

# BOROUGH COUNCIL HANDBOOK

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# Table of Contents

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- I. Office of Borough Council Member** .....1
  - Ward Redistricting .....1
  - Redistricting by Ordinance .....1
  
- II. Legislative Powers** .....7
  - General Powers .....7
  - The Legislative Role .....7
  - Quasi-Judicial Role .....8
  - Conduct of Meetings .....8
  - Parliamentary Procedure .....10
  - Sunshine Act .....11
  - Minutes and Records .....11
  - Intergovernmental Cooperation .....12
  
- III. Administrative and Appointive Powers** .....14
  - Appointed Administrator .....14
  - Personnel Management .....16
  - Appointment Powers .....17
  - Boards and Commissions .....18
  - Municipal Authorities .....19
  
- IV. Fiscal Powers** .....22
  - Taxes .....22
  - Act 50 .....23
  - The Budget .....24
  - The Budget Calendar .....25
  - Capital Improvements Planning and Budgeting .....26
  - Contracts .....27
  - Officers' Bonds .....28
  - Municipal Borrowing .....28
  - Pension Funding .....29
  
- V. Municipal Services** .....30
  - Streets .....30
  - Street Lighting .....30
  - Police .....31
  - Firefighting .....31
  - Ambulance/Rescue Services .....32
  - Parks and Recreation .....32

Libraries and Cultural Services .....	32
Building and Housing Codes .....	33
Sewer and Water Services .....	34
Emergency Management .....	34
Electric Services and Cable TV .....	34
Gas Services .....	34
<b>VI. Land Use Control and Environmental Regulation .....</b>	<b>36</b>
Comprehensive Planning .....	36
The Zoning Ordinance .....	37
Floodplain Regulations .....	38
Stormwater Management .....	39
Sewage Enforcement .....	39
Solid Waste Management .....	40
Historic Districts .....	40
<b>VII. Glossary of Terms .....</b>	<b>42</b>





# I. Office of Borough Council Member

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Boroughs are governed by an elected council. The membership of council varies depending on the method of election. Boroughs may elect their council members at large by a vote of the entire borough, or by wards. Boroughs may be divided into no more than 13 wards; each ward must contain a minimum of 300 registered voters.<sup>1</sup> Where a borough is divided into wards, one or two members may be elected from each ward.<sup>2</sup> Those boroughs electing three per ward may continue to do so until the number is changed.

Where boroughs are not divided into wards, seven council members are elected at large.<sup>3</sup> Boroughs with a population under 3,000 may reduce the size of council to five or three members by court action.<sup>4</sup> The Borough Code contains detailed provisions for altering the number of ward council members and for transition to a different size council.

## **Term of Office**

The term of office for a borough council member is four years. The Code establishes a pattern of staggered elections so that roughly half the council is up for election at each municipal election year. The number elected at each election depends on council size and method of election.

When a vacancy has occurred in the office of borough council member the office may appear on the ballot as a short term.<sup>5</sup> If the vacancy occurs more than 60 days before a municipal election and there are at least two years remaining of the original term, the position will go on the ballot for a two-year short term. This provision is intended to retain the original staggering of council members, but yet not allowing appointees to hold elective offices for more than two years.

## **Ward Redistricting**

### **Council's Responsibility and Authority**

It is the council's responsibility to make sure the wards within its borough comply with Borough Code. Borough Code provides that the borough council must redistrict its wards within the year following the official and final reporting of the Federal census, a decennial or a special census.<sup>6</sup> Each borough not governed by a council entirely elected at large must at this time re-apportion itself into districts.<sup>7</sup>

The Borough Council also has the authority to redistrict its wards by ordinance when it deems necessary to do so.<sup>8</sup> By ordinance, the council can divide the borough into wards or erect new wards out of two or more wards or parts of the wards.<sup>9</sup> By ordinance, the council can also consolidate two or more wards into one ward, divide any previously established ward into two or more wards and alter the lines of any two or more adjoining wards or cause the boundaries to be ascertained or established.<sup>10</sup> The council by ordinance can also abolish all the wards, leaving a council entirely elected at large.<sup>11</sup>

## **Redistricting by Ordinance**

The configuration of the wards is governed by many state law requirements. No borough can be divided into more than thirteen wards.<sup>12</sup> No ward can be created that would contain less than 300 registered electors.<sup>13</sup> The council can abolish any ward that contains less than 350 registered electors, and distribute the territory among the remaining wards.<sup>14</sup>

In the event that upon abolishing wards of a borough, the total number of wards is reduced to less than five, the council members from the abolished wards will continue in office for the term for which they are elected.<sup>15</sup> The council members from the abolished wards will then serve as council members at large.<sup>16</sup>

Ordinances enacted relating to the reapportionment of wards within a borough must be published at least once within a newspaper of general circulation.<sup>17</sup> Also, a copy of the ordinance and a plot showing the boundaries of the wards established by the ordinance must be forwarded to the county board of elections.<sup>18</sup>

Additionally, in order to comply with the Constitution of the Commonwealth of Pennsylvania and other statutory authority, the wards composing a borough must be composed of compact and contiguous territory as nearly equal in population as practicable.<sup>19</sup> The council must also number the wards.<sup>20</sup>

### **Redistricting by Petition**

A borough's electors may petition the council to redistrict the ward on their own volition. Five percent or more of the registered electors of the borough can petition the council to redistrict the wards under Section 601 of the Borough Code.<sup>21</sup> The electors can then present the council with a plot showing the boundaries of the proposed wards.<sup>22</sup> Within 90 days from receiving the petition, the council must determine by vote whether or not to redistrict the wards under Section 601 of the Borough Code, as requested by the petition.<sup>23</sup> In the event the council has not approved the petition within 90 days, 10 percent or more of the registered electors can petition the court of common pleas and contest the existing apportionment as violating Section 601(b) or 601(d) of the Borough Code.<sup>24</sup>

Additionally, if the council has not reapportioned the districts within its borough in the year following the official and final reporting of the Federal Census, decennial or special, the registered electors of the borough may petition the court of common pleas to reapportion the borough.<sup>25</sup> The petition must be signed by at least one registered elector.<sup>26</sup>

Districts meeting the population equality standard may nevertheless be constitutionally infirm if boundaries operate to the disadvantage of an identifiable protected class, either to force out, cancel or minimize its voting strength. The lines may reflect existing lines, natural or historic boundaries and topographic or geographic considerations as long as these factors are not employed to intentionally disadvantage a minority.<sup>27</sup> Redistricting must be primarily based on population figures, but use of other supplementary figures for small areas is not fatal.

### **Qualifications**

The basic qualification to serve as a borough council member is to be a registered voter and resident of the borough.<sup>28</sup> Council members must have resided in the borough continuously for at least one year prior to their election (i.e., the General Election). If the borough has a population of less than 150 residents that have not lived in the borough for more than one year may serve as council members, but still must reside in the borough.<sup>29</sup> To continue serving as a council member, an individual must retain residence within the borough. To qualify as a voter, a person must be 18 years of age and a resident of the election district. A person whose name appears on the district voting register but who is no longer a resident of the borough is not a lawfully registered elector. Legal residence includes not only a person's intention, but also a physical presence. Intention or voter registration is not enough; the actuality of an individual's residence is better determined by conduct than by words.<sup>30</sup>

Council members elected by the ward system must be residents of the ward from which they are elected.<sup>31</sup> Council members moving to residences outside their wards automatically disqualify themselves from holding office.<sup>32</sup> After the borough has been redistricted, all council members serve the remainder of their terms.<sup>33</sup>

### **Incompatible Offices**

Borough council members may not hold any other elective borough office.<sup>34</sup> The Borough Code does not prohibit a council member from holding other borough appointive offices.<sup>35</sup> A council member is prohibited from also serving as borough treasurer, secretary or manager.<sup>36</sup> Only one council member at a time may serve on the borough's civil service commission.<sup>37</sup> A limited number of council members can serve as members of the borough planning commission,<sup>38</sup> but are prohibited from becoming members of the zoning hearing board.<sup>39</sup> A borough council member cannot also serve as a member of a school board or a trustee of a charter school.<sup>40</sup>

The eligibility of members of municipal governing bodies to serve on authority boards had long been an unsettled issue. In 2001, the State Ethics Commission ruled that a council member could serve simultaneously on a municipal authority.<sup>41</sup> Furthermore, any incompatibility of office must be established by the legislature, not by the courts. However, the articles of incorporation of an authority may prohibit elected officials from serving on authority boards and these provisions are enforceable in the courts.<sup>42</sup> The Borough Code authorizes the official who serves in both capacities (i.e., a council member and the municipal authority board member) to be paid compensation for both positions.<sup>43</sup>



### **Oath of Office**

Before entering office, each council member whether elected or appointed must present a notarized Affidavit of Residency before he can take an oath or affirmation of office.<sup>44</sup> The oath can be administered by a judge, district magistrate, notary public or the mayor. The council member must swear to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform the duties of the office of council member with fidelity. A copy of this oath and the notarized Affidavit of Residency must be filed with the borough secretary.

### **Vacancies**

The most common reason for vacancies on council is through resignation. Individuals sometimes find the demands on their time, the pressure of private business activities, personal health or family problems or the responsibilities of office are too much to cope with. Vacancies can also occur because of death, moving out of the borough or ward, removal from office by the court or failure to qualify.

The Code provides for the remaining members of council to fill a vacancy by resolution.<sup>45</sup>

The Borough Code states that a resignation must be in writing and is effective the date a majority of vote of the quorum of council at a public meeting or the effective date on the written resignation whichever is later. Council has 30 days to fill the vacancy on council. If council neglects to accept a resignation, then it is deemed accepted after 45 days.<sup>46</sup> If the resignation is withdrawn in writing before council acts upon it then there is no vacancy.<sup>47</sup>

When 30 days have expired and council fails to fill the vacancy, then the vacancy board fills the vacancy within 15 additional days by appointing a qualified person. The vacancy board consists of council and one registered voter of the borough who is appointed by the council and acts as the chair of the vacancy board. If the vacancy board fails to fill the vacancy within the prescribed time, the chair then petitions the court of common pleas to fill the vacancy. In the case of a vacancy in the chair, the remaining members of the vacancy board petition the court to fill the vacancy. Where more than a majority of the offices of council member are vacant at any one time, the vacancies are filled by the court of common pleas upon petition of at least 15 registered voters of the borough.

In all cases, the successor is appointed to serve until the first Monday in January following the first municipal election occurring more than 60 days after the vacancy occurs, if the term continues that long. At that municipal election, a successor is elected to fill any unexpired balance of the term. All persons appointed to fill vacancies must have all the qualifications required of elected officers.

