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Borough Mayors' Manual



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Comments or inquiries on the subject matter of this publication should be addressed to:

Governor's Center for Local Government Services
Department of Community and Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, Pennsylvania 17120-0225

(717) 787-8158
1-888-223-6837
E-mail: ra-dcedclgs@pa.gov
newPA.com

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Preparation of this publication was financed from appropriations of the General Assembly of the Commonwealth of Pennsylvania.

The Governor's Center for Local Government Services acknowledges the input and comments from the Pennsylvania State Mayors' Association and Duquesne University School of Law.

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A Guide to Legal Sources

In this Manual, beginning with Section II entitled “Office of Borough Mayor,” many of the statements of the law in Pennsylvania will be followed by their legal sources. The sources are one of two kinds: *statutes* which are formal arrangements of laws passed by the General Assembly and other legislative bodies, and *court cases* which are primarily judicial interpretations of the meanings of those statutes.

Most of the citations of statutes are from the Borough Code. A “code” is a consolidation of laws on a particular subject which, in the case of the Borough Code, is borough government. Citations to the Borough Code will look like this example: 8 Pa.C.S. §10A06. The number “8” refers to the title of the Pennsylvania Consolidated Statutes, abbreviated “Pa.C.S.,” where the compilation of borough laws is located. The numbers and letter following the symbol for section (§) designates the section of Title 8 where the law, now a “statute,” may be found.

Other titles of the Pennsylvania Consolidated Statutes referenced in this Manual include: Title 23 (Domestic Relations); Title 35 (Health and Safety); Title 42 (Judiciary and Judicial Procedure); and Title 65 (Public Officers). All of these consolidated statutes are available online at: http://www.legis.state.pa.us/cfdocs/legis/LI/Public/cons_index.cfm

Not all laws are consolidated into codes. There are laws found in *unconsolidated* statutes. Unconsolidated statutes are statutes in a title with many different subjects in contrast to a consolidated title such as the Borough Code. The most common unconsolidated statutes cited in this Manual are from Title 53 entitled “Municipal and Quasi-Municipal Corporations.” Unconsolidated statutes are cited similarly to consolidated statutes except “P.S.” is used in place of “Pa.C.S.”

All of the *court cases* referenced in this Manual are decisions of statewide courts; namely, the Pennsylvania Commonwealth Court, which is the first level of appeal from a county court and the Pennsylvania Supreme Court, which is the second and final level of appeal. Unlike previous editions of this Manual, no county cases have been cited in this Manual. This is because county cases are the case law only of that county and they do not have statewide application.

Commonwealth Court and Supreme Court cases are reported primarily in two different volumes of books. They are: a series of volumes containing *only* the cases of that Court and a regional series of volumes known as the Atlantic Reporter. Because the Atlantic Reporter contains cases decided in both Courts and is more readily available to the public, citations of court cases in this Manual will be to the Atlantic Reporter alone. There are three series of the Atlantic Reporter which are abbreviated as “A.,” “A.2d,” and “A.3rd”. When a court case is referenced, the name of the case will appear first followed by the volume of the reporter, the series of the reporter, and the page where the case begins. At the end of the citation, in parentheses, will be an abbreviation of the Court and the year in which the court decision was rendered. Here is an example: *Hoffman v. Borough of Macungie*, 63 A.3rd 461 (Pa.Cmwlt. 2013).

After a case is initially cited, it will be cited in an abbreviated fashion thereafter. Using the above case as an example, that case will be cited as *Hoffman*, *supra* at 471 if it follows the referencing of *another case* and the cited material is on page 471. (“*Supra*” is a Latin word meaning above.) Conversely, if the same *Hoffman* case is cited consecutively, this fact will be denoted by the abbreviation *Id.* at 471. (“*Id.*” is an abbreviation of the Latin word *Idem*, which means the same.)

I. Borough Government

In the Commonwealth of Pennsylvania, there are essentially three types of municipal governments: boroughs, cities and townships. The Town of Bloomsburg in Columbia County is the one notable exception to this general rule.

Townships are the units of local government which subdivide counties in the same manner that counties subdivide the Commonwealth of Pennsylvania. Townships are unique in the sense that their land mass can be fragmented and boroughs and cities can be created within or from their land mass through a legal process known as incorporation. A township cannot be merged into an existing borough but a borough can be merged into an existing township.

Generally speaking, cities are large, more densely populated units of local government. Boroughs are usually smaller versions of cities but less densely populated. Boroughs can be likened to the common notion of a town in contrast to a city metropolis. Third class cities can be reincorporated as boroughs.

Townships are divided into two classes based upon population, known as first class townships and second class townships. Cities are divided into three classes based upon population with a similar designation as townships although the reality is that Philadelphia is the only first class city; Pittsburgh is the only second class city, and Scranton is the only second class A city. There is only one class of boroughs.

The registered voters of all municipalities have the right under Article IX of the Pennsylvania Constitution to create their own form of municipal government using the process outlined by the General Assembly of Pennsylvania known as home rule. In Pennsylvania, 32 boroughs, 21 cities and 24 townships have exercised their constitutional right to create their own form of government. Typically when this happens, the “home rule” borough, city, or township will establish its own form of local government but reference the legislative code under which it was originally formed for any matter not addressed and not in conflict with its home rule charter.

Boroughs are the second most common form of municipal government in Pennsylvania; their number is exceeded only by the number of second-class townships. Pennsylvania’s 955 boroughs represent 37.2 percent of all general purpose municipal governments in Pennsylvania. The median number of boroughs per county is 11. The number ranges from one in Forest County to 84 in Allegheny County. The commonwealth’s boroughs govern a combined population of more than 2.5 million, representing 19.8 percent of the state’s total population.

The populations of boroughs vary widely. The boroughs with the largest populations are: State College (Centre County), 42,034; Norristown (Montgomery County), 34,324; Bethel Park (Allegheny County), 32,313; Monroeville (Allegheny County), 28,386; and Plum (Allegheny County), 27,126. The boroughs with the smallest populations are: Centralia (Columbia County), 10; Valley-Hi (Fulton County), 15; S.N.P.J. (Lawrence County), 19; Seven Springs (Somerset County), 26; and Green Hills (Washington County), 29. The median population of a borough in Pennsylvania is 1,320. Below is a breakdown of boroughs by population size based upon the 2010 federal census:

Population	Number
20,000 and over	9
15,000 - 19,999	7
10,000-14,999	17
5,000-9,999	109
2,500-4,999	178
1,000-2,499	231
Under 1,000	404

The disparity in the land area of boroughs is equally as great as population. The boroughs with the five largest land area in square miles are: Sugarcreek (Venango County), 37.4; Murrysville (Westmoreland County), 36.9; Plum (Allegheny County), 28.6; Ohioville (Beaver County) 23.3; and Nesquehoning (Carbon County), 21.2. Conversely, five boroughs are less than 0.1 of a square mile in land area; namely, Applewood (Armstrong County), Bear Creek Village (Luzerne County), Coaldale (Bedford County), Shade Gap (Huntingdon County), and Nesquehoning (Bedford County).

Development of Borough Government

The name “borough” is derived from the Old English word “*burg*,” meaning a fortified place. By the Middle Ages, it meant a town in England possessing a charter that granted it special duties and privileges. By the 17th century, boroughs were corporate towns not granted the status of city. William Penn’s Charter of 1681 from Charles II gave him the power to erect and incorporate towns into boroughs and boroughs into cities in Pennsylvania.

Borough government in Pennsylvania developed later than county and township government. At the time of the American Revolution, there were only 4 boroughs in Pennsylvania compared to 255 townships. Philadelphia appears to have been a borough between 1684 and 1691 when its first city charter was granted, but no record of this survives. The first surviving borough charter was that of Germantown in 1691. Other colonial boroughs were Chester in 1701, Bristol in 1720, and Lancaster in 1741. After the Revolution, renewed growth brought the spread of municipal government and 15 more boroughs were incorporated between 1782 and the end of the 18th century.

Early boroughs had a governing body composed of two or more burgesses and a number of assistants. This body adopted local ordinances and also formed a court to hear and dispose of local cases. The burgesses were also empowered to call town meetings, but these were generally meetings of borough officers not town meetings of the general populace. Early charters were granted by special acts of the legislature, but they soon developed common patterns. By 1800, the first councils had appeared in borough charters and references to town meetings were dropped. The number of burgesses was standardized at two, a chief burgess and an assistant burgess. The chief burgess was the presiding officer of council meetings, had a full voice and vote in all deliberations, and was also the chief executive charged with the preservation of order, and administration of the borough government.

Between 1800 and 1830, 64 additional boroughs were formed. The growing burden of local legislation led to the enactment of the first general borough law in 1834, authorizing county courts to incorporate boroughs upon petition of the citizens of a town. These boroughs had a governing body of one burgess and five councilmen. The burgess was president of the council with all rights of a member and continued responsibility for preserving order and hearing cases involving infractions of borough ordinances. Boroughs also continued to be incorporated by special legislation up until 1873 when a new state constitution prohibited the legislature from enacting special or local laws. Between 1782 and 1873, 260 boroughs were incorporated by special act. Most of these municipalities subsequently accepted the terms of the general borough laws and now operate under the Borough Code.

The General Borough Law of 1851 supplemented the 1834 law, outlining in more detail the powers and duties of borough officers. In 1871, the number of councilmen was increased to six to give the council a total of seven members. Division of boroughs into wards was first authorized by general law in 1874, although various special acts had authorized it for particular boroughs before then. Special charters enacted by the middle of the nineteenth century provided for a president of council to preside in the absence of the burgess, and in some of these charters the burgess retained the right to preside, but was restricted to voting only in case of ties. These changes presaged an important alteration in the structure of borough government.

In 1887, the judicial power of the burgess was expanded when the office was given the jurisdiction of a justice of the peace to hear criminal actions under state law as well as borough ordinances. In 1893, the powers of the principal borough officers were reshuffled. Council was given the power to select its own president. The term of office for the burgess was extended to three years, and the assistant burgess was abolished. The burgess was no longer the presiding officer, nor a voting member of council. In exchange for these lost legislative powers, the burgess was given the power to

veto legislation. The 1893 amendment was influenced by a trend in city governments to lessen the powers of mayors in favor of councils. Boroughs were first authorized to appoint police officers in 1893, but they were under the direction and control of council until 1911, when this power was transferred to the burgess.

The late 19th century saw the greatest increase in numbers of boroughs. More than two-thirds of existing boroughs and cities originally formed as boroughs were incorporated between 1850 and 1910. In this period, boroughs were formed at the rate of roughly 10 per year as Pennsylvania underwent industrialization, an extensive railroad network was put in place and the urban proportion of the population increased from 23 percent to 60 percent. The rate of borough formation dropped to 6 per year in the 1910s, 3 per year in the 1920s, and 1 or fewer per year since 1930.

In 1909, the terms of borough officers were extended to four years to comply with the new election schedule. The General Borough Act of 1915 codified the 1834 and 1851 borough laws and their subsequent amendments. Boroughs were first authorized to establish the office of manager in 1917, but not until 1939 was the burgess authorized to delegate authority over the police force to the manager. The General Borough Act was reenacted in 1927, revised and reenacted in 1947 as the Borough Code, and reenacted again in 1966. Prior to the 1966 reenactment, the title of burgess had been changed to mayor, in 1961. In 1968, the new judicial article of the Pennsylvania Constitution removed all judicial powers from the mayor, stripping the office of this responsibility. The latest reenactment of the Borough Code came in 2012 which was followed by a consolidation of the Borough Code as a new Title 8 in the Pennsylvania Consolidated Statutes in 2014. All of the Consolidated Statutes including the Borough Code can be accessed in their entirety online at: www.legis.state.pa.us/cfdocs/legis/LI/Public/cons_index.cfm.

Role of Municipal Government

There are three primary sources for understanding the role of municipal government in the Commonwealth of Pennsylvania. They are: Article IX of the Constitution of the Commonwealth of Pennsylvania; a judicial principle known as “Dillon’s Rule”; and Title 53 of Pennsylvania Statutes entitled “Municipal and Quasi-Municipal Corporations.”

In 1968, the people of Pennsylvania spoke loudly and strongly about the importance of municipal government, devoting a separate article (IX) to this subject entitled “Local Government.” Article IX mandates that the General Assembly of Pennsylvania not only “provide by general law *for* local government” (Section 1) but also “provide *optional forms of government for all municipalities*” (Section 3). Even when the General Assembly complies with these mandates, “[m]unicipalities have the *right and power* to frame and adopt *home rule charters*” (Section 2). “A municipality by the act of its governing body may, or upon being required by initiative and referendum ..., shall, cooperate or agree in the exercise of any function, power or responsibility with, or delegate or transfer any function, power or responsibility to, one or more other government units ...” (Section 5). In short, Article IX protects the right of the people of Pennsylvania to local self-determination in a way that celebrates the idea that one size or type of government does not fit all.

“Dillon’s Rule,” is a legal principle about the nature of municipal government first articulated by John Forrest Dillon, an American jurist who served on the Iowa Supreme Court and the United States 8th Circuit Court in the 19th Century. As a federal judge, Judge Dillon made a systematic study of local governments and wrote a treatise in 1872 based upon that study, entitled *Municipal Corporations*. In that treatise, Judge Dillon stated “municipal governments only have the powers that are expressly granted to them by the state legislature, those powers that are necessarily implied from that grant of power and those that are essential to the municipality’s existence and functioning.” This proposition, now known as “Dillon’s Rule,” has been adopted by many state and federal courts including Pennsylvania and the United States Supreme Court in a case involving the City of Pittsburgh.

Article IX of the Constitution of the Commonwealth of Pennsylvania and Dillon’s Rule leave little doubt that understanding the role of municipal government in Pennsylvania requires a thorough knowledge of the laws adopted by the Commonwealth’s General Assembly. Up until the passage of Act 37 of 2014, these laws were almost exclusively codified in Title 53 entitled “Municipal and Quasi-Municipal Corporations.” The subject matter of Part I is “General Municipal Law” followed by Parts pertaining to nine different classes of local government; namely, cities of the first class (II), second class (III), second class A (IV), and third class (V); boroughs (VI); incorporated towns (VII) and townships of the first class (IX) and second class (X) as well as a Part on general township law (VIII).

With the passage of Act 37 of 2014, the Borough Code was removed from Title 53 and consolidated in its own Title 8, entitled "Boroughs and Incorporated Towns," as Part I. Part I of Title 8 furnishes "a complete and exclusive system for the government and regulation of boroughs" except in specific circumstances enumerated in that Part. For borough elected officials seeking to know and understand borough laws, the consolidation of those laws into a separate title or book is a distinct advantage.

