings, over a period of years (normally five) together with a plan for spending and receiving the money to pay for the items.

**Capital Reserve Fund.** Established to account for resources legally set aside for anticipated capital expenditures, including construction, purchase or replacement of, or additions to, municipal buildings, equipment, machinery, motor vehicles or other capital assets.

**Certification.** A formal, written declaration by the authorized officer that certain facts are true or valid.

**Charter.** A document setting forth the purposes, powers and organization of a home rule municipality, as approved by the voters.

**Cluster Development.** A type of residential development where the overall density conforms to typical standards, but allows for the concentration of structures on a portion of the tract while leaving the remaining open space for common resident usage. This type of development should be sympathetic to environmental conservation and protection.

**Comprehensive Plan.** A comprehensive plan (or community development plan) consists of maps, charts and textual matter, and indicates the recommendations of the planning commission for the continuing development of the municipality. The comprehensive plan includes, but is not limited to, the following related basic elements: a statement of objectives, a plan for land use, a map or statement indicating the relationship of the municipality and its proposed development to the adjacent municipalities and areas.

**Conditional Use.** A use which is not appropriate to a particular zone district as a whole, but may be suitable in certain localities within the district only when specific conditions and factors prescribes for such cases within the zoning ordinance are present. Conditional uses are allowed or denied by the municipal governing body after recommendations by the planning agency.

**Constituent.** A person served by an elected official, normally a resident or voter.

**Council.** The governing body of a city, borough and certain home rule municipalities.

**Debt Service.** Payments to creditors, primarily the holders of municipal bonds. Debt service includes principal, interest and minor incidentals such as paying agents' fees.

**Developer.** Any landowner, agent of such landowner or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or land development.

**Development Plan.** The provisions for the development of a tract of land, including a subdivision plat, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities.

**Easement.** A right-of-way for public or quasi-public use. Normally, they are used for public utilities, bridle paths, parkways, floodways, scenic uses and other purposes. The fee title to land in the easement areas remains tied to the adjacent land and the easement rights are relinquished when the public or quasi-public use ceases.

**Effluent.** A term applied to the water discharged from a sewage treatment device.

**Eminent Domain.** The concept of the power of certain governmental entities to acquire, for the public use, privately owned real estate by means of legal processes and adjudicated compensation to the private owner.

**Executive.** Pertaining to the power to carry out laws and functions, veto legislation, appoint officer and perform other duties as prescribed by law. If a municipality has a manager, the administrative portion of the executive function is the responsibility of the manager.

**Executive Session.** A meeting of a public agency closed to the public. They can legally be held only for certain limited purposes.

**Feasibility Study.** A preliminary survey to determine the design, aesthetics, construction and economic aspects of a proposed project.

**Floodplain.** The area along a natural watercourse subject to periodic overflow by water.

**General Fund.** Used to account for all revenues and the activities financed by them not accounted for in some special fund.

**General Obligation Bond Funds.** Established to account for the proceeds from bond sales and other revenues properly allocated to these funds and the costs of projects financed by them. Costs for public improvements are recovered from general revenues.

**Governing Body.** The council in cities and boroughs, the board of commissioners in first class townships, the board of supervisors in second class townships and the elected representative body in home rule municipalities.

**Highway Aid fund.** As provided by law, this fund is created to account for the receipt and use of state liquid fuels funds and is subject to the regulations of the Department of Transportation.

**Home Rule.** The degree of local municipal power exercised by a municipality following a referendum greater than the power set forth in general law. A municipality under a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania or by the General Assembly or by the charter itself.

**Improvements.** Those physical changes to the land necessary to produce usable and desirable lots from raw acreage including, but not limited to, grading, paving, curbs, gutters, storm sewers and drains, improvements to existing watercourses, sidewalks, crosswalks, street signs, monuments, water supply facilities and sewage disposal facilities.

**Industrial Park.** A planned area for manufacturing or warehousing uses where special consideration has been given to human and aesthetic values, such as vegetation, open space and buffer zones. Similar areas are developed for office and research parks.

**Job Description.** An outline of the duties assigned a class of personnel positions together with the training and experience normally required to qualify for the class.

**Judicial.** Pertaining to the power to judge, to administer justice and interpret laws and ordinances.

**Land Development.** The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving a group of two or more buildings or the division or allocation of land or space between or among two or more existing or prospective occupants to include streets, common areas, leaseholds, condominiums, building groups or other features; a subdivision of land.

**Legislative.** Pertaining to the power to make laws as opposed to administrative, executive and judicial.

**Manager.** The chief administrator of a municipality appointed by the council or board to run its business and suggest and carry out policies and programs.

**Mayor.** The chief elective officer of a city. Depending on the form of government used by a Pennsylvania city, the mayor may be the separately elected chief executive officer of the city (mayor-council form) or the presiding officer of the city where there is no elected executive (council-manager or commission forms).