### **Compensation**

Borough council members may receive a salary. The amount of the salary must be established by an ordinance enacted by the council. The salary cannot exceed the maximums set for the following population groupings, as determined by the latest official census.<sup>48</sup> The council's compensation cannot be changed during the term of office and the increased compensation would not be applicable until the person has stood for reelection.<sup>49</sup>

<b><u>BOROUGH POPULATION</u></b>	<b><u>MAXIMUM COMPENSATION</u></b>
Under 4,999	\$1,875
5,000-9,999	\$2,500
10,000-14,999	\$3,250
15,000-24,999	\$4,125
25,000-34,999	\$4,375
35,000 and over	\$5,000

### **Fringe Benefits**

Boroughs are authorized to provide insurance benefits for employees and for the mayor and council members, covering life, health, hospitalization, medical and surgical service and accidents, but provide for pensions for employees only.<sup>50</sup>

Elected officials, including council members, are also excluded from coverage for unemployment compensation and workers' compensation benefits. Boroughs are authorized to purchase insurance for borough elected officials and employees for legal liability arising from performance of their duties.<sup>51</sup> This is commonly known as errors and omissions insurance.

### **Expenses**

When travel on official business is authorized by the council, council members can receive a mileage fee for use of their personal vehicle. The amount for mileage is to be set by council for all borough personnel.<sup>52</sup> When attending meetings of professional organizations or training sessions as authorized by council, a council member may be entitled to payment of all or any part of the necessary expenses agreed to by council.<sup>53</sup> Borough officers authorized to travel to such meetings must submit itemized expense accounts. The council should set a policy for claiming travel expenses, including reasonable documentation. Allowable expenses should be limited to such items as mileage, lodging, meals, parking, tolls and public transportation expenses.

Council members are authorized to attend meetings or conventions of county and regional associations of boroughs. Council members attending such meetings may be entitled to payment of the registration fee, mileage and other expenses the council agreed to pay.<sup>54</sup> Likewise; borough council members authorized by the council to attend the annual convention of the Pennsylvania State Association of Boroughs are entitled to the registration fee, mileage and other actual expenses the council agreed to pay. Each council member attending the convention must submit an itemized account of expenses to council. Time spent attending the annual convention cannot exceed four days, including the time spent in travel. The council may authorize borough employees to be compensated at their regular rate of pay while attending the annual convention.<sup>55</sup>

### **Conflicts of Interest**

Borough council members should be very careful to avoid the possibility of conflict between their personal and private interests and their role as a public officer. The Public Official and Employee Ethics Act (POEEA) states that the people have a right to be assured the financial interests of public officers do not conflict with the public trust.<sup>56</sup>

In any issue brought before council where an individual member has a conflict of interest, or there is an appearance of a conflict of interest, that council member should refrain from voting on the issue and hand a written memo to the borough secretary plus orally state that he has a conflict of interest.<sup>57</sup> Pennsylvania courts have long upheld as a fundamental public policy principle the rule that members of a governmental body cannot vote on any matter where they have a direct personal interest.<sup>58</sup>

Specific legal prohibitions governing personal interest in contracts and purchases appear in the POEEA which are referenced by statute in the Borough Code.

Under the POEEA, revised in 1998, no public official such as a borough council member can enter into a contract valued at \$500 or more with the governmental body with which the official is associated, unless the contract is awarded through a public process, including prior public notice and subsequent public disclosure. Moreover, this prohibition extends to any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official is associated, unless the contract is awarded through a public process. In such case, the public official cannot have any supervisory responsibility for administration of the contract.<sup>59</sup> In cases where a contract is made with a firm employing a council member in a non-management position; the council member must inform the council of such status and refrain from voting on the contract. The Code includes specific penalties for violation of the personal interest prohibition. Any council member facing the possibility of a conflict of interest under the POEEA may request an advisory opinion from the State Ethics Commission. Alleged violations can be reported to the Commission for further investigation. Any contract, purchase or appointment a borough wishes to make where a council member or any other borough official has a personal interest should be closely scrutinized as to its legality. In all cases, the appearance of honesty and impartiality is as important as fulfilling legal requirements.

### **Financial Disclosure Statements**

The POEEA requires local elected and appointed officials to file financial interest statements no later than May 1 of each year in office and one year after leaving office. The statements are open to public inspection.

### **Surcharges**

Borough officers whose actions have exceeded legal authorizations, or who failed to take actions required by law are subject to a financial penalty if the action or failure to act resulted in a financial loss to the borough.<sup>60</sup> When the borough auditors or controller review the accounts for the year they are required to determine if financial loss was caused by the illegal action or inaction of any officer. If they find such a case, the audit contains a balance entered against the official responsible, called a surcharge. The Code contains procedures for the filing and appeal of surcharges. The action of imposing surcharges is civil in nature rather than quasi criminal, since the function of the surcharge is remedial and not punitive — it is designed to reimburse the government for losses resulting from some misconduct of its officials.<sup>61</sup>

There is a specific provision for surcharge in cases of evasion of advertising requirements in making purchases. Any council member who contracts for purchases piecemeal to avoid advertising for a purchase of more than \$19,400 may be subject to a surcharge of 10 percent of the full amount of the contract or purchase.<sup>62</sup>

Limiting surcharges to the amount of actual loss does not apply to cases of fraud or official collusion. For such activities council members would also be subject to the criminal laws of the Commonwealth. Officials convicted of crimes relating to the conduct of their public office are subject to removal from office by the courts.

### **Removal from Office**

The Pennsylvania Supreme Court ruled that the Pennsylvania State Constitution only allows an elected official to be removed from the office through impeachment, conviction of a felony, perjury or misbehavior in office.<sup>63</sup> The Borough Code provides for removal of an elected official under quo warranto action if the official no longer meets the requirements to hold office.

### **Official Liability**

The Judicial Code defines a strictly limited set of conditions where the borough can be held liable for damages because of injury to a person or property.<sup>64</sup> Members of council 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 council member for an act or omission claimed to be within the scope of official duties, the borough must defend the action when requested by the council member. 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 when a surcharge arises from the willful or fraudulent misconduct of an official, the municipality may insure only its loss and may not purchase coverage for the official. Surcharges arising out of an official's willful or fraudulent misconduct are liabilities which arise outside the scope of official duties.<sup>65</sup>

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## II. Legislative Powers

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### General Powers

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

General powers include the right to sue and be sued, to complain and defend in the courts of the Commonwealth, the right to make and use a common seal and the right to purchase, exchange, acquire by gift or otherwise, hold, lease let and convey by sale or lease, real and personal property in the best interests of the borough.<sup>1</sup> The Borough Code vests the corporate power of the municipality in council.<sup>2</sup>

The Code further delineates other powers enabling council to function in the best interest of the borough. Specific powers provide authority to council to enact legislation covering governmental functions such as health, fire and police protection and taxation. Specific powers granted to the borough are intended to provide council with the capability needed to legislate for the benefit of the municipality and its citizens.

The Code also includes an especially important power — the authorization to the governing body to make and adopt all ordinances, bylaws, rules and regulations deemed necessary for the proper management and control of the borough in order to maintain good government and protect the safety and welfare of its citizens.<sup>3</sup> A municipality is forbidden, however, to enact any legislation in conflict with the Constitution and the laws of the Commonwealth. This general grant of power authorizes any legal action on the part of council to maintain the peace, good government and welfare of the borough and to protect the health, safety, morals and general welfare of its inhabitants. Courts have held these general police powers are not unlimited. An exercise of the police power must not be unreasonable, unduly oppressive or patently beyond the necessities of the case. The means it employs must have a real and substantial relation to the objects sought to be obtained. It must not invade the fundamental liberties of the citizens. Even legitimate legislative goals cannot be pursued by means which stifle fundamental personal liberty when the goals can be otherwise more reasonably achieved.<sup>4</sup>

### The Legislative Role

As an elected borough council member, you will be involved primarily in a legislative role. You may also act in an administrative, executive or supervisory role to a lesser extent. Your legislative role is of primary importance because the actions taken by you in deciding the laws governing the borough will affect not only the people within the borough, but also those outside the borders as well. Whether you become involved in initiating new laws or in passing judgment on the legal proposals of other officials, you will undoubtedly find legislation an interesting and important aspect of your position.

The methods for taking official action are specified in the Borough Code and other state laws. Although official binding actions may be taken on the basis of an ordinance, a resolution or a motion, the Code requires all legislative acts to be taken by ordinance.<sup>5</sup>

An ordinance is generally defined as a local law of a municipal corporation of a general or permanent nature. In some cases the Code specifies when an ordinance should be used. If no specific direction is given in the Code then an ordinance should be used if the matter has general application or is of a permanent nature. A resolution on the other hand is considered as being less formal than an ordinance and used when the matter under discussion is either specific or of a temporary nature, pertains to the transaction of current business or ordinary administration of municipal affairs, statements of public policy, approval of formal agreements, and the filling of vacancies in elected office or borough-appointed positions.<sup>6</sup>

A motion is a formal method for taking action on any measure being considered by the governing body, such as an ordinance or resolution. In addition, it is used to finalize the decision on other actions before council. The adoption of a motion by the required majority of the quorum expresses the will of the group.<sup>7</sup>

The borough solicitor should be consulted when the governing body is uncertain whether to use an ordinance or resolution.

## **Quasi-Judicial Role**

In addition to the power to deliberate, formulate and enact local legislation and regulations, state law gives borough councils quasi-judicial powers similar to a zoning hearing board to hear, interpret local ordinances and decide certain issues. These include hearings on such matters as local personnel actions and various types of applications under the PA Municipalities Planning Code. The formulation of legislative policy involves full and free public discussion of issues, often with a council member vigorously acting as advocate for a particular policy approach, or possibly spearheading opposition. Such activity is often a necessary part of the legislative process.

However, when the borough council is acting in a quasi-judicial role, it's important to note that the Borough Code was amended to allow a council member to vote (and not to disqualify him from voting) just because he previously expressed an opinion on an issue in either an official or unofficial capacity.<sup>8</sup>

The Borough Code requires council to meet at least once a month at a time and place designated by council.<sup>9</sup> Only the date of the organization meeting of council is set by law as the first Monday in January of each even numbered year. When the first Monday is a legal holiday, the organization meeting is held the following day. Council's first official business at this meeting is to elect one of its members as president and one as vice president. While chosen at this meeting, these officers serve at the pleasure of council and can be replaced at any time.<sup>10</sup>

The Code sets minimum requirements for a quorum to do business at a meeting. A quorum is a majority of the members of council then in office.<sup>11</sup> If a quorum is present, then a majority of the votes cast on any particular question will carry the issue.<sup>12</sup> This is the case even if this number does not constitute a majority of the quorum. It is immaterial if all members present did not vote. Nonvoting members cannot prevent action by council by their silence. A council member with a personal interest in any matter cannot vote. If you have a personal or pecuniary interest neither your vote nor your presence can be counted toward a majority or a quorum.