When one reads the various municipal codes governing boroughs, cities, towns and townships, it is apparent that the General Assembly of Pennsylvania chose not to specifically define the role of municipal government. Instead the legislature allowed, within broad parameters, the citizens of each municipality to define the role of their municipal government themselves through their local elected officials. Here is an example from the Borough Code. Section 1006 (4) of the Borough Code states: "It shall be the duty of council:...(4) To enact, revise, repeal and amend ordinances and resolutions under Chapter 33 (relating to ordinances), and bylaws, rules and regulations, not inconsistent with the laws of this commonwealth, *as it deems beneficial to the borough* and to provide for the enforcement of the same." For instance, in determining what is "beneficial to the borough" to protect citizens against criminal acts, a council may decide to use the powers given to it in the Borough Code to enact ordinances or resolutions to: establish a police department, contract with another municipal police department, join with other municipalities in forming a regional police department, or take no governmental action and rely upon the Pennsylvania State Police to enforce the Crimes Code.

By way of further example, in Section 1202 of the Borough Code, the General Assembly delineates 65 specific powers of the borough on such diverse topics as: air navigation facilities, artistic and cultural activities, cable television services, civic programs, community development programs, conservation districts, electricity, emergency medical services, fire services, garbage collection, hospitals, industrial development agencies, junkyards, landmarks, municipal gas distribution systems, municipal music, neighborhood crime watch, senior citizens, shade trees, smoke emission, telecommunication systems, vehicles for towing, watershed associations and zoning. As if these specific powers were not enough, Section 1203 of the Borough Code reserves broad nonspecific powers to the borough with these words: "The council may make and adopt all ordinances, bylaws, rules and regulations not inconsistent with or restrained by the Constitution of Pennsylvania and laws of this commonwealth as may be expedient or necessary for the proper management, care and control of the borough and its finances and the maintenance of peace, good government, safety and welfare of the borough and its trade, commerce and manufactures."

In summary, although constitutionally and judicially, municipal governments are creatures of the commonwealth, the General Assembly of Pennsylvania has given municipal governments broad powers to serve the people that they represent at the local level. Some municipal governments choose only to provide basic services related to their citizens' use and enjoyment their property: police protection, fire fighting services, street maintenance, garbage collection, storm water management, and zoning, while others provide a myriad other services authorized by the General Assembly in the various municipal codes. Whether a municipal government plays a large role or small role depends upon the needs and wants of its citizens as well as the public and private resources available to that municipal government.

Structure of Borough Government

The business of borough government can be undertaken by five to twelve public officials elected by the people; three to five appointed officers whose duties are specified in the Borough Code and laws pertaining to all municipalities; two to three advisory or quasi-judicial bodies; and as many employees as the resources of the borough will support to provide the necessary or desired municipal services. The elected officials are three to seven members of council (unless the borough is divided into wards which could increase the number of members of Council significantly), the mayor, the tax collector and three auditors or one controller. The appointed officers are the secretary and/or manager, the treasurer, the solicitor, the police chief, the street commissioner and/or engineer. The quasi-judicial bodies are the zoning hearing board, the uniform construction code board and the civil service commission. Borough employees typically work in three areas: administration, public works and public safety.

Members of borough council may be elected at large or by ward. If members are elected at large, the borough council is usually composed of seven members; however, there is a legal process by which the number of members can be reduced to five or three. In boroughs where council members are elected by ward, the number of members of council can range from three to thirty-nine, depending upon the number of wards *and* whether three members of council were elected in each ward prior to January 1, 1966.

Borough council functions in two distinct ways. The first is as a *legislative body* like the General Assembly of Pennsylvania, enacting laws that set up and fund the borough government and regulate the activities of people living and businesses operating within the borough's geographic boundaries. The second is as a *board of directors of a non-profit corporation* in which the council oversees the delivery of municipal services (other than the police department) on a day-to-day basis through the manager, secretary or other public officials. By design, the council carries out its statutory responsibilities through a collaborative, deliberative process in which the majority rules and no one councilperson has any more authority than another (even the council president) to direct borough government operations *unless* such authority is specifically given to that person by the council body pursuant to the Borough Code. Often the council is organized into committees of less than a majority of council members (to avoid violating the Sunshine Act) for the purpose of studying legislative issues in detail and making recommendations to the entire council to take or not take formal action.

Like the president of the national government and the governor of the state government, the mayor is the only elected executive officer in borough government. In contrast to the council, the mayor acts alone in carrying out mayoral powers and duties, which are primarily in the areas of public safety and emergency response. From a public policy perspective, these areas of government action are highly sensitive and confidential, lending themselves well to executive decision making by a single public official in contrast to a deliberative body. The role of the mayor within the structure of borough government will be discussed in more detail in the next section.

The tax collector and auditors are elected officials with specific responsibilities related to the finances of the borough. The tax collector is "the collector of all state, county, borough, school, institution district and other taxes levied within the borough by the authorities empowered to levy taxes" *other than* taxes levied and imposed under a taxing act known as the "Local Tax Enabling Act." The most common tax collected by the tax collector is the real estate tax. The wage tax, realty transfer tax, and local services tax are examples of municipal taxes authorized under the "Local Tax Enabling Act." Notwithstanding, council may, by ordinance, provide that the tax collector shall be the collector of a tax levied under the Local Tax Enabling Act.

The Borough Code provides for the election of three auditors (unless council by a two-thirds majority vote chooses to appoint an independent auditor) *or* one controller. The mandatory responsibilities of the auditors are to "audit, adjust and settle the accounts of the tax collectors, the magisterial district judge and all officers of the borough." They also have the discretion to "audit, adjust and settle the accounts of any person, corporation, association, organization, committee or commission receiving or expending borough funds." The borough controller manages the fiscal affairs of the borough, as well as performs all of the functions of the auditors. Managing the fiscal affairs of the borough means the controller has "supervision and control of the accounts of all departments, bureaus and officers of the borough authorized to collect, receive or disburse the public money or who are charged with the management or custody of the accounts."

The solicitor is an individual who is licensed to practice law in Pennsylvania, is appointed by council to handle all of the legal matters of the borough, and serves at the pleasure of council. Among the duties of the solicitor set forth in the Borough Code, the solicitor is required to "perform every other professional act incident to the office which the borough solicitor may be authorized or required to do by the council *or the mayor*. In the case of a legal dispute between the mayor and council or in any other case in which representation of the mayor and council by the borough solicitor would create a conflict of interest for the borough solicitor, the mayor may employ outside counsel at borough expense, not to exceed \$4,000 in any 12-month period, to perform necessary legal services."

The secretary is appointed by council to be the borough's record-keeper and compliance officer with respect to the "Sunshine Act." Often the secretary is the compliance officer for the "Right to Know Law" as well (except for police records). The secretary must attend all meetings of the council and maintain full minutes of its proceedings. Among other duties, the secretary records the bylaws, rules, regulations, resolutions and ordinances of the borough; preserves the records and documents of the borough; has custody of the corporate seal; and informs council and the public of all borough meetings, including special meetings of council as required by the "Sunshine Act."

The treasurer, who is appointed by council, undertakes all of the duties that one would expect of a corporate treasurer. That is, the treasurer receives all money due the borough and deposits the money promptly in a designated depository in the name of the borough; keeps distinct and accurate accounts of all sums received from taxes and other sources; and pays out all money only on direction by the council, upon an order signed by the president of council and the borough secretary and also by the borough controller, if any.

If council chooses to create by ordinance the office of borough manager, the manager will become one of the most important officials in borough government because of the broad powers given to that position. The borough manager serves at the pleasure of council, subject to contractual rights that may arise under an employment agreement lasting no longer than two years. In the employment agreement, the council may delegate to the borough manager "by ordinance and subject to recall any of the *non-legislative* and *non-judicial* powers and duties of the council, the planning commission and the shade tree commission. With approval of council, the mayor may also delegate to the borough manager any of the mayor's non-legislative and non-judicial powers and duties.

Under the Borough Code if the council establishes a police department, then "council shall designate the ranks in the police department and the duties of each rank and may designate one of the police officers as *chief of police*." "The mayor may delegate to the chief of police supervision over and instruction to subordinate officers in the manner of performing their duties."

Council is not limited to appointing officers whose powers and duties are specifically set forth in the Borough Code. Section 1005 of the Code provides that Council may "create the offices of ... an engineer, a street commissioner *and other officers as it deems necessary*." In contrast to the offices of secretary, treasurer, and manager, there are no details in the Borough Code with respect to the duties of the engineer or street commissioner.

In at least one instance, a borough official is not appointed by council but is instead appointed by the Governor. If a borough chooses to be a "local organization of emergency management" under the Emergency Management Services Code, the borough is required to have a "coordinator who shall be responsible for the planning, administration and operation of the local organization subject to the direction and control of the executive officer (mayor) or governing body (council)." Under the Emergency Management Services Code, "the coordinator shall be appointed by the Governor upon the recommendation of the executive officer or governing body of the [borough]."

Within and without the Borough Code, there are statutes that *mandate* the creation of various boards and commissions if council elects to exercise certain powers. For instance, if a council chooses to establish a police department with three members or more, it must also constitute a civil service commission consisting of three electors within the borough. If a council enacts a zoning ordinance pursuant to the Pennsylvania Municipalities Planning Code, it must also create a zoning hearing board of three to five residents. A council that adopts an ordinance for the administration and enforcement of the Uniform Construction Code shall appoint an unspecified number of members to serve on a board of appeals. A mandated board that includes all of the members of council plus an elector residing in the borough is the vacancy board whose existence and function will be discussed in the section headed "Vacancies" under the part entitled "Office of Borough Mayor."

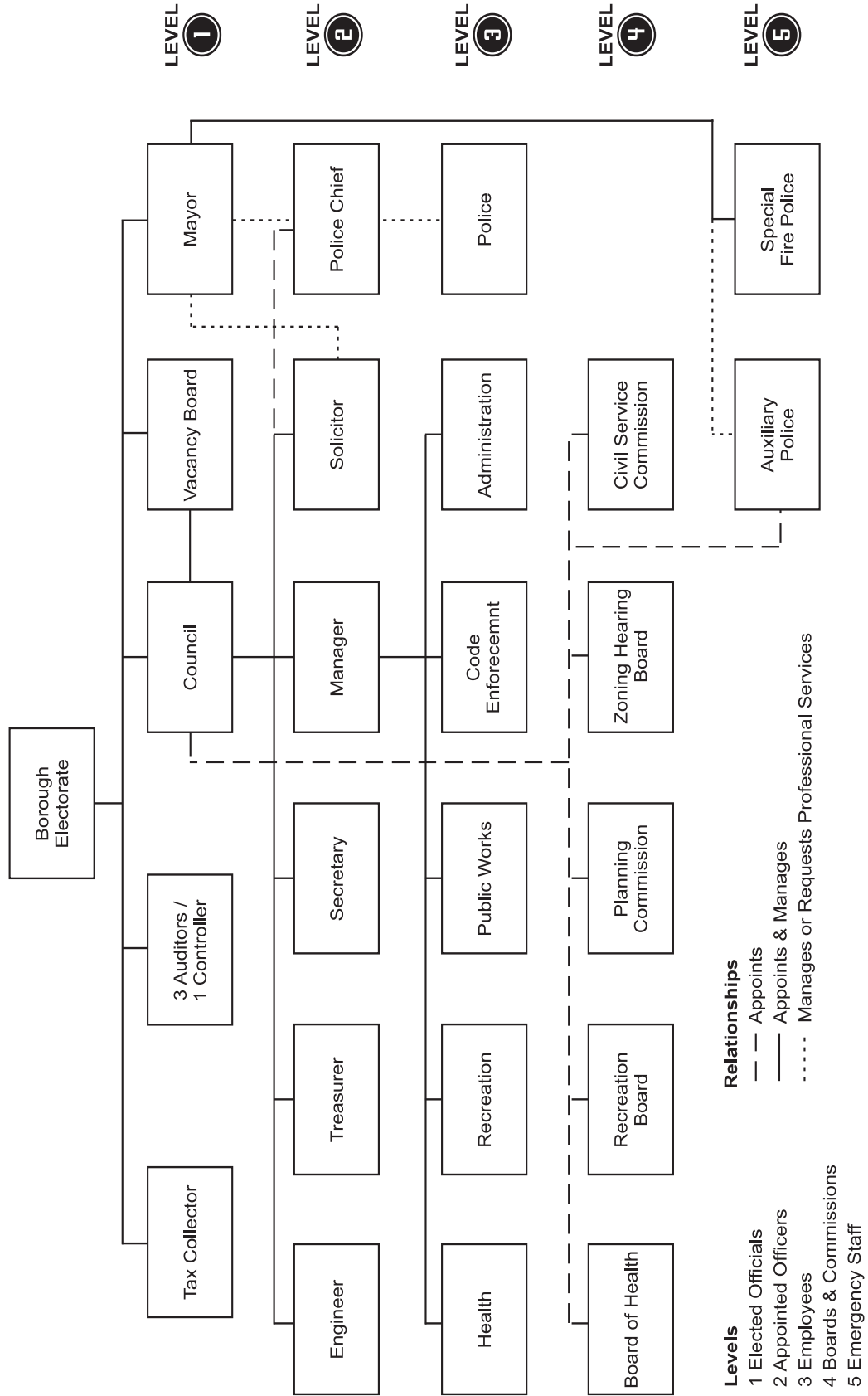
All of the aforementioned boards and commissions operate autonomously from the council, pursuant to the laws that mandated their creation. The mayor, as well as council, must be careful not to attempt to influence the deliberations and decision-making of the quasi-judicial boards in any way. The same caution must be exercised with the borough's zoning officer. Otherwise, any subsequent process of review by council, and possibly the mayor, may be tainted.

Likewise, within and without the Borough Code, there are statutes that *permit* the creation of various boards and commissions if council elects to do so. One of the most common commissions is a planning commission of three to nine members whose powers and duties are enumerated in the Pennsylvania Municipalities Planning Code. Under the Borough Code, a council can constitute a cemetery or shade tree commission of three members; a board of health or a commission of the water system composed of three to five members; or a recreation board consisting of five to nine members.

A discussion of the structure of borough government would not be complete without mention of the many borough employees who provide services to the residents and businesses of the municipality. Among other responsibilities, borough employees work in the administrative offices, labor on the roads and in the parks and keep the borough safe from personal perils and property damage.

An organizational chart illustrating the relationships among the officers, officials, and entities appears on the following page.