**Meeting.** A gathering of elected officials set or called in accordance with prescribed laws or charter provisions and where business of the public agency may be transacted.

**Mill.** A property tax measure equal to one dollar of tax per one thousand dollars of assessment.

**Nonconforming Use.** A use, whether of land or of structure, not complying with the applicable use provisions in a zoning ordinance or amendment as enacted, where such use was lawfully in existence prior to the enactment of the ordinance or amendment or prior to its application to the location.



**Nonconforming Structure.** A structure or part of a structure manifestly not designed to comply with the applicable use provisions in a zoning ordinance or amendment as enacted, where the structure lawfully existed prior to the enactment of the ordinance or amendment. Such nonconforming structures include, but are not limited to nonconforming signs.

**Official.** A person who occupies a municipal legislative, quasi-judicial, administrative, executive or enforcement position.

**Ordinance.** A law or statute enacted by a municipality. See resolution.

**Personnel System.** A method of recruiting, selecting and promoting people to perform the work of a municipal organization and the method of classifying and assigning a pay scale to their jobs together with related personnel regulations and activities concerning hours of work, training, grievance procedures and labor relations.

**Planned Residential Development (Planned Unit Development).** An extension of cluster development including detached, semi-detached, attached and multistory structures, and may include land uses other than residential to the extent they are designed to serve the residents.

**Planning.** A process of deciding what is to be done and how it is to be accomplished; the process of deciding how land should be used and where public facilities should be located.

**Planning Commission.** A planning agency, authorized by law to prepare and recommend plans for the development of physical, social, economic and cultural resources and facilities within a political subdivision.

**Plat.** The official map of a subdivision of land.

**Public Hearing.** A meeting or portion of a meeting set up to give members of the public a chance to speak on a particular subject such as the provisions of a proposed ordinance.

**Referendum.** A vote by the people of a municipality or area on an issue. A referendum may be started by a governing body or initiated by petition.

**Regulation.** A rule, procedure or other formal requirement passed to carry out the purpose of a law. It carries the same legal power as the law. However, the rule or formal requirement may only be used to carry out the purpose or the law under which it is passed.

**Revenue Bonds.** A borrowing tool with higher interest rates than general obligation bonds, but not subject to voter approval. Repayment of the bonds is guaranteed by revenues produced by the project and not municipal taxing power.

**Resolution.** A decision, opinion or directive of a municipality expressed in a formally drafted document but not having the force or effect of law.

**Revisions.** Written or added changes, corrections of improvements to a plan, specification of drawing.

**Revolving funds.** Special purpose funds providing a constant source of funds for assessable public improvements. General obligation bonds, repayable from general revenues, as well as assessed taxes, may be used as sources for establishing such a fund.

**Right-of-Way.** Any area reserved by law or by common consent to a public or semipublic use. Streets and easements are typical examples.

**Scenic Easement.** An easement for the protection of the environment or of scenic values. On this easement, the land owner is not permitted to alter the vegetation or change the use of the land without governmental consent.

**Shop Drawings.** Additional drawings prepared by the contractor or supplier of materials after the contract has been awarded.

**Sinking Fund.** Established to account for the accumulation of money providing for the retirement of bonds and the payment of interest.

**Soil Percolation Test.** A field test conducted to determine the absorption capacity of soil to a specified depth in a given location for the purpose of determining suitability of soil for on-site sewage disposal.

**Special Assessment Bonds.** Similar to general obligation bond funds. However, the cost of public improvements provided by the bond proceeds are assessed against owners of properties benefited by the improvements.

**Special Exception.** The granting of a modification of the provisions of a zoning ordinance as authorized in specific instances listed, and under the terms, procedures and conditions prescribed in the specific ordinance. Special exceptions are administered by the zoning hearing board.

**Special Revenue Funds.** These funds are established to account for revenues specifically raised for a particular purpose. A special fund is usually created for each purpose (fire, tax fund, library tax fund).

**Specifications.** The written instructions which accompany and supplement the drawings in a contract.

**Subdivision.** The division of a single tract or other parcel of land into two or more lots. (Specific definitions will vary in specific ordinances or regulations.)

**Subdivision and Land Development Regulations.** Procedures and requirements which must be met before the subdivision or development of land is permitted.

**Temporary Funds.** Created to accommodate a specific need that may arise. Must include a system for complete accountability and be closed promptly upon completion of its purpose. Remaining assets should be distributed in accordance with the intentions of the elected officials as set forth at the time the fund was created.

**Utility Funds.** These funds account for the financial transactions of utility services rendered to the general public financed by specific user charges (water fund, electric fund, sewer fund).

**Variance.** The permission granted by the zoning hearing board, following a public hearing, for an adjustment to some regulations in zoning ordinance to alleviate an unnecessary hardship. The permission granted must not be contrary to the public interest and must maintain the spirit and original intent of the ordinance.

**Zoning.** The restrictions of certain land areas for specific uses and the control of these uses by legal restrictions.

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