Although members are prohibited from voting on any issue where there is a personal conflict of interest, they sometimes abstain from voting on issues where they have no personal interest. Local government is based on the concept of representative democracy. Governing body members are elected to represent their constituents in making decisions for the community. Refusing to vote because a matter is contentious or may cause personal resentments is not acceptable. Members refusing to vote are violating their sworn duty to represent the voters in helping to decide matters before the governing body.

## **Conduct of Meetings**

As a council member, inevitably at one time or another you will be called upon to conduct a meeting. While you may not be the president of council, you may at some time have to conduct a borough meeting as president pro tem. In addition, you will probably find yourself on special subcommittees, or a member of a regional group of municipalities. You may very well be designated chair and will be responsible for the proper conduct of meetings.

The Borough Code does not set forth rules of conduct or procedure for municipal meetings. Each borough is free to establish its own order of business and rules for conduct and procedure, as long as the Sunshine Act is adhered to, which is discussed later.<sup>13</sup> Your borough probably already has a procedure for its meetings which has been established either by ordinance, resolution or perhaps by tradition. Rules of procedure are always within the control of the majority and may be changed at any time by majority vote.

The wise chair will ensure an agenda is prepared for each meeting. This is necessary for several reasons:

1. The agenda provides a guide for the chair to keep the meeting on the track; without an agenda or an ordered sequence of events it will be too easy for extraneous issues to disrupt the meeting.
2. An agenda assures all relevant points concerning the business at hand will be discussed.
3. An agenda lets all the participants in the meeting know exactly when they will be expected to make their contribution.

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

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

## **MEETING AGENDA**

1. **Call to Order.** The president of council calls the meeting to order. A roll call is conducted to determine if a quorum is present.
2. **Minutes of the Previous Meeting.** Minutes from the previous meeting or meetings are presented for approval. To expedite the procedure, minutes of the previous meeting should be typed and mailed to council members for their review prior to the meeting. Minutes are reviewed for possible corrections, deletions or additions. Changes to the minutes or approval of the minutes can be made without a motion if there are no objections, but some boroughs require a motion, etc.
3. **Treasurer's Report.** The treasurer gives a report of expenditures and revenues since the prior board meeting. Once again, a typed report mailed to officials prior to the meeting could expedite action on financial matters.
4. **Correspondence.** Letters or verbal communications received by the borough since the last meeting should be noted and acted upon.
5. **Public Participation.** Any resident or taxpayer of the borough may request to appear before council to present any matter they feel is of municipal concern. Some boroughs require persons wishing to address council at the meeting to state the topic usually three days in advance of the meeting. The borough must exercise extreme caution using this policy because a resident or taxpayer that is denied the right to address council, could argue that his Free Speech rights were denied. Most boroughs set a reasonable time limit on citizen presentation. It is a good policy to have the presentation early in the meeting so persons requesting to be heard will not be inconvenienced by a lengthy meeting.
6. **Borough Reports.** Standing committees, special committees, the borough manager, administrative officers and consultants are usually required to give reports on current projects in which they are involved. Boroughs not having managers usually require monthly or special reports from department heads.
7. **Unfinished Business.** Items of borough concern not completely resolved are discussed in the unfinished business category until council takes some conclusive action.
8. **New Business.** Once all topics of unfinished business included on the agenda are covered, the meeting should be open to new business. It may include such items as bid openings, consideration of new ordinances or discussion of new public works programs. During this portion of the meeting, council may discuss any appropriate subject or make announcements of importance to other officials or those in attendance.
9. **Public Participation.** This allows residents and taxpayers of the borough in attendance to be recognized even though they had not previously been placed on the agenda by the manager or secretary. A time limit is usually placed on an individual's presentation and any resulting discussion.
10. **Adjournment.** A meeting may be adjourned once business is completed.

## **Parliamentary Procedure**

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

The most commonly used standard code on parliamentary procedure is *Roberts Rules of Order* by Henry M. Robert. *Jefferson's Manual* and *Cushing's Manual* also contain legislative procedures.

Legislative action is taken by a governing body through a motion and vote. Basically four types of motions can be made: main motions, subsidiary motions, privilege motions and incidental motions. One of the most common misunderstandings concerns the rule only one motion can be pending at one time. There can be many motions pending at one time; however, there can be only one main motion. Other motions may be applied to the main motion.

A main motion is simply what the name implies, a motion to accomplish some concrete or specific item of business on the agenda. A subsidiary motion is also what it implies, something supplemental, auxiliary or secondary to the main motion. If such a motion is made, then it must be dealt with before the main motion can be voted on. The most commonly used subsidiary motions are as follows:

1. To postpone indefinitely.
2. To amend the main motion.
3. To amend the amendment.
4. Substitute for the whole.
5. Refer to the committee.
6. Postpone debate until a specified time.
7. Limit or extend debate.
8. The previous question.
9. Lay on the table.

The incidental motion is a minor or subordinate factor to the main motion, thus if brought up it must be dealt with before the main motion in question. An incidental motion arises out of the pending question of the main motion.

The incidental motions apply specifically to the matter or question immediately pending before the meeting:

1. Leave to withdraw motion.
2. Parliamentary and other inquiries.
3. Division of question.
4. Division of vote.
5. Objection to consideration of question.
6. Suspension of rule.
7. Point of order.
8. Appeal.



Privileged motions are also what they imply, a motion of special right, power or immunity. A privileged motion does not relate directly to the pending question, but rather is more of an administrative function for orderly progress. Following are the most commonly used privileged motions:

1. Call for the order of the day.
2. Question of privilege.
3. Motion of recess.
4. Motion to adjourn.
5. Motion fixing time to which the meeting shall adjourn.

## **Sunshine Act**

The Sunshine Act requires all public agencies to take all official actions and conduct all deliberations leading up to official actions at public meetings before the public.<sup>14</sup> The Act covers all actions by council and its committees and by all boards and commissions of the borough. Official actions include making recommendations, establishment of policy, decisions on municipal business and votes taken on any motion, resolution, ordinance, rule, regulation, proposal, report or order.

The Sunshine Act requires that the council must allow for public comment prior to taking official action at a duly advertised public meeting. The right of citizens to make comments is limited to matters of concern, official action or deliberation which are or may be before the governing body. The public under the Sunshine Act is defined as the residents and taxpayers of the borough.

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

Executive sessions, or meetings from which the public is excluded, may be held only for a limited number of reasons. These include discussing personnel matters relating to a specific individual; strategy sessions and negotiations for collective bargaining agreements; the purchase or lease of real estate; consultation with the solicitor in connection with ongoing or pending litigation; or, to discuss any municipal business which if conducted in public would violate a legal privilege or protected confidentiality. Since the Act contains the legislative declaration of public policy as ensuring the right of citizens to attend meetings of public bodies, any use of the executive session should be limited to situations clearly falling within the list of enumerated purposes. Executive sessions may be held during a public meeting, at the conclusion of a public meeting or immediately prior or subsequent to the executive session, or announced for a future date. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. Any official action taken on the basis of discussions held at an executive session must be taken at an open meeting.

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

## **Minutes and Records**

Council must keep minutes of its proceedings and official actions and other record books it finds necessary in the performance of its duties.<sup>15</sup> All minutes, records and books must be open to legal resident of the United States for public inspection at any reasonable time.<sup>16</sup> All records, books and minutes must be delivered by the elected officials to their successors.

All borough records required to be recorded or transcribed will be valid if typewritten, printed, photocopied, microfilmed and electronically or digitally stored.<sup>17</sup> Any process that accurately reproduces the original, and forms a durable medium is also acceptable. Records required to be retained may be kept in either a mechanical post binder book or a bound book.<sup>18</sup>

If the borough uses a mechanical post binder book, the book must be equipped with a permanent locking device. The pages must be consecutively numbered with a security code printed on each as well. Each page must also bear the official seal of the borough.<sup>19</sup>

If the borough uses a bound book, the pages must likewise be consecutively numbered. The records can be transcribed directly on the pages, or the records may be attached to the pages. Records attached to the pages of the bound book must be done so permanently with either staples or glue. Each page must also bear the official seal of the borough. If the records are being attached to the pages within the book, the seal must cover a portion of the attached record, and a portion of the page it is attached to.<sup>20</sup> Any records, attachments or transcriptions added to a record book must bear the official borough seal impressed upon each page.<sup>21</sup>

It has become very important that all actions of council be carefully recorded, especially those actions involving the expenditure of funds. It is also important to record votes in both legislative and financial actions. Council members disagreeing with a majority action of council should make certain their no votes are recorded. A council member recorded as voting against an action cannot be held responsible for the action if it later is declared illegal. Any errors in roll call votes should be corrected at the instant meeting. Council members cannot change their votes after the meeting is adjourned and the vote is recorded.

## **Intergovernmental Cooperation**

Throughout the United States and Pennsylvania, elected local government officials are being confronted with problems which lend themselves to regional solutions. Citizens are requesting additional services in such diverse areas as new recreation facilities, increased police protection and library services. At the same time, these citizens are demanding increased services not be matched by increased taxes.

State governments are also making demands by insisting local elected officials solve problems of solid waste disposal and sewage, air and water pollution. These actions are frequently being demanded without regard to the community's ability to pay for the solutions.

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

Municipalities have found several ways to address regional issues. One approach has emerged enabling elected officials to solve regional problems while still maintaining and in fact strengthening, individual local government sovereignty: it is the council of governments' concept. Whether officially called a council of governments or some other title, the idea is based on joint discussion and action by elected officials of each municipality in an area as an efficient way to solve regional problems. Local governments already engaged in regional programs through a council of governments' concept have found a way to provide realistic solutions to problems too large and too costly for any one municipality to solve completely on its own. Municipal merger or consolidation is another form of intergovernmental cooperation and some communities have pursued this option. The Municipal Consolidation or Merger Act 53 Pa.C.S.A. Section 731-741 describes the process of merger and consolidation.

### Description of a COG

A council of governments is a voluntary association of local government units joined together under a written compact to improve cooperation, coordination and planning. The COG is intended to provide an entity for undertaking cooperative municipal activities authorized by the state constitution and Borough Code. By mutual agreement, the members seek solutions to mutual problems. Members of a COG realize the future of each of the local governments depends not only on the action of that government itself, but also on the relationships and interdependent actions of each of the municipalities in the region.