Model Structure of Borough Government



Role of Mayor

The role of the office of mayor has evolved over the years within the structure of borough government responding to changing attitudes about the nature and functioning of municipal government. In the middle of the 19th century, the mayor of today was known as the burgess and was the central figure in borough government. The burgess presided over council meetings, had a vote on all issues and appointed committee members. The burgess also was the chief executive officer, appointing many officials and exercising general supervision over borough government. Lastly, the burgess was a judicial officer hearing all cases involving violations of borough ordinances.

Toward the end of the 19th century, the people of Pennsylvania came to believe that the concentration of executive, legislative and judicial powers in one individual was not the best way for a borough government to operate. Over time, various powers exercised by the burgess were given to other elected officials. The judicial powers formerly held by burgesses are now exercised by the Magisterial District Judges, whose magisterial districts are a part of the unified judicial system established in Article V of the Pennsylvania Constitution. Borough councils now exercise most of the appointive and legislative powers formerly exercised by burgesses. This change in powers necessitated a change in title from burgess to mayor.

Despite the change in powers and title, the borough mayor of today continues to be the most recognizable and in many boroughs, is the most important public official in borough government. As previously noted, the borough mayor is the only executive in borough government elected by people. The mayor is the chief law enforcement officer of the borough and the elected official who takes charge during the time of an emergency. Although the mayor does not generally vote on legislative matters, he/she can vote in the event of a tie, veto an ordinance passed by council, attend and participate in all meetings of council and from time to time report to council on the state of the borough. In many boroughs the mayor is the only borough-wide elected person who participates in the work of the borough on a regular basis.

Within their boroughs, mayors are also in a unique position to exercise leadership because of the prestige of their office and its elected status. In many boroughs, the extent of the mayor's role will be determined by the mayor's view of civic responsibilities, personal skills, background in governmental affairs and individual interests. To a large degree, the mayor's role is also defined by the local political culture, the generalized local attitudes toward municipal government and commonly-held expectations of how public officials should operate.

II. Office of Borough Mayor

One mayor is elected in each borough by the electors of the borough at a municipal election held every four years 8 Pa.C.S. §806(a)(1). Municipal elections are always held in odd-numbered years. The term of office begins on the first Monday of January following the mayor's election and continues until the term of the next elected mayor, approximately four years later 8 Pa.C.S. §806(b). Shorter terms may occur in cases of appointment or election to fill vacancies. The mayor shall be eligible to succeed himself/herself 8 Pa.C.S. §10A01.

Qualifications

Resident. To serve as mayor, one must have been a resident of the borough continuously for one year prior to the mayor's election, with one exception 8 Pa.C.S. §801(a)(2). The exception is that a borough with a population of fewer than 150 may permit residents who have not resided in the borough continuously for at least one year immediately before the election to be eligible to hold office 8 Pa.C.S. §801(c). Before being sworn into office, a mayor shall present a signed affidavit to the borough secretary that states that the mayor has resided in the borough continuously for at least one year immediately prior to the mayor's election 8 Pa.C.S. §801(a)(2).

Elector. Not only must a candidate for mayor be a resident, he/she must be a registered elector of the borough 8 Pa.C.S. §801(a)(1). To qualify as a registered elector, a person must be 18 years of age and a resident of an election district in the borough. To continue to serve as mayor, an individual must retain his/her residence within the borough and be a registered elector. Legal residence includes not only a person's intention, but also a physical presence.

Incompatible Offices. The Borough Code, as well as Title 53 of Pennsylvania Statutes entitled "Municipal and Quasi-Municipal Corporations," prohibits a mayor from holding a number of elective and appointive offices known as "incompatible offices." The incompatible offices which are part of borough government are these. A mayor may not hold any other *elective office*, including but not limited to member of council, nor may a mayor serve as borough manager, secretary or treasurer 8 Pa.C.S. §10A01, 1104(c). A mayor may not be appointed to serve as a member of the borough's civil service commission (8 Pa.C.S. §1173) or zoning hearing board [53 Pa.C.S. §10903(a)] but may serve as a member of the borough planning commission 53 Pa.C.S. §10205. The mayor is prohibited from serving as a zoning officer 53 Pa.C.S. §10614.

A mayor of a borough with a population of 3,000 or more may not serve as an employee of that borough; however, a mayor serving as an employee of that borough prior to the certification of the 2010 official census or a subsequent latest official census which indicates an increase in the population of that borough to 3,000 or more may continue serving as an employee 8 Pa.C.S. §1104(b). Regardless of a borough's population, a mayor may not be employed as a police officer or firefighter in the borough where he/she is mayor or employed nor may a mayor be employed in a regional department, council of government or other cooperative venture in which the mayor's borough is a member of such a multi-municipal police entity 8 Pa.C.S. §1104(f).

Outside of borough government, the incompatible offices are these. A mayor may not serve as a school director or a trustee of a charter school 8 Pa.C.S. §801(b). No member of Congress or any person holding any office or appointment of profit or trust under the federal government or any person holding the office of magisterial district judge may at the same time be capable of holding the office of mayor 8 Pa.C.S. §10A02. A mayor may not serve as district attorney 16 P.S. §1401, 4401.

Notwithstanding the elective and appointive offices and employment which are by statute, "incompatible" with the office of mayor, unless there is incompatibility in fact, a mayor shall be eligible to serve on *any* board, commission, bureau or other agency created by or for the borough or any borough office created or authorized by statute and may accept appointments under the statute 8 Pa.C.S. §1104(a). Additionally, the Pennsylvania Supreme Court has held that only the legislature may declare governmental offices incompatible. *Commonwealth v. Lucas*, 632 A.2d 868, 870, (Pa. 1993). In the words of the Court, "it is not for [the Courts] to legislate or by interpretation to add to legislation matters which the legislature saw fit not to include." *Id.*

Oath of Office. Before exercising the duties of office, the mayor must take and subscribe an oath or affirmation of office 8 Pa.C.S. §10A03. The form of the oath is found in section 1141 of the Municipal Code 53 P.S. §1141. The oath requires a mayor to swear to support the Constitution of the United States and the Constitution of Pennsylvania and to perform the duties of office of mayor with fidelity. The oath may be administered by a judge, magisterial district judge of the county or a notary public. A copy of the oath as well as the mayor's certificate of election must be filed with the borough secretary and retained in the borough records for six years. 8 Pa.C.S. §10A03.

Bond. The Borough Code does not require a mayor to give bond as it does the controller and treasurer. If, however, council authorizes the mayor by ordinance to issue licenses and permits or otherwise handle public monies, a mayor may be required to post a bond. The basic purpose of the bond is to protect the borough from monetary loss through dishonesty or willful neglect by its employees or officers. The premium of the bond may be paid by the borough 8 Pa.C.S. §804(b)(1).

Vacancies and Absences

Vacancies. A vacancy in the office of mayor may occur from time to time for various reasons. The most common reason for a vacancy is a resignation for personal reasons which prevent a mayor from completing his/her term of office. Another reason is that a mayor is no longer eligible to serve because of *impediments* such as non-residency, failure to register to vote, holding an incompatible office, not taking the oath of office, not signing the affidavit of residency and failure to give bond, if required. Finally, a mayor may be unable to serve in office because of death or incapacity.

If any vacancy occurs in the office of mayor through death, resignation, impediments, incapacity, or in any other manner whatsoever, the council shall fill the vacancy within 30 days by appointing, by resolution, a registered elector of the borough to hold the office 8 Pa.C.S. §901(a). A prerequisite for filling the vacancy is that a quorum of the members of council be present at the meeting. A majority of the membership of council then in office shall constitute a quorum 8 Pa.C.S. §1001(b). With one exception, only council members physically present at a meeting place within the borough shall be counted in establishing a quorum 8 Pa.C.S. §1001(b). The one exception is that council may provide for the participation of council members in council meetings by means of telecommunication devices, such as telephones or computer terminals, which permit at a minimum, audio communication between locations, if certain conditions are met 8 Pa.C.S. §1001(c).

When a quorum of the members of council is present, a majority of that quorum can validly elect a mayor *Raynovich v. Romanus*, 299 A.2d 301, at 304 (Pa. 1973). Absent a statutory prohibition, a borough council may select one of its members to fill a mayoral vacancy; provided however, that any council-member-nominee for mayor cannot vote for himself/herself because of his/her personal interest in the result of the election. *Id. at 303*.

The appointed person shall hold the office of mayor, if the term continues that long, until the first Monday in January after the first municipal election occurring more than 60 days after the vacancy occurs, at which election an eligible individual shall be elected to the office for the remainder of the term 8 Pa.C.S. §901(a). Except in a borough with a population of fewer than 150, no individual shall be appointed to fill a vacancy in the office of mayor unless the individual has resided within the borough continuously for at least one year immediately prior to the individual's appointment 8 Pa.C.S. §901(a). If the individual elected to the office fails to give any bond required, to provide the affidavit of residency or to take the required oath, the council, before making the appointment, shall declare the office vacant 8 Pa.C.S. §901(b).

If the council of any borough refuses, fails, neglects or is unable, for any reason whatsoever, to fill any vacancy within 30 days after the vacancy happens, the vacancy shall be filled within 15 additional days by the vacancy board 8 Pa.C.S. §901(c). The vacancy board shall consist of the council, exclusive of the mayor, and one registered elector of the borough who shall be appointed by the council at the council's first meeting each calendar year or as soon as practical and who shall act as chair of the vacancy board 8 Pa.C.S. §901(c). The vacancy board shall appoint a registered elector of the borough, to hold the office, if the term continues that long, until the first Monday in January after the first municipal election occurring more than 60 days after the vacancy occurs, at which election an eligible individual shall be elected to the office for the remainder of the term 8 Pa.C.S. §901(c).

If the vacancy is *not* filled by the vacancy board within 15 days, the chair shall, or, in the case of a vacancy in the chair, the remaining members of the vacancy board shall petition the Court of Common Pleas to fill the vacancy by the appointment of a registered elector of the borough to hold the office, if the term continues that long, until the first Monday in January after the first municipal election occurring more than 60 days after the vacancy occurs, at which election an eligible individual shall be elected to the office for the remainder of the term 8 Pa.C.S. §901(d). If vacancies exist in more than a majority of the offices of council, the Court of Common Pleas shall fill the vacancies upon presentation of a petition signed by not fewer than 15 registered electors of the borough 8 Pa.C.S. §901(e).

In the case of a resignation, a vacancy shall not be created by a resignation until the date that the resignation is *accepted* by a majority vote of a quorum of council at a public meeting or the effective date of the tendered resignation, whichever is later 8 Pa.C.S. §901(a.1). A council must accept a resignation no later than 45 days after it has been tendered in writing to council, unless it is withdrawn in writing prior to acceptance 8 Pa.C.S. §901(a.1). A resignation which is not accepted by council within 45 days (during which time a mayor may withdraw his/her resignation before it is accepted) shall be deemed accepted after 45 days 8 Pa.C.S. §901(a.1). The acceptance of a resignation of a mayor by a council cannot later be rescinded by the mayor. See *King v. Weiser*, 591 A. 2d 770, at 772, (Pa.Cmwlt. 1991) appeal denied 600 A.2d 541.

Absences. If the mayor is absent or incapacitated or there is a vacancy in the office, the duties of the office shall be discharged by the president of council or, in the absence or incapacity of the president of council or if there is a vacancy in that office, by the vice president of council 8 Pa.C.S. §10A08(a). While discharging the duties of mayor, the president or vice president of council shall be entitled to the same salary as the mayor would receive. During the time the salary is paid to the president or vice president of council as acting mayor, the mayor shall *not* be paid compensation 8 Pa.C.S. §10A08(b). The president or vice president of council while acting as mayor shall have the power to veto a proposed ordinance or to break a tie but shall not have power to vote as a member of council 8 Pa.C.S. §10A08(c).

Compensation

Salary. The salary of the mayor shall be established by ordinance and shall not exceed the following:

1. In a borough with a population of less than 5,000, a maximum of \$2,500 per year.
2. In a borough with a population of 5,000 or more but less than 10,000, a maximum of \$5,000 per year.
3. In a borough with a population of 10,000 or more but less than 15,000, a maximum of \$7,500 per year.
4. In a borough with a population in excess of 15,000, a maximum of \$500 per year per 1,000 residents or fraction of 1,000, the population to be determined by the latest official census figures 8 Pa.C.S. §10A04(a).

It is customary for a mayor to be paid on a monthly or quarterly basis.

Fringe Benefits. In addition to paying the mayor a salary, council may also enter into contracts of insurance with any insurance company, association or exchange authorized to transact business in this commonwealth insuring a mayor and/or his/her dependents, under a policy or policies of insurance covering life, health, hospitalization, medical and surgical service or accident insurance 8 Pa.C.S. §1202(26)(ii). These benefits shall not be considered pay, salary or compensation, but payment for all or a part of the premiums or charges for the benefits shall be in accordance with the section authorizing such benefits 8 Pa.C.S. §10A04(a.1). Any change in salary, compensation or emoluments of the elected office shall become effective at the beginning of the next term of the mayor 8 Pa.C.S. §10A04(b).

The Borough Code does not authorize council to provide unemployment compensation, worker compensation or pension benefits to elected officials, including mayors. Notwithstanding, although elected officials cannot be included in the borough's own pension plan, municipalities joining the Pennsylvania Municipal Retirement System can make membership compulsory, optional or prohibited for elected officials 53 P.S. §881.203. The mayor is also included in the coverage if the borough brings its officers and employees under the Social Security system 42 U.S.C.A. §418. Notably, effective July 1, 1991, the mayor and council members who are not covered by a retirement system must be covered by Social Security.

Marriage Ceremony Fees. With one exception, any salary paid under a salary ordinance to a mayor shall be in lieu of all costs and fees allowed by a mayor 8 Pa.C.S. §10A05(a). This means that any costs and fees collected or received by a mayor must be deposited into the borough treasury 8 Pa.C.S. §10A05(a) and cannot be diverted in any way even as a gift to a charitable organization or it will be considered a violation of the Ethics Act relating to ethics standards and financial disclosure 65 Pa.C.S. Ch. 11. The exception is that the Borough Code authorizes a mayor to receive a monetary fee for the performance of a marriage ceremony in this commonwealth, if the fee does not exceed \$150 for each ceremony performed and a mayor meets two conditions set forth in the Code. The first condition is that *prior to performing these ceremonies*, the mayor must notify council in writing of the mayor's intention to perform marriage ceremonies. The notification to council shall remain in effect for the term of the mayor or until the notification is rescinded by the mayor. The second condition is that the mayor must maintain accurate accounts of the fees received relating to the performance of marriage ceremonies and provide council each quarter with a report of money received for that period. The quarterly report shall include the amount of money received and the names of persons from whom money was received, along with the date and the location of the performed ceremony. Said quarterly report shall be considered a public record.