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

1. Serve as a place for the collection and exchange of information of regional interest.
2. Provide the machinery to insure communication and coordination between various local government units is maintained.
3. Provide a method for individual municipalities within the region to project a unified voice to state and federal governments, thereby strengthening local government by providing the vehicle for dealing with the larger units.
4. Provide an opportunity to minimize conflicts and misunderstandings between individual municipalities.

### REFERENCES

1. 2014 P.L. 432, no. 37, Section 1201.
2. 2014 P.L. 432, no. 37, Section 1202.
3. 2014 P.L. 432, no. 37, Section 1006(4); *Phillips v. Borough of Folcroft*, 403 A.2d 194, 44 Pa.Cmwlth. 83, at 85, 1979.
4. *Simco Sales Service v. Lower Merion Township*, 394 A.2d 642, 38 Pa.Cmwlth. 434, at 438, 1978; *Commonwealth v. Sterlace*, 354 A.2d 27, 24 Pa.Cmwlth. 62, at 66, 1976.
5. 2014 P.L. 432, no. 37, Section 1006(4).
6. *Almy v. Borough of Wilkesburg*, 416 A.2d 638, 53 Pa. Cmwlth. 46, at 50, 1980
7. 2014 P.L. 432, no. 37, Section 1001 (d).
8. 2014 P.L. 432, no. 37, Section 1006 (2).
9. 2014 P.L. 432, no. 37, Section 1001 (a).
10. 2014 P.L. 432, no. 37, Section 1001(a).
11. *McAdoo Borough v. Pennsylvania Labor Relations Board*, 469 A.2d 693, 79 Pa.Cmwlth. 158, at 164, 1983; *Meixell v. Hellertown Borough Council*, 88 A.2d 594, 370 Pa. 420, 1952.
12. 65 Pa.C.S. § 710; *Almy, supra*, at 55; *Berger, supra*, at 131.
13. 65 Pa.C.S. § 704.
14. 65 Pa.C.S. § 706.
15. 2014 P.L. 432, no. 37, Section 1009
16. 67 P.S. 67.102
17. 2014 P.L. 432, no. 37, Section 1009
18. 2014 P.L. 432, no. 37, Section 1009
19. 2014 P.L. 432, no. 37, Section 1009
20. *Penn Wynne v. Lower Merion Township*, 124 A.2d 487, 181 Pa.Super. 524, at 531, 1956.
21. Pennsylvania Constitution, Article IX, Sections 8 and 14.

## **III. Administrative and Appointive Powers**

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In addition to your task as a legislator in the formation of policy and the enactment of laws, you will also be responsible directly or indirectly for the operation of all functions of your government.

In that capacity you will be acting as an executive and an administrator concerned with law enforcement, preparing an annual budget, suggesting systems of taxation, preparing an annual municipal report, preparing grant applications, appointing members of boards and commissions and contracting for municipal purchases.

Local government is becoming more complex every day. Residents are demanding more services and federal and state governments are placing more responsibility at the local level. The administration of local government has reached the point where it is extremely difficult for a governing body to handle all of the day-to-day administrative functions without help. Many boroughs have delegated extensive administrative powers to the appointed officials. Large boroughs have generally appointed a manager for this purpose, while many smaller boroughs utilize the secretary to perform many administrative tasks.

Under the broad scope of administration, you will be involved in many duties not too technical in nature, but demanding your time. Some examples are:

1. Informal meetings with residents to obtain their reactions to borough programs and policies.
2. Informal meetings with the manager or administrators and borough elected officials to discuss specific problems.
3. Reading the technical reports of the administrator, engineers, planners and other professionals employed by the borough.
4. Delivering speeches before civic and interest group and attending county and state association conferences.
5. Making field trips and inspections relating to specific problems or proposals.
6. Recruiting candidates and approving appointments to borough boards and commissions.
7. Reporting the status of local government affairs to residents.
8. Attending public hearings for public opinion.
9. Attending borough meetings to discuss, study, decide and vote on matters concerning the borough.

### **Appointed Administrator**

If the borough has appointed a manager or administrator, that person is delegated the responsibility for taking care of the day-to-day business of the borough. It is your duty as an elected official to ensure the performance of the administrator is efficient and effective.

Whenever a borough has a manager or administrator, there should be a definite separation of powers and responsibilities between the governing body and the administrator. Policy and legislative powers should remain the responsibility of council while administrative functions are handled by the administrator. Bear in mind an administrator is appointed by the entire council and operates under the directions and official actions of the entire council. Try to avoid telling him what to do personally. Develop a good working relationship because he or she can be useful to you as a sounding board for ideas and a source of valuable information. Don't bypass the administrator and give orders directly to department heads or employees. Work through the administrator. Meet informally with the administrator for the purpose of exchanging ideas and opinions on the issues arising in the borough.

The extent of responsibility delegated to an administrator varies from municipality to municipality. The administrator's power can be as confined or as broad as council determines. The following list of responsibilities can be delegated to a manager or administrator:

1. Preparing short-term and long-range objectives for recommendation to council
2. Preparing plans and programs to attain objectives approved by council
3. Determining project priorities to meet objectives approved by council
4. Attending meetings of boards and commissions
5. Investigating and presenting recommendations to council concerning state and federal grant programs
6. Preparing reports to other governmental units
7. Attending and participating at state conventions and professional association meetings
8. Maintaining professional affiliations and keeping abreast of new developments in the field
9. Reviewing budget performance of all departments
10. Preparing monthly reports on all activities, including construction projects and costs and equipment purchases, for submission to council
11. Preparing recommendations, background information and cost estimates for monthly council meetings
12. Attending and participating in all municipal meetings
13. Programming all major expenditures from cash flow viewpoint
14. Assisting in preparing the annual report and budget
15. Preparing, recommending and implementing a capital improvements program
16. Meeting with land developers, business developers and groups involved in economic developments
17. Preparing and/or approving news releases.
18. Maintaining public relations contacts with residents
19. Delegating responsibility and authority for performance of assigned functions to departments
20. Developing and updating a training plan for municipal employees
21. Preparing and implementing a preventive maintenance program for borough equipment
22. Developing and administering municipal personnel policies, procedures and programs
23. Reviewing applications of prospective employees, interviewing and hiring, and when necessary, firing or laying off employees
24. Preparing and/or approving specifications for purchase of major equipment
25. Directing and supervising the daily work of the administrative staff
26. Coordinating activities of all municipal departments
27. Ordering or approving purchases as needed

## **Personnel Management**

Personnel management is a key to efficient government operation. It is probably the area which can cause the greatest problems if handled poorly. Many functions of local government are categorized under personnel management: recordkeeping, employee hiring policy, affirmative action, personnel in-service training plan, employee relations policy, systems for maximizing employee potential, standards for wage and salary administration and providing for employee benefits. Even the smallest boroughs need to understand the importance of personnel issues, since even they are not immune from being charged with discrimination or violation of a statute.

### **Hiring Employees**

Hiring employees involves recruiting and selecting the proper personnel. A number of personnel selection tools can be helpful to the municipality. Job descriptions should include a general definition of work to be performed, specific examples of work and required knowledge, skill and ability. A listing of essential functions should be developed for each job. The establishment of a minimum training and experience requirement will help to provide the borough with qualified applicants, and will also supply prospective applicants with some details of the position's responsibilities. These selection tools are not only helpful in the hiring process, they are also invaluable in showing council's reasoning should a rejected applicant take issue with the decision either in court or at a public meeting.

Well-designed application forms can provide the municipality with important background information on the applicant's education, experience and relevant personal information without asking questions which laws and court cases have said might be construed as improper. Personal interviews, non-medical tests and reference checks can also aid the municipality in personnel selection.

### **Employee Training Program**

Employee training programs assist employees to attain a high quality of performance on the job. Training programs can include a wide variety of activities and programs such as orientation, on-the-job training, conferences and discussions, apprenticeship, classroom training and cooperative training.

### **Wage and Salary Administration**

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

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

Most borough employees are covered by the federal Fair Labor Standards Act (FLSA) and must be paid at least a minimum wage and be compensated for overtime work. In addition, the law defines who may be exempt from the overtime provisions, what constitutes work hours and when punitive damages against the borough may be levied.<sup>1</sup> Elected officials are not covered under FLSA.

### **Compensation Plan**

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

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

### **Labor Relations Laws**

The Public Employee Relations Act was established to promote orderly and constructive relationships between all public employers and their employees.<sup>2</sup> The Act grants employees the right to organize, requires employers to negotiate and bargain with employee organizations representing public employees and to enter into written agreements evidencing the result of such bargaining. It establishes procedures to protect the rights of the public employee, the public employer and the public.

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

A separate act covering police officers and paid firefighters authorizes collective bargaining with public employers concerning the terms and conditions of employment, including compensation, hours, working conditions, retirement, pensions and other benefits.<sup>3</sup> The Act provides for arbitration in order to settle disputes and requires compliance with collective bargaining agreements and findings of arbitrators. The Police Tenure Act regulates municipal action in the suspension, removal, furloughing and reinstatement of police officers, and provides rights of police officers to hearings or appeals in cases of dismissal.<sup>4</sup> It applies to all boroughs having a police force of fewer than three officers not having civil service commissions.

### **Other Personnel Laws**

A number of state and federal laws govern the treatment of employees and job applicants. An even larger number of court cases offer opinions and precedents providing direction as to how these laws are implemented. They prohibit discrimination based on race, religion, national origin, sex, age and disability. They govern who must receive a minimum wage and when overtime rates must be paid. They require that certain benefits be paid to employees injured on the job. They determine the procedure for employees who request a hearing after being terminated. Boroughs and individual council members can be subject to serious penalties for failure to adhere to these laws.

### **Appointment Powers**

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

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

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

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

### **Solicitor**

One of the most critical appointments is that of municipal solicitor. In smaller boroughs, this individual is the only immediate source of on-site professional assistance. As in many professions, attorneys have specialties, and not every attorney has a working knowledge of land use or municipal law. The complexity of laws which have an impact on borough operations make it important to identify an attorney with demonstrated capability and interest in municipal law to fill the post. This can be done by sending a letter of interest to a number of attorneys or law firms in your region, or even using a formal request for proposals. Council members should know, before contacting attorneys, what they expect from a solicitor regarding attendance at meetings, if a retainer is to be provided, and what is covered by the retainer. Once the best candidate is identified, council should sit down and work out a written agreement on the services to be provided and how compensation is to be calculated.

### **Engineer**

Another common appointment, even in small boroughs, is that of borough engineer. The engineer can be a valuable source of advice during road and bridge construction, site plan and subdivision reviews and some of the more complex environmental issues. The process of appointing an engineer is very similar to that of hiring a solicitor. A borough needs an individual who has a broad general knowledge of engineering and is accessible to assist with immediate problems and plan reviews. It is also important to have a brief written understanding with the engineer regarding attendance at meetings and hearings, hourly rates for other assistants in the firm's office and any restrictions fixed by the borough council on engineering work done for other clients within the borough.