Expenses

Associations for Mayors. A mayor may join a mayors' association, and council shall pay reasonable dues of up to \$100 for each year a mayor belongs to the mayors' association 8 Pa.C.S. §704(a). The mayor may attend the annual meeting of the mayors' association, which shall be held in this commonwealth in accordance with the procedure adopted by the mayors' association 8 Pa.C.S. §704(a). A mayor shall receive the following expenses for attending the annual meeting of the mayors' association: (1) the registration fee; (2) lodging, meals and mileage for use of a personal vehicle or reimbursement of actual transportation expenses going to and returning from the meeting; and (3) any actual expenses that the council may have agreed to pay 8 Pa.C.S. §704(b). The amount for mileage is to be set by council for all borough personnel 65 P.S. §371. Every mayor attending the annual meeting of the mayors' association shall submit to the council an itemized account of expenses incurred at the annual meeting of the mayors' association. The time spent in attending the annual meeting may not be more than four days, including time traveling to and from the meeting 8 Pa.C.S. §704(c).

State Associations for Boroughs. Council may, by motion, designate a mayor as a delegate to attend the annual meeting of the State Association of Boroughs, which must be held in this commonwealth in accordance with the procedure adopted by the State Association of Boroughs 8 Pa.C.S. §701.1(a). Likewise, council may, by motion, designate a mayor to attend the annual meeting of the State Association of Boroughs as a nondelegate or to attend a conference, educational training or committee meeting of the State Association of Boroughs 8 Pa.C.S. §701.1(b). In the event that council designates a mayor as a delegate or nondelegate to attend a conference, educational training or committee meeting of the State Association of Boroughs, council may authorize the mayor to receive total or partial reimbursement for lost wages or salary, including those from self-employment, while attending the annual meeting or a conference, educational training or committee meeting of the State Association of Boroughs if sufficient documentation is presented to council to justify the reimbursement 8 Pa.C.S. §701.2(b). The maximum time for which a mayor not employed by the borough shall be reimbursed for lost wages or salary while attending the annual meeting or a conference, educational training or committee meeting of the State Association of Boroughs cannot be more than four days, including time spent traveling to and from the event 8 Pa.C.S. §701.2(c). In addition to any compensation paid to a mayor for attending such events, council may pay the following expenses upon receipt of an itemized account of expenses: (1) the registration fee; (2) mileage for use of a personal vehicle or reimbursement of actual transportation expenses going to and returning from the annual meeting, conference, educational training or committee meeting of the State Association of Boroughs; and (3) any actual expenses that the council may have agreed to pay 8 Pa.C.S. §701.1(c)(1).

Additionally, council may authorize a mayor to receive total or partial reimbursement for lost wages or salary, including those from self-employment, if the mayor or council attends a meeting for which the mayor is an officer, a member of the board of directors, a member of the executive committee, a member of a standing committee or a trustee of the State Association of Boroughs, subject to the following conditions:

1. The compensation of a mayor for attending a meeting of a standing committee of the State Association of Boroughs shall be limited to two days per year of lost wages or salary.
2. The compensation of a mayor for attending a meeting for which the mayor is a trustee for the State Association of Boroughs shall be limited to four days per year of lost wages or salary.
3. The compensation of a mayor for attending a meeting for which the mayor is an officer, member of the board of directors or a member of the executive committee of the State Association of Boroughs shall be limited to 15 days per year of lost wages or salary.
4. A mayor may not be compensated by the borough under this subsection if the mayor receives compensation from the State Association of Boroughs or a board or committee of the State Association of Boroughs for attending the meeting *8 Pa.C.S. §701.2(d)*.

The time referenced above shall include time spent traveling to and from the event.

County and Regional Associations of Boroughs. If council selects the mayor as a delegate for attendance at a meeting of the county or regional association of which the borough is a member, it may authorize the mayor to receive total or partial reimbursement for lost wages or salary while attending the meeting if sufficient documentation is presented to the council to justify the reimbursement *8 Pa.C.S. §702(d)*. The borough may also pay the following expenses of the mayor: (1) the registration fee; (2) mileage for use of a personal vehicle or reimbursement of actual transportation expenses going to and returning from the meeting; and (3) any actual expenses that the council may have agreed to pay *8 Pa.C.S. §702(c)(1)*. A mayor who attends such meeting must submit to the council an itemized account of expenses incurred *8 Pa.C.S. §702(c)(2)*.

Other Associations and Organizations. A borough, by motion of council, may join associations and organizations other than state, county and regional associations and organizations that are concerned with municipal or governmental affairs and send delegates to meetings or conferences of associations and organizations *8 Pa.C.S. §703(a)*. If council selects the mayor as a delegate for attendance at a meeting of such associations and organizations, the borough may pay these expenses for the mayor: (1) the registration fee; (2) mileage for use of a personal vehicle or reimbursement of actual transportation expenses going to and returning from the meeting or conference; and (3) any expenses that the council may have agreed to pay *8 Pa.C.S. §703(a.1)(1)*. As such delegate, the mayor shall submit to the council an itemized account of expenses incurred *8 Pa.C.S. §703(a.1)(2)*.

In addition, a borough may, by motion of council authorize the mayor to attend meetings of professional organizations and associations and educational training sessions for individuals holding the same or similar office as well as pay all or a portion of the necessary expenses incident to a mayor's attendance at such meetings or sessions *8 Pa.C.S. §703(b)*. Every mayor attending such a conference, meeting or educational training session shall submit to the council an itemized account of the individual's expenses, including traveling expenses or mileage that council may have agreed to pay *8 Pa.C.S. §703(c)*.

Ethics

The General Assembly of Pennsylvania has declared that "public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust" *65 Pa.C.S.A. §1101.1*. In the "Public Official and Employee Ethics Act," the General Assembly sought to define as clearly as possible those areas which represent conflict with the public trust.

Restricted Activities. Section 1103 of the Act lists “restricted activities” for all public officials including mayors. Below are the restricted activities which are most applicable to the office of mayor. For purposes of emphasis, the words “public official” in the Act will be substituted with the word “mayor.”

Conflict of Interest. No mayor shall engage in conduct that constitutes a conflict of interest *65 Pa.C.S. §1103(a)*. A conflict of interest is a use by a mayor of the authority of his/her office or any confidential information received through his/her holding public office for the private pecuniary benefit of himself/herself, a member of his/her immediate family (i.e. parent, spouse, child, brother or sister) or a business with which he/she or a member of his/her immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the mayor, a member of his/her immediate family or a business with which he/she or a member of his/her immediate family is associated *65 Pa.C.S. §1102*. A “de minimis economic impact” is an economic consequence which has an insignificant effect *65 Pa.C.S. §1102*.

Seeking improper influence. No person shall offer or give to a mayor, or a member of his/her immediate family or a business with which he/she is associated, anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment based on the offeror's or donor's understanding that the vote, official action or judgment of the mayor would be influenced thereby *65 Pa.C.S. §1103(b)*.

Accepting improper influence. No mayor shall solicit or accept anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment, based on any understanding of that mayor that the vote, official action or judgment of the mayor would be influenced thereby *65 Pa.C.S. §1103(c)*.

Honorarium. No mayor or public employee shall accept an honorarium *65 Pa.C.S. §1103(d)*. An honorarium is a payment made in recognition of published works, appearances, speeches and presentations and which is not intended as consideration for the value of such services which are nonpublic occupational or professional in nature. The term does not include tokens presented or provided which are of de minimis economic impact *65 Pa.C.S. §1102*.

Contract. No mayor or his/her spouse or child or any business in which the person or his/her spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the mayor is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the mayor is associated, unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the mayor shall not have any supervisory or overall responsibility for the implementation or administration of the contract *65 Pa.C.S. §1103(f)*.

Voting conflict. Where voting conflicts are not otherwise addressed by the Constitution of Pennsylvania or by any law, rule, regulation, order or ordinance, the following procedure shall be employed. Any mayor who in the discharge of his/her official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his/her interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever council would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then the mayor shall be permitted to vote if disclosures are made as otherwise provided herein *65 Pa.C.S. §1103(j)*.

The “Public Official and Employee Ethics Act” is administered by an independent commission known as the State Ethics Commission. Among its many duties under the Act, the Commission must issue to any mayor upon such mayor's request an opinion with respect to such mayor's duties under the Act. The Commission must, within 14 days, either issue

the opinion or advise the mayor who made the request whether an *opinion* will be issued. No mayor who acts in good faith on an *opinion* issued to him/her by the Commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the *opinion* request 65 Pa.C.S. §1107(10).

Likewise, the Commission must provide written *advice* to any mayor upon his/her request with respect to such mayor's duties under the Act. Such *advice* shall be provided within 21 working days of the request, provided that the time may be extended for good cause. It shall be a complete defense in any enforcement proceeding initiated by the commission, and evidence of good faith conduct in any other civil or criminal proceeding, if the mayor, at least 21 working days prior to any alleged violation, requested written *advice* from the commission in good faith, disclosed truthfully all the material facts and committed the acts complained of either in reliance on the advice or because of the failure of the commission to provide *advice* within 21 days of the request or such later extended time 65 Pa.C.S. §1107(11).

Financial Disclosure Statements. The Public Official and Employee Ethics Act requires every mayor to file a statement of financial interests for the preceding calendar year with the borough no later than May 1 of each year that he/she holds such office and of the year after the mayor leaves such office 65 Pa.C.S. §1104(a). No mayor shall be allowed to take the oath of office or enter or continue upon his/her duties, nor shall he/she receive compensation from public funds, unless the mayor has filed a statement of financial interests as required by the Act 65 Pa.C.S. §1104(d). All statements of financial interests filed pursuant to the provisions of the Act must be made available for public inspection and copying 65 Pa.C.S. §1104(e).

Surcharges

The auditors of the borough annually audit, adjust and settle the accounts of all officers of the borough including the mayor (8 Pa.C.S. §1041(b)), but only if the mayor is responsible for an account. The auditors must complete the annual audit, adjustment and settlement as soon as possible after the end of the fiscal year 8 Pa.C.S. §1059.1(a). If the auditors determine that there is a balance or shortage in the mayor's account, the secretary of the auditors must serve notice on the mayor prior to the filing of the report and indicate the amount of the balance or shortage and a brief description of how the balance or shortage was derived 8 Pa.C.S. §1059.1(c). The notice will indicate that the balance or shortage is deemed a surcharge and will apprise the mayor served of the right to appeal 8 Pa.C.S. §1059.1(c).

The action of imposing a surcharge in conjunction with the auditors' report is civil in nature rather than quasi-criminal because the function of the surcharge is remedial not punitive. It is designed to reimburse the government for losses resulting from some misconduct of its officials. *In re: Appeal from Report of Audit of South Union Township for 1975*, 407 A.2d 906, at 910, (Pa.Cmwlth. 1979).

The amount of any balance or shortage or of any expenditure of a kind or made in a manner prohibited or not authorized by statute which causes a financial loss to the borough shall be a surcharge against any mayor against whom the balance or shortage shall appear, or who by vote, act or neglect has permitted or approved the expenditure 8 Pa.C.S. §1059.3(a)(1). In the absence of fraud, collusion, or a penalty enuring to the benefit of or payable to the commonwealth, no mayor may be surcharged for any act, error or omission in excess of the actual financial loss sustained by the borough 8 Pa.C.S. §1059.3(a)(2)(i)(iii). Additionally, a surcharge shall take into consideration as its basis the results of the act, error or omission and the results had the procedure been strictly in accordance with law 8 Pa.C.S. §1059.3(a)(2)(ii). In any matter involving a financial transaction, any mayor who knowingly and willfully acts contrary to law commits a misdemeanor and, upon conviction, may be sentenced to pay a fine not exceeding \$100 8 Pa.C.S. §1059.3(b).

Official Liability

Generally speaking, a borough and its elected officials including the mayor are immune from liability for any damages on account of any injury to a person or property caused by any act of the borough 42 Pa.C.S. § 8541. There are eight areas of exceptions: (1) vehicle liability; (2) care, custody or control of personal property; (3) real property; (4) trees, traffic controls and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) care, custody or control of

animals 42 Pa.C.S. § 8542(b). To be successful in these eight areas, a plaintiff must prove two elements of law. The first element is that damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available the defense of governmental immunity 42 Pa.C.S. § 8542(a)(1). The second is that the injury was caused by the negligent acts of the borough with respect to one of the eight categories 42 Pa.C.S. § 8542(a)(2). Negligent acts do not include acts or conduct which constitutes a crime, actual fraud, actual malice or willful misconduct 42 Pa.C.S. § 8542(a)(2).

Mayors 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 mayor for an act or omission claimed to be within the scope of official duties, the borough must defend the action when requested by the mayor. The borough is authorized to purchase liability insurance for itself and its officers and employees or to initiate a risk management program. However, the Pennsylvania Supreme Court has ruled that where the conduct of an elected official, such as a mayor, is negligent, a municipality may seek insurance coverage for the loss occasioned to either the municipality or the public official. *Lewis Township v. Employers Mutual Casualty Company*, 523 A.2d 719, at 722 (Pa. 1987). On the other hand, where the surcharge arises from the *willful or fraudulent misconduct* of an official, a municipality may insure only its loss and may not purchase coverage for the public official. *Id.*

Notwithstanding, it is legally possible for a mayor to be *negligent* but *immune* from liability under section 8541 of the Judicial Code referenced above. The rule with respect to insurance coverage against financial loss must co-exist with the government immunity provisions. *Borough of West Fairview v. Hess*, 568 A.2d 709 at 714 (Pa. Cmwlth. 1989). For a municipality to recover its losses in such circumstances, insurance would need to be written to cover conduct shielded by immunity. *Id.*

In addition to the statutory protections of immunity found in the Judicial Code, there are constitutional protections as well. A mayor is a high public official with complete immunity for any statements made relating to the municipal operations and its personnel.

Removal from Office

The Pennsylvania Constitution states that all civil officers, including mayors, shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime. Constitution of Pennsylvania, Article VI, Section 7. Once a mayor is convicted of misbehavior in office or an infamous crime, he/she may no longer claim to hold the position because the constitutional provision is self-executing. *Commonwealth v. Davis*, 149 A. 176 at 178 (Pa. 1930). A court, upon convicting a mayor of misbehavior in office or an infamous crime must apply the constitutional penalty of removal from office as part of the sentence.

The Constitution also provides that the Governor may remove a civil officer, such as the mayor, for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate. Constitution of Pennsylvania, Article VI, Section 7. There has not been a case of a Governor removing a civil officer in recent times.

The proceedings described above are the only means by which a mayor may be removed from office. Borough council has no inherent power to remove the mayor since no authority is conferred by the Constitution or by state law. *Commonwealth v. Reid*, 108 A. 829 (Pa. 1919). In the words of the Pennsylvania Supreme Court, "when the Constitution of the United States, the Constitution of this state, and the acts of the assembly relative to municipalities, provided that the executive and legislative departments should be co-ordinate and independent branches of government, each elected by and answerable to the people, and each bound by the provisions of the Constitution and the laws passed in pursuance thereof, all possibility of incidental powers existing in one department over the other, as distinguished from such as are expressed in or reasonably to be implied from such Constitution or laws, at once necessarily ended, even if it existed under the English system of government" *Id.* at 831.

III. Executive Powers and Duties

Law Enforcement Powers and Duties

The powers and duties of the mayor with respect to law enforcement are primarily set forth in Sections 10A06 and 10A07 of the Borough Code. In order to enable the mayor to effectually preserve the public peace within the borough, the mayor shall have the power to prevent and suppress mobs, riots and unlawful and tumultuous assemblies 8 Pa.C.S. § 10A06(b)(1). The Borough Code charges the mayor with the duties of preserving order in the borough, enforcing borough ordinances and regulations, removing nuisances, and performing any other duties as shall be vested in the mayor's office by law or ordinance 8 Pa.C.S. §10A07(1). The powers and duties of the mayor in the Borough Code with respect to law enforcement have been acknowledged in other laws such as the Election Code. At the request of election officers, the mayor must clear the approach to the polling place, maintain order or quell any disturbance at the polling place on election days 25 Pa.C.S. §3047. Because of these powers and duties, the mayor has been recognized as the "chief law enforcement officer" of the borough *Hoffman v. Borough of Macungie*, 63 A.3rd 461 at 471 (Pa.Cmwlt. 2013) appeal denied 73 A.3d 812 (2013).

The term chief law enforcement officer is also found in the "Municipal Police Jurisdiction Act," which is subchapter D of chapter 89 of the Judicial Code 42 Pa.C.S. § 8951 *et seq.* The MPJA, as the Act is known, delineates the circumstances in which municipal police officers have the power and authority to enforce the laws of the Commonwealth of Pennsylvania, such as the Crimes Code and Motor Vehicle Code, within their municipalities and even statewide. In Section 8951 of the Judicial Code, "chief law enforcement officer" is defined as "the head of a duly constituted municipal law enforcement agency which regularly provides primary police services to a political subdivision or, in the absence of any such municipal law enforcement agency, the commanding officer of the Pennsylvania State Police installation which regularly provides primary police services to the political subdivision" 42 Pa.C.S. §8951. The mayor has been held to be the chief law enforcement officer in the borough for purposes of the MPJA *Id.* at 471.

The MPJA, which does not require a chief law enforcement officer to be a municipal police officer, limits the chief law enforcement officer to directing the municipality's police force and deciding whether to request or accept aid from neighboring municipalities *Id.* Moreover, the MPJA serves to highlight the difference between a "law enforcement officer" such as the borough mayor and a "municipal police officer." The latter is defined in the MPJA as "any natural person who is properly employed by a municipality, including a home rule municipality, as a regular full-time or part-time police officer" 42 Pa.C.S. §8951. Rule 103 of the Pennsylvania Rules of Criminal Procedure offers one of the best explanations of this difference. In Rule 103, a "law enforcement officer" is defined as "any person who is by law given the power to enforce the law when acting within the scope of that person's employment" *Pa.R.Crim.P.* 103. A "police officer" is defined by the same rule as "any person who is by law given the power to arrest when acting within the scope of the person's employment" *Pa.R.Crim.P.* 103. In brief, a law enforcement officer such as the mayor enforces the law without the authority to arrest.

The difference between the mayor as the "chief law enforcement officer" and the "police officers" over which the mayor has full charge and control has been raised in the context of the "Criminal History Record Information Act" 18 Pa.C.S. §9101 *et seq.* CHRIA, as the Act is known, mandates every "criminal justice agency" within the commonwealth maintain complete and accurate "criminal history record information" and to report such information at such times and in such manner as required by the provisions of CHRIA or other applicable statutes 18 Pa.C.S. §9111. Excluded from the definition of "criminal history record information" are "intelligence information, investigative information and treatment information" collectively referred to as "protected information" 18 Pa.C.S. §9102.

As to whether the mayor, in his/her capacity as the chief law enforcement officer, is entitled to access "protected information," the Commonwealth Court held the following. A mayor is a member of a criminal justice agency and entitled to the more liberal provisions for dissemination of criminal history information in police department files. *Id.* at 474 The

mayor is “presumptively entitled to access all the police department’s hard copy files, such as work schedules and personnel records, including any criminal history information that may be in those files *Id.* at 475. Any future denial of access must be supported by a signed, written statement describing the type and location of the requested records, specifying the provisions in CHRIA supporting the denial of access, and explaining how the records meet the statutory criteria for protected information, all in sufficient detail to permit judicial review *Id.* Those who would deny a mayor access to police department records have the burden of explaining their position” *Id.*

The law enforcement duties of the mayor are unqualified and not conditioned upon the public safety entity selected by council to police the borough. That is, Council may, by ordinance, establish a police department, but it is not required to do so 8 Pa.C.S. §1121. In section 1201.2(24) of the Borough Code, council also may enter into agreements with other municipalities, regional police or other public safety entities for the furnishing to or receiving from municipalities or governmental entities police protection or any other public safety services, and to make appropriations for public safety services 8 Pa.C.S. §1201.2(24). If a borough enters into a cooperative agreement or contract with any municipality, regional police force or other governmental entity created by two or more municipalities under the statutes governing intergovernmental cooperation for the furnishing or receiving of police protection as authorized by section 1201.2(24) of the Borough Code, the police force of the municipality, regional police force or other governmental entity furnishing the police protection shall be appointed and accepted as the police force of the borough receiving the police service by resolution of the council 8 Pa.C.S. §1122 (a). Finally, Council may choose to not expend any borough monies and rely upon the Pennsylvania State Police to enforce the Crimes Code and Motor Vehicle Code in the borough. It is the policy of the Pennsylvania State Police to enforce only state codes such as those referenced above; the State Police will not enforce any borough ordinances.

Whether a borough council chooses to: establish a police department, contract with another municipality for police services, form a regional police department, or rely upon the Pennsylvania State Police, the designated public safety entity is subject to the mayor’s authority and duty to: preserve the public peace and order within the borough, enforce borough ordinances and regulations, and remove nuisances. Because Pennsylvania Courts have recognized the mayor as the “chief law enforcement officer” within the territorial limits of the borough, the mayor must be integrally involved with whatever public safety entity is providing police services to borough residents. Notably, of the 955 boroughs in Pennsylvania, approximately 506 or 53% operate their own municipal police departments, 62 or 6.4% have entered into intergovernmental cooperation agreements and formed regional police departments, 117 or 12.3% have entered into contracts with other municipalities to provide police services and 270 or 28.3% rely upon the Pennsylvania State Police to enforce the Crimes Code.

The Borough Code provides borough council with various means to enforce borough ordinances other than through the mayor and the police department. Under Chapter 31 of the Borough Code entitled “Health and Sanitation,” council may, by ordinance, appoint a board of health or a health officer to administer and enforce the health ordinances and related ordinances of the borough 8 Pa.C.S. §3101. Notwithstanding the primacy of the Uniform Construction Code, borough council may enact a property maintenance ordinance or a standard or nationally recognized property maintenance code and appoint property maintenance inspectors who may enter and inspect any premises at reasonable hours and in a reasonable manner for the administration and enforcement of the borough’s property maintenance code or ordinance 8 Pa.C.S. §32A04(a)(b). For an ordinance regulating building, housing, property maintenance, health, fire, public safety, parking, solicitation, curfew, water or air or noise pollution, enforcement shall be by a criminal action in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. The municipal solicitor may assume charge of the prosecution without the consent of the district attorney 8 Pa.C.S. §3321(b)(2).

Emergency Powers

Under the Emergency Services Management Code, a “local disaster emergency” may be declared by the council upon finding a disaster has occurred or is imminent *35 Pa.C.S. §7501(b)*. The council may also authorize the mayor to declare a local disaster emergency subject to ratification by the council *35 Pa.C.S. §7501(b)*. A “local emergency” is defined as the condition declared by the [council or mayor] when in their/his/her judgment the threat or actual occurrence of a disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby. A local emergency arising wholly or substantially out of a resource shortage may be declared only by the Governor, upon petition of the [council or mayor], when he/she deems the threat or actual occurrence of a disaster to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby *35 Pa.C.S. §7102*.

A declaration of a local disaster emergency by the council is a legislative act. Because it is a legislative act, it cannot be delegated to the borough manager pursuant to section 1142(b)(5) of the Borough Code *8 Pa.C.S. §1142(b)(5)*. A borough council must either schedule a special meeting on short notice or authorize the mayor to declare a local disaster emergency subject to ratification by council.

For many reasons, most if not all councils choose to authorize the mayor to declare a local disaster emergency. The primary reason is that the Borough Code is very specific with respect to the power of the mayor to declare an emergency. Under the Borough Code, if the mayor considers that a state of emergency exists, the mayor may issue a proclamation, which shall be in writing and posted in one or more conspicuous places and the contents of which shall be made available to all news media, declaring a state of emergency for a period not to exceed seven days unless sooner rescinded, modified or ratified or extended by resolution of council *8 Pa.C.S. § 10A06(b)(4)*. The mayor may prohibit in the proclamation for all or part of the borough:

- (i) Any person being on the public streets or in the public parks or at any other public place during the hours declared by the mayor to be a period of curfew;
- (ii) The entry or departure of persons into or from any restricted area;
- (iii) The sale, purchase or dispensing of any commodities or goods as designated by the mayor;
- (iv) The transportation, possession or use of gasoline, kerosene or other combustible, inflammable or explosive liquids or materials except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use;
- (v) Any other activities as the mayor reasonably believes should be prohibited to help preserve life, health, property or the public peace *8 Pa.C.S. §10A06(b)(5)*.

The proclamation shall describe the specific restricted area with particularity and shall specify the hours when restrictions are to be in effect *8 Pa.C.S. §10A06(b)(6)*. A person violating the proclamation of emergency commits a summary offense and shall, upon conviction, be sentenced to pay a fine not to exceed \$300 and costs or to a term of imprisonment not to exceed 30 days *8 Pa.C.S. §10A06(b)(7)*.

The second reason why councils choose to authorize the mayor to declare a local disaster emergency is that the mayor has full charge and control of the police chief and the police force as well as authority over any other police entity operating within the borough’s municipal borders. Because of the mayor’s powers concerning police, the mayor is the best position to receive and evaluate critical information necessary to make an executive decision to declare an emergency.

The mayor not only has authority over the police entity operating within the borough; but, in the event that a state of emergency exists, the mayor has the authority to request aid and assistance from law enforcement officers and agencies from a neighboring municipality *8 Pa.C.S. §10A06(b)(2)*. In response to a request of a mayor made during a state of emergency, a municipal police officer shall, within the borough from which the request was made, have the power and

authority to enforce the laws of this Commonwealth or otherwise perform the functions of that office as if enforcing those laws or performing those functions within the territorial limits of the officer's primary jurisdiction, subject to the limitations and conditions set forth in the Judicial Code relating to statewide municipal police jurisdiction 8 Pa.C.S. §10A06(b)(3).

Under the Borough Code, the mayor may appoint special police during an emergency in which the safety and welfare of the borough and the public is endangered 8 Pa.C.S. §1123.1(d). An "emergency" has been determined to be "a sudden or unexpected event which creates a temporarily dangerous condition usually necessitating immediate or quick action" *Borough of Yeadon v. Montgomery*, 455 A.2d 785 (Pa.Cmwlth. 1983). A reduction in police officers by borough council is not an emergency *Scaccia v. Old Forge Borough*, 94 A.2d 563 at 564 (Pa. 1953).

Similarly, under the Emergency Management Services Code, a volunteer fire company in any borough may nominate any of its members as special fire police 35 Pa.C.S. §7434. Special fire police nominated under the subchapter on special fire police shall, before they enter upon their duties, be confirmed by the mayor of the borough 35 Pa.C.S. §7434.

The mayor may also activate auxiliary police in accordance with general law and, notwithstanding any other provision of law, may activate auxiliary police for purposes of crowd and traffic control for limited periods during events if, in the mayor's discretion, public safety is promoted by the activation of the auxiliary police 8 Pa.C.S. §1123.1(e). The chief of police may nominate persons to serve as auxiliary police officers. The nominees must have successfully completed a training course prescribed by the chief. All candidates must be confirmed by the mayor and take an oath. Auxiliary police may serve only during a period of emergency. 53 P.S. §734. Auxiliary police cannot act with authority of law unless an emergency condition exists.

Finally, councils choose to authorize the mayor to declare a local disaster emergency because the mayor is the only elected executive officer in borough government. The mayor can act alone and with all deliberate speed in responding to an emergency as the electorate's representative.

Any emergency declaration by the mayor whether it is issued under the Borough Code or under the Emergency Services Management Code may not be continued or renewed for a period in excess of seven days except by or with the consent of the council 8 Pa.C.S. § 10A06(b)(4), 35 Pa.C.S. §7501(b). Any order or proclamation declaring, continuing or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the agency 35 Pa.C.S. §7501(b). The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local emergency management plans and to authorize the furnishing of aid and assistance thereunder 35 Pa.C.S. §7501(b).

Administrative Powers and Duties Related to Public Safety

To carry out statutory powers and duties relating to law enforcement and emergencies, the mayor must have the necessary means to do so. This is why in section 1123.1 (a) of the Borough Code, the mayor has been given full charge and control of the chief of police and the police force 8 Pa.C.S. §1123.1(a). The mayor shall direct the time during which, the place where, and the manner in which the chief of police and the police force perform the duties of their rank 8 Pa.C.S. §1123.1(b). Having such charge and control enables the mayor to fulfill another duty; that of, exacting a faithful performance of the duties of the officers appointed 8 Pa.C.S. §10A07(1), *Bosler v. Rahn*, 151 A.2d 627 at 628 (Pa.1959). Under the Borough Code, police officers have those powers and abilities as are granted to police officers under the laws of this commonwealth, the rules of the Pennsylvania Supreme Court or the ordinances of the borough for which a fine or penalty is imposed unless otherwise excepted 8 Pa.C.S. §1121(b).

The mayor may delegate to the chief of police or other officer, supervision over and instruction to subordinate officers in the manner of performing their duties 8 Pa.C.S. §1123.1 (c). Although a chain of command may be practical and efficient, the Borough Code does not require a mayor to funnel control over the police department through the chief of police *Hoffman*, supra, at 470. Nevertheless, the increasing professionalism and demand for well-trained police officers is an incentive for considerable delegation, especially in large departments. When the office of manager has been created, the mayor may also delegate authority over the police department to the manager, with consent of council 8 Pa.C.S. §1142(b)(5).