### **Emergency Management Coordinator**

This position is one of the least used but perhaps one of the most important positions in a borough. State law dictates that each municipality nominate an individual to the Governor's Office for approval to become the emergency management coordinator and the borough with the coordinator's assistance should adopt an emergency plan.<sup>5</sup> The coordinator can be an existing employee of the borough and, in fact, is often the fire chief or police chief. Since emergencies come in all forms, from toxic material spills to blizzards, council must feel comfortable with the ability of the individual to function in a variety of situations. In addition, the borough must have a plan spelling out how and when an emergency is declared and the powers given to the emergency coordinator. While emergencies are rare, it is the duty of council to prepare for them. Indecision or poor decisions during an emergency can be costly.

## **Boards and Commissions**

### **Planning Commission**

Planning commissions or planning departments may be created by boroughs.<sup>6</sup> At the direction of the governing body the planning commission may be required to prepare a comprehensive plan for the borough, to prepare and make recommendations on an official map and to prepare land use control ordinances including zoning ordinances and subdivision and land development ordinances. In addition it may be required to prepare building and housing codes, prepare environmental studies and recommend capital improvements programs for the borough.

Planning commissions can be very useful as a way for citizens to make their views known on growth, planning and the direction the borough is taking. With the planning commission receiving and evaluating input on these topics, citizens are able to have more discussion time on topics which concern them. Meanwhile meetings of council can remain the forum where decisions are made based on the citizen input received by the planning commission.

### **Park and Recreation Board**

Boroughs have the power to provide, improve, maintain and regulate public parks, parkways, playgrounds, playing fields, swimming pools, public bathing places and recreation centers. Many municipalities form a park and recreation board to function in an advisory capacity to the governing body in determining the amounts and kinds of recreation most needed by the citizens. Council may also place the responsibility to equip, operate and maintain recreation facilities on the park and recreation board.<sup>7</sup>

Whichever approach is taken, the duties of a park and recreation board should be clearly spelled out by council so there is no blurring of the advisory and operational roles in the park and recreation programs of the borough.



### **Zoning Hearing Board**

Any borough which has enacted a zoning ordinance must appoint a zoning hearing board.<sup>8</sup> The board is established to hear appeals on the validity of the zoning ordinance or map or any decision of the zoning officer. In addition, the board has the power to grant variances and special exceptions to the ordinance. The zoning hearing board is either a three-member or five-member quasi-judicial board consisting of residents of the municipality who may hold no other elected or appointed position.

The zoning hearing board appoints its own solicitor to assist in its deliberations, written decisions and appeals.<sup>9</sup> The municipal solicitor may not be the zoning hearing board solicitor since the opinions and decisions of the zoning hearing board may differ from the views of the council members. Council may, just as any affected citizen, appeal a decision of the zoning hearing board to the courts.

### **Shade Tree Commission**

A borough may appoint a shade tree commission and give it exclusive custody and control of the shade trees in the borough.<sup>10</sup> Shade tree commissions have the authority to plant, remove, maintain and protect shade trees on public streets and highways of the borough. If the borough has a commission for the care of public parks, the council may by ordinance vest these powers within the commission that cares for the public parks.<sup>11</sup>

### **Civil Service Commission**

Any borough that maintains a police force or paid fire-company must establish a Civil Service Commission.<sup>12</sup>

The commission consists of three members who have the power to provide for the examination of applicants for positions and promotions, establish minimum qualifications for positions, test applicants for appointments and provide hearings in cases of dismissals or reductions in rank for those employed under civil service status. The Commission also may appoint alternates to serve on the commission when a commissioner is absent.<sup>13</sup>

### **Board of Health**

Boroughs may establish a board of health composed of three to five members, or appoint a health officer or officers who have the same powers and duties as prescribed for the board of health.<sup>14</sup> The board may be delegated with the authority to quarantine, establish rules and regulations for sanitary drainage make sanitary inspections, disinfect quarantine areas and enforce other health laws of the commonwealth, regulations of the state Department of Health and Department of Environmental Protection and any ordinances of the borough relating to health.

Any public health officer(s) appointed must have some training or experience in public health work. The officer must be certified by the Department of Health within six months of taking the oath of office.

The Board of Health is to be comprised of three or five members.<sup>15</sup> One of the members must be a professional health care provider with no less than two years of experience in their respective profession.<sup>16</sup> Professional health care providers include, but are not limited to: physicians, dentists, chiropractors, optometrists, psychologists, pharmacists, physical therapists, paramedics, physicians' assistants, registered and practical nurses, and administrators of health care facilities.<sup>17</sup> If a health care provider cannot be found to serve on the board, the council may appoint an individual who has experience in or is knowledgeable of public health issues.<sup>18</sup>

## **Municipal Authorities**

Boroughs may form municipal authorities for certain purposes.<sup>19</sup> Although the local government plays a role in the creation of an authority and appoints its board members, the authority is not part of the municipal government. An authority is an independent agency of the commonwealth. It is a public corporation engaged in the administration of civil government. An authority is a separate legal entity with the power to incur debt, own property and finance its activities by means of user charges or lease rentals.

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

The decision to form a new municipal authority should not be taken casually. If a borough creates an authority to operate the sewer system, it surrenders power over important public policy issues such as the extent and cost of sewer service. An authority is not answerable to the voters in the way borough council is. Nor is it answerable to council except through the appointment of new members as terms are completed. Authorities offer no advantage in the borrowing of money, and operation of a sewer or water system by a separate entity may not be a good idea for a number of reasons. Authorities make the most sense when two or more municipalities form a joint authority to operate an area-wide project that crosses municipal lines, such as a regional sewer system.

### **Types of Authorities**

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

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

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

### **Forming a Municipal Authority**

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

Municipal authorities are governed by a board whose members are appointed by the governing body of the incorporating local government. Boards may not consist of less than five members, and boards of joint authorities should contain at least one representative from each participating municipality. The term of office is five years. Board members may succeed themselves.

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

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

### **Disbanding a Municipal Authority**

An authority may be terminated after the bonds and interest secured by the pledge of revenues have been paid off. The authority may transfer its project to its incorporating municipality and be disbanded at any time after all debt obligations have been paid. Each authority terminates after 50 years, unless its lifespan has been extended by amending its articles of incorporation.

Even before the debt is paid off, the incorporating municipality may assume the project by passing an ordinance signifying its desire to do so. The incorporating municipality then must assume any outstanding obligations incurred with respect to the project and will be bound by the terms of the bond indenture. This is the ultimate tool for control of an authority's actions and can be done even over the objections of the municipal authority board.<sup>20</sup>

### **REFERENCES**

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3. 43 P.S. 217.1; 1968 P.L. 237, No. 111.
4. 53 P.S. 811; 1951 P.L. 586.
5. 35 Pa.C.S. § 7502.
6. 53 P.S. 10201; Pennsylvania Municipalities Planning Code, Section 201.
7. 53 P.S. 47708; Borough Code, Section 2708 (a).
8. 53 P.S. 10901; Pennsylvania Municipalities Planning Code, Section 901.
9. 53 P.S. 10617.3; Pennsylvania Municipalities Planning Code, Section 617.3. Zoning Hearing Board of the City of Uniontown, 720 A.2d 166, (PA. Cmwlt. 1998).
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15. 2014 P.L. 432, no. 37, Section 3102(a).
16. 2014 P.L. 432, no. 37, Section 3102(a).
17. 2014 P.L. 262, no. 37, Section 3100.
18. 53 P.S. 303; Municipal Authorities Act, Section 3.
19. 53 Pa. CS 603; Municipal Authorities Act.
20. *Mifflin County v. Mifflin County Airport Authority*, 437 A.2d 781, 63 Pa.Cmwlt. 56, 1981.

## **IV. Fiscal Powers**

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

### **Taxes**

The primary source of revenue for Pennsylvania boroughs is local taxes. In 1997, taxes provided 37.8 percent of the revenues of boroughs.<sup>1</sup> The other significant sources of revenue were earnings from electric and water utilities, 14.6 percent of revenues, grants from federal and state agencies, including liquid fuels funds, totaling 7.5 percent of revenues and sewer rents and charges constituting 17.0 percent of revenues. The two chief tax sources provided the preponderance of tax revenues. The greatest tax yield came from the real estate tax, constituting 19.8 percent of all revenues, while the earned income tax came in second, contributing 13.5 percent of revenues.

Real estate taxes are authorized in the Borough Code. The Code authorizes borough council to levy up to thirty mills for general borough purposes.<sup>2</sup> An additional five mills for general purposes can be levied after approval by the court of common pleas.

Legislation that provides for a “two-tier” real estate tax was enacted in 1999. Act 1999-47 provides that a borough may levy separate and different tax rates on all land other than farmland, and on all improvements on land or on farmland. The tax rate must be applied equally on all real estate within the classification. While boroughs are authorized to set different tax rates under the provisions of Act 1999-47, the combined rate of both taxes cannot exceed the maximum millage rate set forth in the Borough Code.<sup>3</sup>

In addition to the general purpose levy, additional special purpose real estate millages may be levied by the borough. Most of these are authorized in the Code. They can be enacted to pay for specific municipal purposes such as a municipal building, fire protection, recreation, debt service, streetlights, permanent street improvements fund, shade trees, pensions, libraries and ambulance and rescue squads. Some of these special levies carry a maximum millage rate, others are unlimited, but all the revenue from each special levy must be maintained in a separate fund and used only for its specified purpose.

All real estate taxes, whether general or special purpose, are levied on an annual basis and collected by the elected borough tax collector. Council can establish the manner and schedule for the tax collector to pay over tax receipts to the borough. Real estate taxes usually represent a significant proportion of revenues in small boroughs. Because of the importance of this tax revenue source, council should establish regulations to assure timely payment by the tax collector. Council also must assure that a borough officer, usually the secretary, treasurer or auditors, reaches settlement with the tax collector at the end of the year, closing out the tax duplicate before the duplicate for the new year is issued. More information regarding the role of the elected tax collector can be found in the Tax Collectors Manual available from the Department of Community and Economic Development.

Boroughs have available a wide range of non-real estate taxes. An occupation tax is authorized in the Code, but must be levied at the same millage rate as the borough real estate tax. Besides the earned income tax, a wide range of taxes may be adopted under the authority of the Local Tax Enabling Act.<sup>4</sup> These include per capita, realty transfer, business gross receipts, amusement, occupational privilege (or instead the Local Services Tax) and occupation taxes. In 1997, these minor non-real estate taxes contributed 4.3 percent of all borough revenues, but did constitute more significant shares of revenue in particular boroughs with special circumstances.