Although a mayor may delegate his/her statutory duties, he/she may not delegate legal responsibilities. Federal courts have held mayors responsible for the actions of their subordinates. A mayor is less likely to be held liable when delegating administrative duties only and reserving approval for policy decisions.

In carrying out the mayor's statutory powers and duties relating to law enforcement, the mayor must work with the members of council. The Commonwealth Court recently described the relationship between the mayor and council as follows: "a borough council may create a police department and assign duties to each rank but the mayor is responsible for coordinating the police force and maintaining order. Stated differently, a borough council may organize a police force but the mayor controls its day-to-day operations *Id.* at 469.

A borough council may, by ordinance, establish a police department 8 Pa.C.S. §1121(a). It may also abolish the police department which it has created *In Re Ordinance No. 384 of Borough of Dale*, 382 A.2d 145, at 148 (Pa.Cmwlth. 1978). The ability of council to disband its police department is not without limitations. It is established law that where there is affirmative evidence of a municipality's bad faith and that the abolition of an office or department is merely a pretense, a court may invalidate the municipality's action and order reinstatement of the discharged employees *Espy v. Borough of Emsworth*, 636 A.2d 1282, at 1283-43 (Pa.Cmwlth. 1994).

If council establishes a police department, it shall designate the ranks in the police department and the duties of each rank 8 Pa.C.S. §1121(a)(3). Likewise, council has the discretion to eliminate one or more ranks within a police department when deemed no longer necessary and despite the provisions of civil service *Slifer v. Dodge*, 362 A.2d 471, at 473-4 (Pa.Cmwlth. 1976). Council also has the authority to allow an office to remain vacant *Eckert v. Buckley*, 350 A.2d 417, at 419 (Pa.Cmwlth. 1978). Again, the power to eliminate ranks is not without limitations. Council's action in abolishing a position is only valid if exercised in good faith *Borough of Canonsburg v. Flood*, 387 A.2d 951, at 953 (Pa.Cmwlth. 1978).

While the duties to be performed by the several ranks of police officers are within the prerogative of council to designate, the manner in which the designated duties are to be performed is the prerogative of the mayor *Salopek v. Alberts*, 209 A.2d 295, at 298 (Pa. 1965). Council can give the police chief the duty to maintain a daily log of police activities, including the starting and quitting times of all officers and the various police activities performed while on duty *Albano v. Civil Service Commission of the Borough of McAdoo*, 320 A.2d 385, at 387 (Pa. Cmwlth. 1974). However, in the absence of an ordinance defining the rank and duties of police officers, the officers of a police department have the duties which are designated to them by the mayor *Slifer v. Dodge*, 362 A.2d 471, at 473 (Pa.Cmwlth. 1976). This can include the assignment of officers to teams. *Id.*

Council has the power to appoint police officers, subject to the provisions of the Borough Code relating to civil service for police 8 Pa.C.S. §1121(a)(1). Council may designate one of the police officers as chief of police 8 Pa.C.S. §1121(a)(3). Council may remove, suspend or reduce in rank any police officer as provided by law subject to any applicable civil service statutes 8 Pa.C.S. §1121 (a)(2). Although the mayor does not have a vote in any of the foregoing personnel matters, the mayor does have a right to attend any or all regular and special meetings of council and take part in the discussions of the council on matters pertaining to borough affairs 8 Pa.C.S. §1003(c). Considering that the mayor has "the ultimate executive authority over the manner in which the police department operates," Hoffman, *supra*, at 470 the mayor has a keen interest in borough affairs which relate to the police department. Because of the mayor's knowledge of the police department and legal responsibility for public safety, most councils respect and value the mayor's opinion on personnel matters dealing with the police department.

Council shall determine the total weekly hours of employment that shall apply to the police officers 8 Pa.C.S. §1121 (a)(5). Council may assign any member of the police department to attend training classes offered by the Federal or State Government and may pay the police officer's expenses while attending the school 8 Pa.C.S. §1121 (a)(4). Borough police and special police appointed by the mayor shall receive compensation as fixed by the council 8 Pa.C.S. §1125.

Although the scheduling of police officers is an inherent managerial right of the mayor and, by delegation, the police chief, the exercise of that right can be affected by a collective bargaining agreement. It is well understood that hours of employment constitute a work condition that may be the subject of negotiation between a police bargaining unit and a municipality under Act 111 *Id.* at 476. Notwithstanding that fact, it is questionable whether any express provision of a collective bargaining agreement which limits the mayor's statutory authority would withstand judicial review *Id.* at 477.

If a borough has a police force of three or more members (as long as those members in excess of two are not appointed on a temporary basis through a federally funded program), the actions of council and the mayor with respect to police personnel will become subject to Subchapter J of the Borough Code entitled "Civil Service for Police and Fire Service Operators." Pursuant to said Subchapter J, council must constitute a civil service commission consisting of three commissioners who shall be qualified electors of the borough and appointed by the council for six-year terms. 8 Pa.C.S. §1172 (b). Whenever a borough is required to have a civil service commission, an appointment to and promotion in the police force shall be made only according to qualifications and fitness, to be ascertained by examinations which shall be competitive as provided in the statutes governing civil service for police 8 Pa.C.S. §1171 (c). Likewise, no person shall be suspended, removed or reduced in rank as a paid employee in any police department, except in accordance with the statutes governing civil service for police 8 Pa.C.S. §1171 (d).

Under the civil service provisions of the Borough Code, no person employed in any police department of any borough may be suspended without pay, removed or reduced in rank except for the following reasons:

- (1) Physical or mental disability affecting the person's ability to continue in service, in which case the person shall receive an honorable discharge from service;
- (2) Neglect or violation of any official duty;
- (3) Violation of any law if the violation constitutes a misdemeanor or felony;
- (4) Inefficiency, neglect, intemperance, immorality, disobedience of orders or conduct unbecoming of an officer;
- (5) Intoxication while on duty;
- (6) Engaging or participating in the conduct of a political or election campaign while on duty or in uniform or while using borough property otherwise than to exercise the person's own right of suffrage;
- (7) Engaging or participating in the conduct of a political or election campaign for an incompatible office as provided in section 1104(f) (relating to appointments and incompatible offices) 8 Pa.C.S. §1190(a).

"Conduct unbecoming of an officer" has been defined by the Pennsylvania Supreme Court in two ways. The Court said "unbecoming conduct on the part of a municipal employee, especially a policeman or fireman is any conduct which adversely affects the morale or efficiency of the bureau to which he is assigned. It is indispensable to good government that a certain amount of discipline be maintained in the public service" *In Re Appeal of William G. Zeber*, 156 A.2d 821, at 825 (Pa. 1959). Secondly, the Court held that "unbecoming conduct is also any conduct which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services. It is not necessary that the alleged conduct be criminal in character nor that it be proved beyond a reasonable doubt" *Id.*

The mayor may, for any of the reasons enumerated above, suspend without pay any police officer until the succeeding regular meeting of the council at which time or later the council may, subject to the statutes governing civil service for police if they are in effect at the time, suspend, discharge, reduce in rank or reinstate with pay the police officer 8 Pa.C.S. §1124 (a). Under the due process clause of the United States Constitution, before a mayor can suspend a police officer, he/she must conduct a pre-disciplinary hearing known as a Loudermill hearing. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). A Loudermill hearing requires that a police officer: (a) be informed of the charges against him/her; (b) have an explanation of the mayor's evidence against him/her; and (c) be given the opportunity for the officer to present his/her side of the story. Following the Loudermill hearing, a written statement of charges made against an officer must be furnished to him/her within five days after the statement of charges is filed 8 Pa.C.S. §1190(c). The officer shall then have ten days from the date of receiving the notice to submit a written request for a hearing to the civil service commission under the section of the borough Code relating to hearings on dismissals and reductions 8 Pa.C.S. §1190(c).

A police officer suspended by the mayor may not be reinstated by council at a date earlier than ten working days from the date fixed by the mayor for the suspension to commence 8 Pa.C.S. §1124(b)(1). In other words, the Borough Code grants a mayor an independent power to suspend a police officer for up to 10 days without action or interference from council. *Hoffman*, supra, at 475. Council cannot effectively undo the first 10 days of a suspension by awarding back pay for that time *Id.* At 476. Furthermore, the Borough Code does not grant expungement powers to council *Id.* Where a mayor imposes a suspension of 10 days or less, the suspended police officer's remedy is an appeal to the civil service commission, not the council *Id.* In any case in which the council has reinstated a police officer after having been suspended by the mayor, the mayor shall not suspend the police officer for reasons: (i) arising from the same act for which the first suspension was made; or (ii) that the council, in reinstating the police officer, determined not to be grounds for suspension 8 Pa.C.S. §1124 (b)(2).

In boroughs with fewer than 3 full-time police officers, suspensions of police officers are governed by the Police Tenure Act 53 P.S. §811 et seq. A mayor suspending a police officer in such a borough cannot do so except for one of the five reasons listed in the Police Tenure Act which are identical to the first five reasons listed in section 1190(a) of the Borough Code, with the exception that the word "immorality" does not appear in the Police Tenure Act. Like the Borough Code, the Police Tenure Act requires a written statement of any charges made against an officer be furnished to him/her within five days after the statement of charges is filed 53 P.S. §812. In boroughs operating under the Police Tenure Act, any suspended officer can demand a public hearing before council which shall be held within a period of ten days from the filing of the charges in writing 53 P.S. §814. The right to a hearing does not apply to furlough situations. *Minnick v. Borough of Hyndman*, 541A.2d 1179 (Pa.Cmwlth. 1988). No order of suspension made by council shall be for a longer period than one year 53 P.S. §814.

Upon request by the board of school directors of the school district in which a borough is wholly or partially located, the council may appoint school crossing guards who shall have the duty of controlling and directing traffic and pedestrians at or near schools and who shall be in suitable and distinctive uniform 8 Pa.C.S. §1127(a)(1). While on duty, school crossing guards shall be under and subject to the direction of the mayor and shall serve at the pleasure of the council unless council enacts an ordinance allowing the board of school directors to assume hiring and oversight of school crossing guards themselves 8 Pa.C.S. §1127(a)(2).

Other Administrative Powers and Duties

Not all of the administrative powers given to the mayor in the Borough Code relate to law enforcement and emergencies. The mayor has the power to administer oaths and affirmations in matters pertaining to borough affairs such as administering the oath of office to council members and other borough officers 8 Pa.C.S. § 10A06. The mayor has a duty to sign papers, contracts, obligations and documents as may be required by law and other than those mandated by law to be signed by the president of council 8 Pa.C.S. §10A07(2).

Except for marriage ceremony fees received and accounted for in accordance with section 10A05(b) of the Borough Code, the mayor has a duty to collect any costs and fees received and to pay the money into the treasury 8 Pa.C.S. §10A07(3). The mayor should submit an itemized account of funds collected to council on a monthly basis.

Frequently the mayor is designated to issue various licenses or permits. When issuing permits, the mayor acts in a purely ministerial role. When the terms of the ordinance are met, the mayor must issue the license or permit. The mayor has no power to impose additional restrictions or regulations. Similarly, the mayor cannot revoke a license unless there is a clear violation of regulations established by council in the ordinance and after notice and a hearing.

Mayors can be granted supervisory power over other borough employees by council through enactment of an ordinance. Council can also grant additional enforcement power to the mayor by ordinance.

The borough shall furnish the mayor with the necessary dockets, books, forms and files as are necessary for the conduct of the mayor's office and which shall be and remain the property of the borough and be surrendered to the mayor's successor in office 8 Pa.C.S. §10A07(3).

IV. Legislative Powers

The corporate powers of the borough are vested in the council *8 Pa.C.S. §1202*. Unless otherwise provided in the Borough Code, all of the powers of council shall be exercised by vote of the majority of council eligible to vote at a meeting *8 Pa.C.S. §1006(4)*. Routine, ministerial or administrative purchases and powers may be made and exercised by officers or committees if authority for the action was previously given or if the action is subsequently ratified by council *8 Pa.C.S. §1006(4)*.

Under the Borough Code, council has a duty to meet at a stated time at least once a month *8 Pa.C.S. §1006(2)*. When a borough council meets, it must comply with the Sunshine Act. The Sunshine Act was enacted by the General Assembly of Pennsylvania because it found that the right of the public to be present at all meetings of borough councils and to witness the deliberation, policy formulation and decision making of such councils is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society *65 Pa.C.S. §702(a)*. In consideration of its finding, the General Assembly has declared it to be the public policy of the commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of borough councils at which any borough business is discussed or acted upon *65 Pa.C.S. §702(b)*.

Official action and deliberations by a quorum of the members of borough council must take place at a meeting open to the public unless the meeting is closed because it falls within the exceptions to open meetings found in the Act *65 Pa.C.S. §704*. In all meetings, the vote of each member of council who actually votes on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of roll call votes, recorded *65 Pa.C.S. §705*. Written minutes shall be kept of all open meetings of council *65 Pa.C.S. §706*.

Under the Sunshine Act, there are three exceptions to the requirement that all meetings be open. They are: executive sessions, conferences in which the deliberation of borough business does not occur, and certain working sessions conducted by Boards of Auditors *65 Pa.C.S. §707*.

Borough council may hold an executive session for one or more of the following reasons:

- (1) To discuss any matter involving the employment, appointment, termination, terms and conditions of employment, evaluation of performance, promotion or disciplining of any current or former public officer or employee;
- (2) To hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or, in the absence of a collective bargaining unit, related to labor relations and arbitration;
- (3) To consider the purchase or lease of real property up to the time an option to purchase or lease the real property is obtained or up to the time an agreement to purchase or lease such property is obtained if the agreement is obtained directly without an option;
- (4) To consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed; and
- (5) To review and discuss borough business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations *65 Pa.C.S. §708(a)*.

The Sunshine Act specifies a procedure for a council to hold an executive session. The executive session may be held during an open meeting or at the conclusion of an open meeting or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. If the executive session is not announced for a future specific time, borough council and the mayor shall be notified 24 hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session *65 Pa.C.S. §708(b)*.

Notwithstanding, there are limitations on the use of an executive session by council. Official action on discussions held in executive session must be taken at an open meeting 65 Pa.C.S. §708(c). Moreover, the sections of the Sunshine Act which allow for exceptions to open meetings are not to be construed to require that any meeting be closed to the public, nor are they to be used as a subterfuge to defeat the public policy that borough meetings be open to the public 65 Pa.C.S. §708(c).