Taxes levied under the Local Tax Enabling Act, often called Act 511 taxes, may be collected in a variety of ways as determined by borough council. While some of these taxes may be assigned to the elected tax collector, it is not required and the tax collector would be acting as an appointed officer and subject to the regulations the borough may set for any appointed officer. It is most usual for the elected tax collector to be assigned collection of

occupation and per capita taxes where levied. A collection agency, whether a joint collection bureau formed by taxing jurisdictions or a private collection company, may also be used. This is most common in the case of the earned income tax (EIT). The EIT is sometimes the largest source of tax revenue for a borough and the quality of collection can vary greatly among municipalities. The loss of tax revenue and associated interest can be greatly reduced through efficient collection and prompt deposit into a borough account. Realty transfer taxes are always collected by the county recorder of deeds. Business gross receipts taxes are usually collected by borough employees.

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

## **Act 50**

On May 5, 1998, the Pennsylvania General Assembly enacted Act 50.<sup>5</sup> The act in part, created several new subchapters in Title 53 of the Pennsylvania Consolidated Statutes (Municipalities Generally). Three of these new subchapters relate to local tax administration and procedures and authorize local governments to establish programs for real estate tax deferrals and for homestead property exclusions from real property taxation. The three subchapters are the following:

1. Local Taxpayers Bill of Rights
2. Real Estate Tax Deferment Program Act
3. Homestead Property Exclusion Program Act

The Local Taxpayers Bill of Rights (the “LTBR”)<sup>6</sup>, requires political subdivisions levying certain local eligible taxes (“Eligible Taxes”) to adopt rules and regulations for practice, procedure and administration in the audit, assessment, appeal, determination and collection of such Eligible Taxes.

The Eligible Taxes (including interest and penalty) subject to the requirements of the LTBR include the following taxes:

1. Any tax authorized or permitted under the Act of December 31, 1965 (P.L. 1257, No. 511), known as the Local Tax Enabling Act.
2. Any per capita tax levied under any act.
3. Any occupation, occupation assessment or occupation privilege tax levied under any act or the Local Services Tax.
4. Any tax on income levied under any act.
5. Any tax measured by gross receipts levied under any act.
6. Any tax on a privilege levied under any act.
7. Any tax on amusements or admissions levied under any act.
8. Any tax on earned income and net profits.

Taxes levied under the Local Tax Enabling Act, commonly called Act 511, include, but are not limited to, per capita tax, earned income tax, amusement, admission, occupation tax, occupational privilege tax or Local Services tax, business privilege tax, net profits tax, business privilege and gross receipts tax, mercantile tax and parking tax.

Additionally, the LTBR, requires local taxing authorities to adopt notice, disclosure and appeal procedures in connection with the administration, collection and audit of certain “eligible taxes.” These disclosure and appeal procedures must inform taxpayers of their rights to appeal the tax levy.

The Real Estate Tax Deferral Program Act<sup>7</sup>, (the “Deferment Act”) was enacted as part of Act 50, and it gives Pennsylvania political subdivisions the power and authority to grant annual real estate tax deferrals to certain eligible individuals on their homesteads, in the manner provided under the Deferment Act. The term “homestead” is specifically defined in the Deferment Act to include only certain types of residential dwellings.<sup>8</sup> Because the taxes are merely deferred (and not abated), the deferred taxes must ultimately be repaid to the political subdivision granting the deferral as specified in the Deferment Act. Boroughs have the option to offer deferrals under the Deferment Act. Before implementing a deferral program, the taxing body is advised to estimate the costs of recordkeeping and the probable level of participation in the program.

The Homestead Property Exclusion Program Act<sup>9</sup> generally permits the governing body of a political subdivision to exclude from real property taxation a fixed dollar amount of the assessed value of each homestead property and farmstead property in the political subdivision. The homestead property exclusion cannot exceed one-half of the median assessed value of homestead property in the political subdivision, and the farmstead property exclusion cannot exceed the amount of the homestead property exclusion. In boroughs where different millage rates are applied to land and the improvements upon the land, the Homestead Act requires that the exclusion must first be applied to the value of the land. If a dwelling is constructed during the taxable year and used as homestead property, the Homestead Act requires that the exclusion must be prorated in a manner consistent with the assessment of real property taxes on that dwelling.

More information on the LTBR, Deferment Act, and Homestead Act can be found in the *Manual for Local Taxpayers Bill of Rights and Real Property Taxpayer Programs* available from the Pennsylvania Department of Community and Economic Development (DCED).

## **The Budget**

The budget is a plan for spending borough money. Its preparation requires much concentration on the part of borough officials to identify the purposes for spending this money, the amount to be spent and revenues necessary to support such expenditures. This affords the council member valuable planning experience and helps assure the fiscal soundness of next year’s operation.

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

The borough budget must be officially enacted before December 31 of each year.<sup>10</sup> The Borough Code contains procedures for reopening a budget after a municipal election and for making supplemental appropriations and budget transfers during the year. This authority should not be used as a justification for poor prior planning.

But even a carefully prepared budget will need to be changed under certain circumstances. An emergency situation can create needs not apparent during the budget process, realized revenues may be much more or less than expected, or an opportunity to obtain favorable loan or grant funds can force a shift in the priority of projects from one year to another.

During the budgeting process, attention focuses on the General Fund, because this is where most financial activity is concentrated. However, other borough funds must be included in the budget, including planned revenues and expenditures for the Highway Aid Fund, Capital Improvement Fund and proprietary funds such as the Sewer Fund. Any planned transfers between funds must be shown. Some funds, particularly agency and fiduciary funds will have little activity.

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

### **Projecting Revenues and Expenditures**

When preparing a budget for the upcoming year, it is common practice to examine the expenditures and revenues of past years in order to project estimates for the next. This procedure can provide accurate information if items are first broken down and compared by function or activity and if past trends are likely to be representative of the situation expected in the next year. Simple graphs not only help show past trends of revenue receipts and expenditures but can also illustrate what might be expected in the future.

The technique is simple. By using the municipality's annual financial reports over the past several years, you can plot on a graph revenue receipts and expenditures for a given year. When recording the total revenue receipts, each source of revenue must be considered separately before it is added to the total to determine whether continued funding can be expected from the source. When recording revenue receipts you would not include the balance carried forward from the previous year, or nonrevenue receipts such as borrowed funds, transferred funds or one-time revenue sources such as a sale of property or grant which would greatly distort a trend. You would include such items as taxes, highway aid, departmental earnings and similar types of revenues received on a regular basis.

Total expenditures should reflect the ordinary expenses of a municipality over the past several years. Costs such as municipal administration, police services, fire protection, street and highway construction and maintenance are included.

### **The Budget Calendar**

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

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

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

**FIGURE 1**  
**TYPICAL BUDGET CALENDAR**

<b>Due Date</b>	<b>Budget Activity</b>	<b>Responsible Person</b>
September 1	Obtain annual budget forms	Secretary
September 15	Post current year expenditure and revenue estimates on form	Secretary
September 30	Certification of minimum municipal obligation for pension plans	Chief Administrative Officer
October 1	Project revenue estimates for next year	Secretary and/or Council
October 30	Submit activity expenditure estimates to secretary	Department heads
November 1	Enter estimates on budget form	Secretary
November 1-20	Conduct full review of budget	Council
November 20-30	Tentative adoption	Council
November 30	Advertise budget	Secretary
December 3-13	Budget open to public inspection	Secretary
December 27	Adopt budget and ordinance setting real estate tax rate	Council
January 2	Create budget accounts in new ledgers	Secretary

### **Capital Improvements Planning and Budgeting**

Sound financial management is principally aimed at securing the most utility from available or projected financial resources. The capital improvements program and related capital budget are the primary elements of sound long-range financial planning. Boroughs are specifically authorized to create capital reserve funds to implement capital improvements.<sup>11</sup> Boroughs may also establish revolving funds for street improvements and fund them with special taxes.<sup>12</sup>

#### **Capital Improvements Program**

A capital improvement is a major facility involving a nonrecurring cost which usually requires large capital outlay and brings returns over a long period of time. Programming simply involves deciding what a community needs most in coming years, and devising a schedule to pay for these facilities within bounds of the community's ability to finance them. Nonrecurring, noncapital items such as major engineering studies may also be included for planning purposes. Generally a five-or six-year period is used for the capital improvements program and expenditures (construction projects, major purchases and road work) are scheduled during each year of the plan according to available funding.

Advantages of the capital improvements program include:

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



Common elements involved in developing the capital improvements program include determining capital costs, translating capital costs to annual costs, comparing costs with available resources, determining priorities and developing the financial schedule. Cost estimates of capital improvements should be made by an engineer or architect. However, rules of thumb may be used for rough preliminary estimates. State and federal subsidies may reduce local costs. It is important to translate capital costs into two major elements of annual costs: annual debt service or borrowing costs (principal and interest) and costs of operating the facility.

Financing these costs may be accomplished through:

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

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

### **Capital Budget**

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

### **Contracts**

There are three general types of contracts a municipality may enter into: a negotiated contract, a competitive bid contract and a contract for professional services. The Borough Code requires at least three written or telephone price quotations for contracts in excess of \$10,500.<sup>13</sup> A written record of the price quotes must be made and retained on file for three years. Informal price quotes are not required for purchases below \$10,500,<sup>14</sup> but are a sound business practice. Contracts within certain specified categories for purchases above \$19,400 are exempted from mandatory bidding requirements.

For most purchases or contracts in excess of \$19,400, a municipality must advertise for a competitive bid contract.<sup>15</sup> Competitive bid contracts are basically of two types: a lump sum contract and a unit price contract. The lump sum contract obligates the contractor to perform his work according to the plans and specifications for a specified amount of money. The purchase of municipal road equipment is a good example of a competitive bid item for a lump sum amount.

The second type of competitive bid contract is the unit price contract. This contract is based on an estimate of unit prices for different types of materials to be supplied and it provides for compensation to the contractor for each actual unit supplied at the agreed-upon price. Bids are compared by the estimated quantities needed at the contractor's proposed unit price. As noted earlier in this handbook under "Surcharges," council cannot waive advertising for competitive bids when the amount of the purchase or contract exceeds \$19,400. Neither can council contract for services on a piecemeal basis. Any council member who knowingly votes in violation of these provisions is subject to a surcharge of 10 percent of the full amount of the contract.