A borough must give public notice of its first regular meeting of each calendar year not less than three days in advance of the meeting and must give public notice of the schedule of its remaining regular meetings 65 Pa.C.S. §709(a). Additionally, a borough must give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice. Public notice is not required in the case of an emergency meeting or a conference 65 Pa.C.S. §709(a). In order to satisfy its legal obligation that public notice to be given by a certain date, a borough must give the notice in time to allow it to be published or circulated within the borough where the principal office of the borough is located or the meeting will occur, before the date of the specified meeting 65 Pa.C.S. §709(b).

At each advertised regular meeting and advertised special meeting, borough council must provide a reasonable opportunity for residents or taxpayers of the borough to comment on matters of concern, official action or deliberation which are or may be before the council, prior to taking official action 65 Pa.C.S. §710.1(a). The council has the option to accept all public comment at the beginning of the meeting 65 Pa.C.S. §710.1(a). If the board or council determines that there is not sufficient time at a meeting for residents or taxpayers of the borough to comment, the council may defer the comment period to the next regular meeting or to a special meeting occurring in advance of the next regular meeting 65 Pa.C.S. §710.1(a). The meeting minutes must include the names of all citizens who appeared officially and the subject of their testimony 65 Pa.C.S. §710.1(a).

Within the foregoing open, participatory legislative process of borough council, there are important roles for the mayor to play to assist council in the exercise of its legislative powers, on behalf of borough residents and taxpayers, as it deems beneficial to the borough. These roles will be discussed in the sections below.

Organization Meetings

Under the Borough Code, the council must organize on the first Monday of January of each even-numbered year by electing one member as president and one member as vice president, who will hold those offices at the pleasure of the council 8 Pa.C.S. §1001(a). If the first Monday is a legal holiday, the meeting and organization will take place the following day 8 Pa.C.S. §1001(a).

It is the mayor who opens the meeting and presides over the nomination and election of the president of council followed by the nomination and election of the vice-president of council 8 Pa.C.S. §1003(a). The mayor will be deemed to be a member of council at the organizational meeting if the mayor's membership becomes necessary to constitute a quorum 8 Pa.C.S. §1003(a). The mayor does not vote at the meeting unless the mayor's vote will, for any reason, be required to effect the organization of council or to elect any officer who is required to be or may be elected at the organizational meeting 8 Pa.C.S. §1003(b). If the mayor is absent from the organizational meeting, one of the members of council physically present at the meeting and chosen by the members eligible to vote at the meeting, shall preside 8 Pa.C.S. §1003(b).

Once the president and vice-president are elected, the mayor ceases to be the parliamentarian and recognizes the newly elected president as the parliamentarian 8 Pa.C.S. §1003(a). The council may, at the organizational meeting, appoint other officers as may be provided for by law or ordinance, or as may be deemed necessary for the conduct of affairs of the borough, and may transact any other business as may come before the meeting 8 Pa.C.S. §1001(a). The authority of the mayor to preside over the organization of council and to break a tie allows the mayor to cast the deciding vote on whether to remove the council president. A court has determined that the mayor has this authority even if the vote occurs at some time other than the statutorily-required organization meeting in January of even-numbered years *Commonwealth ex rel. Lafayette v. Black*, 620 A.2d 563 (Pa.Cmwlth. 1993).

Council Meetings

The mayor may attend any or all regular and special meetings of council and take part in the discussions of the council on matters pertaining to borough affairs, subject to any restrictions applicable to members of council contained in the rules of order or bylaws of the council *8 Pa.C.S. §1003(c)*. Included in all special meetings of council are executive sessions referenced in the Sunshine Act. Understandably, where the subject of the executive session involves a legal dispute between the council and the mayor, the mayor should not be in attendance.

As a participant in the discussions of the council, the mayor can be helpful in resolving difficult or important legislative issues and enrich the deliberations because of the mayor's perspective, position and access to information. As an officer who is elected borough-wide and a non-member of council, a mayor has a more detached, community-wide perspective of an issue. This is particularly important in a borough where the members of council are elected by ward. The office of mayor is an executive position and executives approach problem-solving in a different way than do deliberative bodies. The mayor is often the most recognizable borough official who is most likely to be invited to community events. This familiarity and involvement gives the mayor more opportunities to gain information and knowledge from residents, businesses and nonprofit organizations which may be useful in legislative discussions. If the borough has a police department, the mayor may be privy to information which is protected from dissemination by the Criminal History Records Information Act. Without revealing that information, a mayor may be able to guide council in taking action on matters of public safety.

A mayor's unique perspective, position and access to information makes him/her well-suited to fulfill one of the mayor's important duties under the Borough Code; that is, to report to the council from time to time on the state of the borough and to make recommendations to the council on matters of borough concern *8 Pa.C.S. §10A07(3)*. The manner and frequency of such a report and recommendations are within the reasonable discretion of the mayor. The exercise of that discretion by the mayor would likely be influenced by the "state of the borough" and the effectiveness with which the council is addressing the important issues the borough is facing.

How effective a mayor will be influencing a council on borough matters will depend on a number of factors including the mayor's governmental experience, leadership capabilities and communication skills as well as local customs and traditions. If conflicts arise between the mayor and council, it is important to resolve them as soon as possible, on a professional basis and with the best interests of the electorate in mind.

Voting in Council Meetings

During regular and special meetings of council if, by reason of a tie or split vote, the council shall be unable to: (a) enact or pass any ordinance, resolution or motion; (b) declare any vacancy under the section of the Borough Code relating to the right of council to declare a seat of a member vacant for failure to qualify; (c) fill any other vacancy in its membership or in any other borough office; or (d) take any action on any matter lawfully brought before it; the mayor, if in attendance at the meeting, may, at the mayor's option, cast the deciding vote or shall direct that the matter be tabled until a special meeting of council *8 Pa.C.S. §1003(d)(1)*. If the mayor directs that the matter be tabled, the special meeting of council shall be held within not less than five days or more than ten days at which time the matter shall be reconsidered by council *8 Pa.C.S. §1003(d)(2)*. If, at the special meeting, a tie or split vote still exists, it shall be the duty of the mayor at that time to cast the deciding vote. If at any regular or special meeting in which the mayor is not in attendance, a tie or split vote occurs the matter shall be tabled to a special meeting to be held within not less than five days or more than ten days as set by the president of council, and the mayor shall be given at least five days' notice of the meeting, at which meeting it shall be the duty of the mayor to cast the tie-breaking vote *8 Pa.C.S. §1003(d)(4)*.

There are some tie or split votes of council where a mayor's vote will not decide the matter on which the vote was taken. In these instances, the mayor should both refrain from voting and declare that tabling the matter to a special meeting would be a nullity. One such circumstance is a vote by council on an ordinance for the appointment of an independent auditor in lieu of the three elected auditors. That ordinance must be passed by a two-thirds vote of the entire number of members of council elected *8 Pa.C.S. §1005(7)*. Consequently, breaking a tie or split vote by the mayor in that situation would have of

no legal significance. Likewise, if council creates, by ordinance, the office of borough manager, it can only elect to fill that office by a vote of a majority of all the members 8 Pa.C.S. §1141(a). Because the mayor is not a member of council, the mayor's vote in breaking a tie or split vote to fill the office would again be of no legal consequence nor would there be any purpose in tabling the vote to a special meeting. See *Morelli v. Borough of St. Marys*, 275 A.2d 889 (Pa.Cmwlt.1971).

Other than the two situations described above and any other instance where a statute requires that an action of council be taken by a vote of a majority or supermajority of the members of council, a mayor should be regarded as having the absolute right to cast a vote and break a tie. The words in the statute cited above (i.e. any ordinance, resolution or motion and any action on any matter lawfully brought before it) admit of no exceptions. This was the holding by the Commonwealth Court in the case of *Commonwealth ex rel. Lafayette* supra. In this case, the Court held that the mayor is part of the appointing power as contemplated Article VI, Section 7 of the Pennsylvania Constitution which provides for the removal of appointed civil officers *particularly whereas here, there was a tie among council members* *Id.* at 565. The Court emphasized the absolute power of the mayor to cast the deciding vote in the following manner: "In any cases where by reason of a tie or split vote, the council of any borough shall be unable to enact or pass any ... motion, or declare or fill any vacancy in its membership, or in any other borough office, or to take any action on any matter lawfully brought before it, the Mayor ... may at his/her option cast the deciding vote" *Id.*

Subsequent to its decision in *Commonwealth ex rel. Lafayette v. Black*, the Commonwealth Court held that a borough mayor had the authority to cast the tie-breaking vote to fill a vacancy on the borough council *Cerjack v. Bridgewater Borough*, 835 A.2nd 845 (Pa. Cmwlt. 2003). In its 2015 case of *Shields v. Council of Borough of Braddock*, not yet reported in the Atlantic Reporter, the Commonwealth Court determined that a mayor has the express authority to cast the tie-breaking vote on a motion removing the borough solicitor and appointing a new solicitor. In the face of these three decisions, that a mayor can cast the tie-breaking vote for a councilperson, a council president and a solicitor, the Commonwealth Court continues to support its decision in *Almy v. Borough of Wilkinsburg*, 416 A.2nd 638 (Pa. Cmwlt. 1980) that a mayor does not have the authority to break a tie vote on a motion to rescind a resolution furloughing police officers. The reason the Commonwealth Court gives is that "permitting the mayor to cast the deciding vote on the motion to rescind would have allowed the mayor to vote on the removal of the police officers, which was not within the mayor's powers under Section 1121" of the Borough Code (before it was revised and re-codified).

There are borough solicitors who believe that there are inherent contradictions in the aforementioned judicial decisions which collectively recognize the power of the mayor to cast a tie-breaking vote to choose a member of council, a council president and a solicitor, but not a police officer. All four votes are council member actions and the one tie-breaking vote in which the mayor should have the greatest interest because it involves public safety, the mayor is judicially denied. The key to reconciling the contradictions may be found in the opinion of *Commonwealth ex rel. Lafayette v. Black*, supra which discusses at length the public policy behind the plain meaning of a statute which reads: "If, by reason of a tie or split vote, the council shall be unable to ... pass any ... motion ... or take any action on any matter lawfully brought before it, the mayor ... may cast the deciding vote ..." 8 Pa.C.S. §1003(d)(1). Among other statements on the statute's public policy, the Commonwealth Court said: "It is essential that government function when to do so would not offend the essential rights and liberties of the people or do an injustice to their constitution" *Id.* at 564 In other words, the ability of a mayor to cast a tie-breaking vote has everything to do the smooth functioning of local government and little or nothing to do with the balance of power between the mayor and council.

The Commonwealth Court will have the opportunity to reverse its decision in the *Almy* case if a similar case is brought before the Commonwealth Court under the revised and re-codified Borough Code, which is now in effect. A mayor who is confronted with the opportunity to cast a tie-breaking vote on the removal of a police officer should consult legal counsel if he/she is prevented from voting on such a matter.

Ordinances, Resolutions, and Motions

Council legislates in one of three ways: by ordinance, by resolution or by motion. An ordinance is an authoritative rule or law; a decree or command. A resolution is a formal expression of opinion or intention made, usually after voting, by a legislature. A motion is a proposal formally made to a deliberative assembly.

Under the Borough Code, every “legislative act of council” must be by ordinance. Legislative acts include, but are not be limited to the following:

- (1) Tax ordinances;
- (2) General appropriation ordinances;
- (3) Capital expenditures not payable out of current funds;
- (4) Legislation doing any of the following:
 - (i) Exercising the police power of the borough.
 - (ii) Regulating land use, development and subdivision.
 - (iii) Imposing building, plumbing, electrical, property maintenance, housing and similar standards.
 - (iv) Regulating the conduct of a person or entity within the borough and imposing penalties for violation of the regulated conduct;
- (5) Imposing assessments on benefited property for public improvements in accordance with Chapter 21A of the Borough Code (relating to assessments and charges for public improvements) *8 Pa.C.S. §3301.1(b)*.

Typically, legislative acts of council have a general purpose; nonlegislative acts are more specific. Legislative acts are permanent whereas nonlegislative acts are temporary and often pertain to transactions of current business or ordinary administration of municipal affairs.

Conversely, resolutions may be adopted for any purpose, including, but not limited to, the following:

- (1) Ceremonial or congratulatory expressions of the good will of the council;
- (2) Statements of public policy of the council;
- (3) Approval of formal agreements of the borough, except for agreements arising under an established purchasing system of the borough;
- (4) Approval, if required, of administrative rules, regulations and bylaws arising under State statutes or borough ordinances;
- (5) The filling of borough-appointed positions and of vacancies of elected officials, except as otherwise provided *8 Pa.C.S. §3301.1(c)*.

Council's approval of the acquisition, disposition and leasing of real or personal property shall also be by adoption of a resolution in a manner consistent with this section of the Borough Code *8 Pa.C.S. §3301.1(d)*.

Any action by council not required to be by ordinance or resolution may be made by motion. It is noted that with the recodification of the Borough Code in 2012, the “legislative resolution” has now been eliminated. All matters previously enacted by legislative resolution are now enacted by ordinance.

There are important reasons for determining when the Borough Code or any other law requires council to act by ordinance. The first is that, except as may be provided by law, every proposed ordinance must be published by council once in one newspaper of general circulation for at least seven days and not more than 60 days prior to enactment prior

to the day when council shall vote on the proposed ordinance *8 Pa.C.S. §3301.2 (a)*. Among other requirements, publication of any proposed ordinance must include the full text or the title of the ordinance and a brief summary prepared by the borough solicitor setting forth all of the provisions in reasonable detail as well as a reference to the borough office or other place where borough records are kept where copies of the proposed ordinance may be examined *8 Pa.C.S. §3301.2 (a)*.

The second is that every ordinance enacted by council must be presented to the mayor for the mayor's approval *8 Pa.C.S. §3301.3(a)(1)*. Presentation to the mayor shall be deemed to mean delivery to the mayor by hand delivery or certified mail, addressee only, to the mayor at the mayor's last known address *8 Pa.C.S. §3301.3(a)(1)*. Delivery shall be deemed complete upon depositing in the mail, postage or charges prepaid, as evidenced by a certificate of mailing *8 Pa.C.S. §3301.3(a)(1)*.

After the act of presenting the ordinance is complete, the mayor has three options for responding. The first option is that if the mayor approves the ordinance, the mayor shall sign it *8 Pa.C.S. §3301.3(a)(2)(i)*. The second option is that if the mayor does not approve the ordinance, the mayor shall return it with objections, which shall be entered in the minutes, to the council at its next scheduled meeting (which may be either a regular, special or reconvened meeting) occurring at least ten days after the meeting at which the ordinance was enacted by council *8 Pa.C.S. §3301.3(a)(2)(ii)*. The third option is that the mayor can choose to retain custody of the ordinance and neither sign it nor return it. If an ordinance is not returned by the mayor at council's next scheduled meeting occurring at least ten days after its presentation to the mayor, the ordinance shall have full force and effect as if it had been approved by the mayor *8 Pa.C.S. §3301.3(a)(3)*.