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

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

The Borough must advertise at least two times in a newspaper of general circulation for contracts in excess of \$19,400.<sup>16</sup> The advertisement must be made at least three days apart in the case of daily newspapers. In the case of weekly newspapers, the advertisement must run once a week for two consecutive weeks.<sup>17</sup> Also, the first advertisement must be published no more than 45 days before the opening of the bid.<sup>18</sup> The second advertisement must run at least 10 days before the opening of the bids.<sup>19</sup>

Written price quotations include those submitted by email.<sup>20</sup>

Generally, all contracts must be made with the lowest qualified and responsible bidder.<sup>21</sup>

Another type of contract is a Separations contract and it can be used for the erection, construction and alteration of a public building when the costs exceed the limits in the contract thresholds.<sup>22</sup> The council may direct the architect, an engineer or whoever is preparing the specs to prepare separate specifications for plumbing, heating, ventilating and electrical work. The person who prepares the separate contracts for each service may receive separate bids for each branch and shall award the contract to the lowest responsible bidder for each of the branches.

## **Officers' Bonds**

It is the responsibility of council to designate the elected and appointed officials and employees of the borough to be covered by a fidelity bond.<sup>23</sup> The bond serves to protect the borough from monetary loss either through dishonesty or willful neglect by officials and employees. Bonds in various amounts are offered by a number of surety companies. The solicitor of the borough usually prepares or approves the form of the bond after the persons and the amounts have been determined.

The Borough Code requires persons holding certain key positions be bonded, e.g. the treasurer and tax collector. In the case of members of council and other officials the Code makes bonding permissive — in other words, council may provide for bonding these persons if believed necessary. All officials and employees who handle borough funds should be bonded. The amount of the bond should correspond to the amount of money the individual handles. Bonding requirements should be reviewed every year and new bonds obtained on an annual basis. The form of the bond should be reviewed by the solicitor to determine it does not contain conditions detrimental to the borough's best interests. Blanket bonds are available, listing all bonded employees and the amount of their bond on a single form, thus reducing paperwork. These bonds are generally less expensive than purchasing a series of individual bonds.

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

## **Municipal Borrowing**

All borough borrowing, including the issuance of tax anticipation notes is governed by the terms of the Local Government Unit Debt Act.<sup>24</sup> Before entering into any borrowing action, the legal and financial details should be worked out with the municipal solicitor, a bond counsel or other financial consultant. Borrowing actions in excess of \$125,000 or 30 percent of the borrowing base must be approved by the Governor's Office of General Counsel and the Pennsylvania Department of Community and Economic Development (DCED). The Local Government Unit Debt Act sets the non-electoral debt limit for boroughs at 250 percent of average total revenues over the past three years. It establishes important procedural requirements for incurring debt. Major provisions are listed below.

1. No limit has been established on electoral debt.
2. Bond anticipation notes may be issued in order to obtain funds pending the sale of long-term bonds or notes.
3. Bonds or notes may be sold at public or private sales.

4. The maturity date on bonds and notes may not be more than forty years or not more than the life of the project being financed, whichever occurs first.
5. Debt repaid solely from rents and other user fees (self-liquidating debt) is not subject to the debt limit.
6. Temporary indebtedness, such as tax and revenue anticipation loans, may not exceed 85 percent of the outstanding tax revenues anticipated and must be repaid during the fiscal year incurred.
7. A municipality in financial crisis may be able to issue unfunded debt in order to meet financial obligations.

For additional information on municipal borrowing, please consult the *Debt Management Handbook* available from DCED.

## **Pension Funding**

Boroughs are authorized to create pension funds for their employees. Boroughs with three or more full-time police officers must establish a police pension fund. The Municipal Pension Plan Funding Standard and Recovery Act now requires municipalities to fully meet the minimum actuarial funding requirements of their pension plans.<sup>25</sup> Municipalities are now required to include the minimum municipal pension obligation in their annual budgets. If the municipality fails to make timely payment into the pension fund it is subject to interest penalties. The Act also provides for state aid for all municipal employees' pensions for the first time.

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21. 2014 P.L. 432, no. 37, Section 1402 (a).
22. 2014 P.L. 432, no 37, Section 1405.
23. 2014 P.L. 432, no. 37, Section 1006 (7).
24. 53 Pa.C.S.A. § 8001; Local Government Unit Debt Act.
25. 53 P.S. §§ 895.302-895.303; Municipal Pension Plan Funding Standard and Recovery Act.

## V. Municipal Services

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Boroughs were first formed for compact, dense settlements to provide additional public services not needed in the generally rural society of the eighteenth and nineteenth centuries. These functions centered upon maintenance of streets, regulation of markets and preserving the peace. As the state became urbanized in the latter half of the nineteenth century, functions of borough government expanded with development of police departments and construction of water and sewer systems. Citizen demand for new services has been met by new authorizations in the Borough Code. The possible extent of municipal services now covers a wide range. Functions in small, rural boroughs tend to be limited, while large, urban boroughs offer a full range of municipal services.

### Streets

Statewide, maintenance of streets and roads is still a primary function in boroughs. In 1997, expenditures for streets and roads constituted 16.5 percent of all borough expenditures. Over 26 percent of borough road expenditures were met from liquid fuels funds.

The Code imposes explicit duties on council in regard to keeping the roads open.<sup>1</sup> While the Code requires boroughs to keep roads and bridges in repair and to keep roads free of obstructions, a court has declared that municipalities do not have an enforceable duty to inspect, install and replace street signs, nor to clear vegetation obstructing views at an intersection.<sup>2</sup> These activities, while authorized by the Code, are discretionary on the part of municipalities. Courts have, however, been moving toward requiring a greater level of care on the part of all local governments and these Code authorizations should not be taken lightly.

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

Borough council has the power to provide for sidewalks, curbs, gutters and water drains within the borough. These may be installed by the borough at public expense or paid in part or totally by property owners.<sup>3</sup>

Every borough in the state participates in the care and maintenance of streets and roads. Increasing concern for properly maintained roads and better snow removal make more boroughs look at the possibility of working with their neighbors in some manner. Joint purchasing with nearby communities of salt, antiskid or road signs is efficient and easy. Joint purchases of large, specialized and seldom-used pieces of equipment or jointly entering into contracts guaranteeing minimum hours of rent to use such equipment are also becoming more common. Street sweepers, graders, pavers, rollers, loaders and backhoes are types of equipment which boroughs might find hard to justify if they sat in maintenance yards for all but a few hours a year. Even construction projects using joint crews are within the range of possibility for boroughs committed to providing the best service at the least cost.

All of these examples have been used at various times and locations in the state. While not required, formal written agreements help to define responsibilities from who pays for maintenance to what happens if the machine is destroyed. The best-intentioned people can easily misunderstand each other and the easy working relationships which currently exist between municipalities may change with the arrival of new personnel or elected officials.

### Street Lighting

The Borough Code authorizes council to provide street lights either paid from the general revenues or a special street lighting tax.<sup>4</sup> The borough may also provide ornamental lighting to any section of the borough with the costs to be paid by assessments on abutting property owners. A set of rules and regulations should be prepared for each section which clearly delineates the means by which properties are assessed.

Boroughs may include provisions in their subdivision and land development ordinances which regulate the construction of street lighting systems, including distances between lights, types of lights and styles of poles.

## **Police**

Boroughs have the general power to do what is necessary to protect the safety of their citizens.<sup>5</sup> Boroughs are authorized to establish police departments and prescribe regulations to define the duties of police officers.<sup>6</sup> They may also contract for police services from adjoining municipalities.<sup>7</sup> In January, 1994, 726 boroughs or 75.2 percent of the total, had local police agencies providing protection, including local police forces, regional forces and contracted services. The remaining boroughs relied on the State Police for protection. Police services constituted the largest expenditure item for boroughs.

All police officers must complete minimum requirements for training set by the Municipal Police Officers' Educational and Training Commission prior to receiving power to enforce the Crimes Code and Vehicle Code, and possessing the authority to carry a firearm.<sup>8</sup> The Commission also requires that applicants for police officer positions undergo physical fitness exams, psychological exams and background investigations prior to employment. In addition to these requirements the federal Americans with Disabilities Act has forbidden the use of physical or psychological exams until after the applicant has been extended an offer of employment.<sup>9</sup> Annual in-service training is also required for all municipal police officers to remain certified for employment as a police officer. This requirement applies to both part-time and full-time officers.

Any borough that maintains a police force of three full time police officers or a completely paid fire company, must establish a Civil Service Commission.<sup>10</sup> All appointments and promotions must be made under civil service regulations. Any borough with three or more full-time police officers must establish a police pension fund.<sup>11</sup>

Because of the increasing cost of providing local police service, there has been rapidly growing interest across the state in the creation of regional police agencies serving two or more municipalities. Many boroughs are now receiving their police services from such regional organizations. The larger forces permitted through joint action allow 24-hour coverage, development of specialized fields within the police force and better utilization of equipment and staff. The regional approach seems to appeal to boroughs which either had no local police coverage or were served only by part-time forces.

## **Firefighting**

Another basic exercise of the general police powers of boroughs is regulation of fire protection. The Borough Code gives council the power to control fire protection activities within the borough.<sup>12</sup> To secure fire protection for borough inhabitants, council may purchase fire apparatus for use in the borough or appropriate funds to fire companies located within the borough.<sup>13</sup> The borough may also contract with nearby municipalities or fire companies for fire protection services. In 1997, fire protection expenditures totaled 3.0 percent of all borough expenditures.

The Code gives council power to regulate fire protection activities, including the power and responsibility to organize an effective fire protection service for the benefit of the borough's inhabitants.<sup>14</sup> In almost every case, fire service activities are delegated to independent volunteer fire companies. A special fire tax millage may be levied for fire protection purposes and 25% of the revenues from the Local Services Tax is the property of the volunteer fire company.<sup>15</sup>

Where the fire company is located within its borders the borough is responsible for carrying worker's compensation coverage for the firefighters. Where the borough is served by one or more fire companies outside its boundaries, there is a legal obligation to contribute to the cost of worker's compensation premiums paid by the host municipality.<sup>16</sup> Boroughs are also legally liable for damages caused by action of volunteer firefighters in performing their official duties.<sup>17</sup> In cases where the borough is served by a fire company outside its boundaries, an intergovernmental contract with the host municipality is the most appropriate method for regulating issues such as the sharing of operational costs and worker's compensation and liability insurance premiums, as well as designation of the fire company to receive the borough's fire relief allocation from the state.

A significant aspect of fire protection has been the development of a system of fire hydrants for the benefit of residents served by a public water supply. Since not all residents have public water available, less developed areas are served by tanker trucks, farm ponds or streams. Boroughs have to consider their firefighting needs when formulating subdivision and land development standards. When water supply systems are extended or new ones created, the borough should be assured that the network of pipes will provide the correct pressure and hydrant location for fire suppression.