If the mayor chooses the second option and returns the ordinance with objections, council shall reconsider the ordinance either at the meeting at which the vetoed ordinance was returned or not later than ten days after the meeting at any other scheduled meeting *8 Pa.C.S. §3301.3(a)(2)(iii)*. If, after reconsideration, a majority of all elected council members plus one votes to override the mayor's veto, the ordinance shall have full force and effect as if it had received the approval of the mayor *8 Pa.C.S. §3301.3(a)(2)(iii)*. The vote shall be determined by yeas and nays, and the names and votes of the members shall be entered upon the minutes *8 Pa.C.S. §3301.3(a)(2)(iii)*.

The effective date of an enacted ordinance, except as provided in the ordinance, shall be one of the following: (1) the date when the mayor approves the ordinance; (2) the date of enactment by the council over the veto of the mayor; and (3) for an ordinance not returned by the mayor at the next scheduled meeting of council occurring at least ten days after the meeting at which the ordinance was enacted by the council, the date of the succeeding scheduled meeting of council *8 Pa.C.S. §3301.3(b)*.

Whenever council seeks to enact a tax ordinance, there are some nuanced differences in the above procedures. If council presents the mayor with the annual tax ordinance, the mayor shall, within ten days of receiving the tax ordinance, approve or return the tax ordinance to the borough secretary with a statement setting forth the mayor's objections *8 Pa.C.S. §3301.3(c)(1)*. Council shall reconsider the tax ordinance at any scheduled meeting held not later than ten days after the mayor has returned the tax ordinance to the secretary with the mayor's objections. The mayor's objections shall be entered upon the minutes of the meeting *8 Pa.C.S. §3301.3(c)(2)*. A veto of the tax ordinance of the borough may be overridden by a vote of a majority of all elected council members plus one. If the veto is overridden, the ordinance shall have full force and effect as if it had received the approval of the mayor *8 Pa.C.S. §3301.3(c)(3)*. If the mayor neither approves the tax ordinance nor returns it with objections, the date of enactment of the tax ordinance shall be the date of the adoption of the tax ordinance by council *8 Pa.C.S. §3301.3(c)(4)*.

A third important reason for determining when the Borough Code or any other law requires council to act by ordinance is that all borough ordinances must, within 30 days after approval by the mayor, the council's override of the mayor's veto or council's next scheduled meeting after its presentation to the mayor, be recorded by the borough secretary in an ordinance book. The entry of the borough ordinance in the ordinance book is sufficient without the signature of the president of council, mayor or member of council *8 Pa.C.S. §3301.4(b)*. The ordinance book must be open to the inspection of citizens during normal business hours *8 Pa.C.S. §3301.4(a)*.

Finally, a borough ordinance must prescribe fines and penalties for violation of the ordinance *8 Pa.C.S. §3321(a)*. Unless otherwise provided by statute, a borough ordinance shall set forth the method of its enforcement in accordance with the provisions of subchapter B entitled Enforcement in the chapter on ordinances in the Borough Code *8 Pa.C.S. §3321(b)*.

At times, the mayor and members of council will have different opinions with regard to the wisdom and efficacy of a proposed ordinance. The challenge for every mayor is to know when it is in the interest of the general public for the mayor to veto an ordinance that the mayor cannot persuade the members of council to either amend or refrain from enacting at all. The use of the veto by the mayor should be thoughtful and judicious. One benefit of vetoing an ordinance is that a veto insures that legislative acts of council which will have a significant impact on borough residents will be enacted by a supermajority of council as opposed to a simple majority. A second benefit is that a veto can buy time when a mayor perceives that council is acting hastily in enacting an ordinance and that the passage of additional time will enable council to consider changes to correct an ordinance's imperfections. Lastly a mayor always has the option when presented with an ordinance to allow the ordinance to become law but express disapproval by not signing it and publicly communicating the reasons why.

V. Community Relations

Community Leadership

As the only elected executive and, in many boroughs, the most recognizable municipal official, the mayor is in a unique position to provide leadership on a variety of borough and community projects. Often, the very reason why an individual runs for the office of mayor is to “make a difference” in his/her borough by addressing a problem or promoting improvements to benefit the residents and businesses. Once the mayor is elected, he/she can use the status and visibility of the office of mayor to bring together the stakeholders of the community, including borough government, to allocate resources and work on beneficial projects. Mayors have been known to be involved in developing parks and recreation facilities, instituting recreation programs for youth, establishing programs and facilities to benefit senior citizens, encouraging historic preservation activities and organizing economic development programs.

Public Celebrations/Individual Recognitions

Mayors are frequently called upon to promote national celebrations or recognize individuals for their accomplishments. The most common means by which mayors promote national celebrations such as Earth Day, National Night Out, Red Ribbon Week, Teen Driver Safety Week and the like is to issue a proclamation. Black's Law Dictionary defines a proclamation as “a written or printed document in which are contained such matters issued by proper authority usually a high government executive” (i.e. president, governor or mayor). A resolution, on the other hand is defined by the same Dictionary as a formal expression of the opinion or will of an official body or public assembly adopted by vote. In other words, mayors issue proclamations; councils adopt resolutions.

Individual recognitions can be the subject of a proclamation such as proclaiming a day in someone's honor for being named “person of the year.” Recognitions can also take the form of an award like a “community service award” or a citation of merit given to an eagle scout. The mayor may act alone or in concert with borough council.

Ceremonial Role

Because of the status and visibility of the office of mayor, the mayor is often invited to be the official representative of the borough government at various community activities and events. A mayor may be asked to attend meetings of civic, fraternal or service organizations; speak at national holiday observances and celebrations; participate in groundbreaking or ribbon cutting ceremonies and ride in parades.

Constituent Services

The accessibility of the mayor to the borough citizenry as well as the perception that borough mayors have the same governmental powers as city mayors often results in the mayor becoming the recipient of complaints about borough services, as well as a sounding board for opinions on community issues or concerns. The responses of mayors in these situations will vary from borough to borough depending upon the nature of the subject, the personality and capabilities of the mayor and the historical role played by the mayor in the borough. Some mayors act like ombudsmen investigating matters of concern and advising citizens or advocating for them with the proper authorities. If there is a neighborhood dispute or a disagreement with council, some mayors will seek to mediate a solution. There are other mayors who will choose not to get involved and make referrals to other agencies or individuals.

Public Relations Officer

In many boroughs, the mayor functions as the unofficial public relations officer. Because of the mayor's role as the chief law enforcement officer and the public official who initially responds during times of emergency, the mayor should always be the spokesperson in these situations. These are circumstances which call for executive action by a public official who knowledgeable, accessible and decisive. Both the public and the news media appreciate these mayoral qualities.

It is natural for the relationship between the mayor and the news media, which develops during the times of emergencies and public safety concerns, to continue whenever there are other borough or community-wide issues. When newsworthy stories are happening, the news media wants to be able to talk to a public official as soon as possible for comment and the most likely official to be found is the mayor. Many councils recognize the value of having their mayor act in this capacity and encourage the mayor to do so.

Some mayors do not wait for the news media to contact them whenever there is positive news to report to the public. They will issue a news release which will summarize the good news and give a contact person and telephone number or e-mail address for the news media to obtain further information.

Whenever the mayor is serving as a spokesperson for the borough, it is a good practice to keep the members of council, the borough secretary and manager, and the chief of police informed so that all borough officers and officials are conveying a consistent message. There are few things as infuriating to a public official as having a member of the public question the official about a news item of which he/she has little or no knowledge.

Solemnization of Marriages

Under Pennsylvania's Marriage Law, a borough mayor has the privilege of solemnizing a marriage between persons who produce a marriage license issued by the clerk of the orphans' court division of the court of common pleas of any county in Pennsylvania 23 Pa.C.S. §1503(a)(5). A former borough mayor may also have the privilege of solemnizing a marriage provided that the former mayor (i) has not been defeated for reelection; (ii) has not been convicted of, pleaded nolo contendere to or agreed to an Accelerated Rehabilitative Disposition or other probation- without-verdict program relative to a misdemeanor or felony offense under the laws of this commonwealth or an equivalent offense under the laws of the United States or any one of its possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation; (iii) has not resigned the position of mayor to avoid having charges filed or to avoid prosecution by Federal, State or local law enforcement agencies; (iv) has served as a mayor, whether continuously or not, by election for an aggregate of a full term in office; and (v) is a resident of this commonwealth 23 Pa.C.S. §1503(a)(5.1).

A license issued by the clerk of the orphans' court division shall authorize a marriage ceremony to be performed by a mayor in any county in Pennsylvania 23 Pa.C.S. §1301(b). The marriage license shall not be valid for a longer period than 60 days from the date of issue 23 Pa.C.S. §1310. The original marriage certificate shall be signed by the mayor and given to the parties contracting the marriage 23 Pa.C.S. §1504(a). The duplicate certificate shall be signed by the mayor and returned for recording within ten days to the court that issued the license 23 Pa.C.S. §1504(a).

VI. Practical Guidelines for Borough Mayors

When an individual is elected mayor, the successful candidate is not given a manual by the county election department explaining the mayor's powers and duties. The newly elected mayor must learn on the job and this can be difficult depending upon the problems faced by the borough and the willingness of those with whom the mayor must interact (i.e., members of council, the secretary or manager, the chief of police) to accept and assist the mayor or, at the very least, allow the mayor to do his/her job.

Moreover, over time the mayor will discover that the learning process never ends. There are always new laws, best municipal practices, and problems which challenge a mayor to continue to learn in order to serve the electorate well. Here are some practical guidelines for achieving success in office:

1. Read and thoroughly familiarize yourself with all of the sections of the Borough Code which could have an impact on your performance as mayor, especially Chapter 10A entitled "Mayor" and Chapter 11, Subchapter E entitled "Police." The Borough Code is available for purchase from the Pennsylvania Legislative Reference Bureau. You can also download it onto your computer by accessing the General Assembly's website at: http://www.legis.state.pa.us/cfdocs/legis/LI/Public/cons_index.cfm
2. Seek out other publications in addition to this Borough Mayor's Manual which will assist you in exercising your powers, duties, privileges, and role as community leader. One such publication is *I've Been Elected Mayor, Now What*, published by Pennsylvania State Mayors' Association. Many publications on a variety of municipal topics are available from the Governor's Center for Local Government Services in the Department of Community & Economic Development. The titles of some of these publications are: *Administering Police Services in Small Communities*, *Model Hiring Manual for Pennsylvania Municipalities*, and *Regional Police Services in Pennsylvania*. Information on these and other publications can be found at: <http://www.newpa.com/local-government/publications>
3. Consider joining one or more of the various state and local associations that exist to support mayors. Visit their websites for information, contact them when you have questions and attend their mayoral conferences. The Pennsylvania State Mayors' Association and the Association of Mayors of the Boroughs of Pennsylvania are two statewide associations. The Allegheny County Mayors' Association, Lackawanna County Mayors' Association, Lancaster County Mayors' Association and York County Mayors' Association are some of the active county mayors' associations.
4. If you have an important legal question, you should not hesitate to ask the borough solicitor for advice. The Borough Code makes it clear that the borough solicitor is the mayor's solicitor as well as the council's solicitor. You should expect that the solicitor will comply with the Pennsylvania Rules of Professional Conduct in representing you. Among other obligations, a solicitor must: provide competent representation to you; act with reasonable diligence and promptness in representing you; not reveal information relating to representation of you unless you give informed consent, and not represent you if the representation involves a concurrent conflict of interest. If there is a conflict of interest with the council, the Borough Code authorizes you, within limits, to retain outside counsel. Finally, be aware of the financial arrangements which the borough has with the solicitor. You can feel freer to ask questions of a solicitor on retainer than one being paid on an hourly basis.
5. Register for courses on borough government offered by the Governor's Center for Local Government Services which trains local government officials through the PA Local Government Training Partnership. The courses are designed to keep municipal officials current on new laws and legislative requirements and enhance their ability to govern more effectively. Training is provided through a partnership agreement with the local government associations such as the Pennsylvania State Association of Boroughs. See <https://palocalgovtraining.org/>

6. Develop professional relationships with all of the members of council, as best you can. Attend all regular and special meetings of council and take part in the discussions of the council on matters pertaining to borough affairs as you have a right to do under the Borough Code. Perform your duty to report to the council from time to time on the state of the borough and to make recommendations to the council on matters of borough concern, but do it in a way that is respectful of their powers and duties under the Borough Code. Remember that the use of the veto by the mayor should be thoughtful and judicious. It is natural and inevitable that there will be conflicts between you and council over your and their respective exercise of powers and performance of duties under the Code. One way to begin to resolve some of those conflicts is to call to mind the words of President Abraham Lincoln in his Gettysburg Address that our American system of government is one “of the people, by the people, for the people” and that people in every borough expect their elected officials to work together for the common good.
7. Although the mayor has full charge and control of the police department, recognize that it is the type of civilian control that the President exercises over the United States Armed Forces and the Governor over the Pennsylvania State Police. There is a hierarchy of command and a heavy reliance by the mayor upon the training and skills of the police officers in the department. The mayor should delegate to the chief of police or other officer supervision over and instruction to subordinate officers in the manner of performing their duties and then review the performance of the chief or other officer on some periodic basis. Make certain that your police department has an up-to-date policy manual that includes as many “best police practices” as possible and is being followed by the members of the department, including any that pertain to you as mayor.
8. Maintain a good working relationship with the administrative staff who manage the borough on a day-to-day basis, especially the borough manager if there is one and the borough secretary if there is not. The administrative staff interacts with the public on a daily basis and there is a lot that can be learned about borough government from that interaction. More importantly, the borough manager or secretary has a hand in everything that is happening in the borough outside of the police department and sometimes even the police department is affected by his/her actions.
9. Participate in as many community events and celebrations as possible and engage the public in conversations about what they like and dislike about their borough. Be a good listener. The information and knowledge gained at these activities will be invaluable in helping you make improvements to the quality of life in your municipality.
10. Embrace the role of being the official or unofficial spokesperson for borough government and the community at large. The perceptions of a borough can significantly influence its desirability as a place to live and do business and every effort should be made to put the borough in the best possible light. For reasons previously mentioned, the mayor is ideally suited to be the borough’s cheerleader. Get to know the persons who are reporting local news and cultivate a relationship with them.

**Pennsylvania Department of Community & Economic Development
Governor's Center for Local Government Services**

Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

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