## **Ambulance/Rescue Services**

Traditionally allied with fire protection are ambulance and rescue services. In the past, the volunteers who provided firefighting services often would provide ambulance and rescue services as well. The scenes of accidents, fires and other incidents often require assistance to injured individuals as well as to property. While ambulance service may have been a natural outgrowth of firefighting, the hours of training required for emergency medical technician certification often makes it difficult for a volunteer firefighter to be cross-trained as a paramedic. Where historically there may have been one unit for both emergency services, there is now often two. Volunteers have been difficult to find in light of the rigorous training requirements. The response of ambulance services is often to hire professionals so that at least one trained crew member is available. This is more common as the number of emergency calls increase and as fewer volunteers are available during daylight hours.

Boroughs are required to support ambulance and rescue services.<sup>18</sup> The service may be volunteer, offered directly by borough employees, or provided by a nonprofit organization with paid employees. This is an area where some of the most innovative financing and cooperative strategies in local government are being used.

## **Parks and Recreation**

Boroughs may acquire and operate parks and other recreation facilities and may also acquire land for future park development.<sup>19</sup> The borough may operate facilities directly or assign this duty to a recreation board. The Code authorizes a special tax for park and recreation purposes, but costs may also be met from general borough funds.

The Pennsylvania Municipalities Planning Code allows boroughs to require developers of residential subdivisions to provide land, payment of fees in lieu of a land donation, construction of facilities, private reservation of land or some combination of these for park or recreational purposes.<sup>20</sup> The borough must have a recreation plan in effect and, among other requirements, the land or fees must be used at a site accessible to the development.

Joint recreation programs with other communities and school districts serve a number of positive purposes. Many recreation activities need a minimum number of participants to be a success or to even be offered. Neighboring communities offering competing programs often find that the activities of both will fail. There is always a population which badly needs recreation programs, but there may not be a large enough target population in two communities to support two sessions of the same activity. Staff hired by two nearby communities often duplicate each other's efforts and increase the overall cost to the participants and taxpayers. In addition, the school district often serves the same communities and may be providing yet another set of programs. Joint operation can usually provide better programs at lower costs and certainly joint planning will always provide benefits to all participating entities with no out-of-pocket expense.

School districts often have recreation facilities which may be underutilized. From early June through the end of August, school auditoriums, multipurpose rooms and libraries are empty, while playgrounds, play areas and athletic fields are unused. A community should explore every opportunity to fully utilize these facilities which its taxpayers have already built before it embarks on park acquisition and development programs. Parks and recreation plans should include all public facilities when future needs are being determined. Cooperative programs can benefit their mutual taxpayers if both the borough and school district understand the specific needs and problems faced by the other party.

## **Libraries and Cultural Services**

Other services boroughs are providing include libraries and cultural services. Boroughs often must contribute to the funding of a local public library to ensure their citizens have access. Boroughs may cooperate in funding a regional library in a nearby town or may undertake the provision of these services themselves. In addition to being able to use general borough funds to support libraries, boroughs may also levy a specific millage to fund them.<sup>21</sup> Public library service is often provided by local nonprofit groups or in conjunction with school districts. Regardless of the method chosen, boroughs may provide assistance.

The Code gives boroughs a similar role with other community cultural services. Activities such as bicentennials, historical pageants or similar programs may be assisted from borough funds.<sup>22</sup>

## **Building and Housing Codes**

Building and housing codes are the way boroughs exercise their police powers to regulate construction and maintain the quality of existing structures. Building codes attempt to assure the construction of safe structures to protect their occupants from injury resulting from collapse, rapid conflagration and other problems with new construction. Housing codes provide minimum standards for the use and occupancy of dwelling units and residential structures.

The regulations adopted by the Department of Labor and Industry supersedes and preempts all local building codes regulating any aspect of the construction, alteration and repair of buildings adopted or enforced by any municipality or authority or pursuant to any deed restriction, rule, regulation, ordinance, resolution, tariff or order of any public utility or any state or local board, agency commission or homeowners' association, except as may be otherwise specifically provided in the act.

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

Housing codes set forth minimum standards designed to provide decent, safe and sanitary dwelling units for human occupancy. They include minimum standards for living space, density of occupancy, light and ventilation, fire and health safety. They regulate facilities such as water supply, drainage, electricity, washing, bathing, toilet and cooking equipment and their maintenance. However, the International Property Maintenance Code is not being adopted. Additionally, while the code affects the alteration, repair, and occupancy of all buildings and structures (private and public), the primary focus of the International Building Code is new construction.

The UCC exempts the following:

1. New buildings or renovations to existing buildings for which a building permit has been issued or for which a contract for design or construction has been signed, prior to the effective date of the regulations issued under the act.
2. Utility and miscellaneous-use structures (except for swimming pools and spas) which are accessory to detached one-family dwellings. Note that this includes carports, detached private garages, greenhouses, and sheds that have a building area of less than 500 square feet.
3. Agricultural buildings (however, all habitable areas and agricultural product processing structures are covered).

Proper building and housing code enforcement requires experienced and well-trained inspectors. Such employees are usually not available on a part-time basis. Smaller boroughs may find that hiring code enforcement professionals is an impossible task without combining the resources and building activity of two or more communities. There are many examples of such cooperation across Pennsylvania. Code enforcement is one of the most successful programs which councils of government (COGs) operate for townships and boroughs in the state. Municipalities banding together or using COGs are able to attract better qualified professionals to manage their programs than by acting alone.

Boroughs have the option to choose whether or not they want to be primary enforcers of the UCC. If a borough chooses to administer and enforce the UCC the borough can do one of the following:

1. Use a borough employee
2. Retain one or more construction code officials or third-party agencies to act on its behalf
3. Enter into a contract with another municipality

4. Jointly administer the code with one or more other municipalities
5. Enter into agreement with the Department of Labor and Industry for plan reviews, inspections and other aspects of the code enforcement for non-residential structures

If they elect not to, the Pennsylvania Department of Labor and Industry will handle approvals and inspections for all buildings other than one-and two-family homes.

## **Sewer and Water Services**

Boroughs have the power to construct and operate their own sewer systems.<sup>23</sup> In years past, restrictive debt limits made it hard for boroughs to borrow money to construct sewer systems, encouraging the use of authorities for this purpose. With the change in the Constitution in 1968, this was no longer the case, but many boroughs continue to form authorities to construct and operate sewage collection and disposal systems. The need for special expertise to operate such a system, or the hesitancy of elected officials to become directly responsible for setting sewer rates are contributing factors. Once created, an authority becomes a separate entity and council can affect its decisions only by appointing members. For additional information on authorities, please see *Municipal Authorities in Pennsylvania*, a publication available from the Department of Community and Economic Development.

Collection, treatment and disposal of sewage are one of the fastest growing expenditure areas for local governments. In 1997, sewer expenditures by borough governments (not counting authorities) comprised 11.3 percent of all borough expenditures. The sewage service may be the single most costly municipal service for the average homeowner. In some places household sewer bills may exceed real estate taxes.

Boroughs may operate water supply systems or may contract with private utilities or adjoining municipalities for water supply services.<sup>24</sup> In addition, authorities are frequently used to construct and operate water systems. Water supply systems are coming under greater scrutiny by state and federal regulatory agencies and meeting standards for the purity of a public water supply is much more complex than in the past. Boroughs are sometimes faced with taking over and operating small community water systems that can no longer afford to operate on their own.

## **Emergency Management**

One of the newer services that boroughs must provide is emergency management.<sup>25</sup> An emergency management coordinator must be appointed and a plan prepared which can provide reasonable guidelines during an emergency. Emergencies can range from severe storms, including blizzards, through plane crashes to toxic spills along highways or railroads. Emergency management is not often needed nor even often thought about, but it is a mandated function of boroughs and requires action by council.

## **Electric Services and Cable TV**

Boroughs may generate or purchase electricity and operate an electric power distributions system within the borough.<sup>26</sup> In 1984, only 34 boroughs operated electric utilities. However, in a number of these boroughs, net profits from sale of electricity were an important contribution to municipal revenues.

Boroughs have the power to build, own and operate cable television systems.<sup>27</sup>

## **Gas Services**

Boroughs may purchase, own, use and operate and control natural gas wells for serving its own municipality.<sup>28</sup>



## REFERENCES

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2. *Bruce v. Commonwealth, Department of Transportation*, 588 A.2d 974, 138 Pa.Cmwlt. 187, 1991.
3. 2014 P.L. 432, no. 37, Section 1801; *Sweigart v. Borough of Ephrata*, 344 A.2d 766, 21 Pa.Cmwlt. 280, at 282, 1975.
4. 2014 P.L. 432, no. 37, Sections 1302(a)(4) and 1708, Assessment US Tax
5. 2014 P.L. 432, no. 37, Section 1203.
6. 2014 P.L. 432, no. 37, Section 1121; *Almy v. Borough of Wilksburg*, 416 A.2d 638, 53 Pa.Cmwlt. 46, at 51, 1980; *Slifer v. Dodge*, 362 A.2d 471, 26 Pa.Cmwlt. 99, at 104, 1976.
7. 2014 P.L. 432, no. 37, Section 1202(24); *Appeal from Ordinance No. 384 of the Borough of Dale*, 382 A.2d 145, 33 Pa.Cmwlt. 430, at 437, 1978.
8. 37 Pa. Code § 203.13
9. Model Rules and Regulations for Hiring.
10. 2014 P.L. 432, no. 37, Section 1172(a).
11. 53 P.S. 767; 1955 P.L. 1804, No. 600.
12. 2014 P.L. 432, no. 37, Section 1202(56).
13. 2014 P.L. 432, no. 37, Section 1202(35).
14. 2014 P.L. 432, no. 37, Section 1202(56).
15. 53 Pa. C.S. A. 6924.330 (a) (1)
16. 77 P.S. 1032
17. 42 Pa.C.S.A. 8524; Political Subdivision Tort Claims Act.
18. 2014 P.L. 432, no. 37, Section 1202(56).
19. 2014 P.L. 432, no. 37, Section 1202(a).
20. 53 P.S. 10503; Pennsylvania Municipalities Planning Code, Section 503(11).
21. 2014 P.L. 432, no. 37, Section 1302(8); 24 P.S. 4401; Library Code, Section 401.
22. 2014 P.L. 432, no. 37, Section 1202(41).
23. 2014 P.L. 432, no. 37, Section 2001.
24. 2014 P.L. 432, no. 37, Section 2401.
25. 35 Pa.C.S. 7501.
26. 2014 P.L. 432, no. 37, Section 2401-A.
27. 2014 P.L. 432, no. 37, Section 1202 (63).
28. 2014 P.L. 432, no.37, Section 1202 (60).

## **VI. Land Use Control and Environmental Regulation**

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The power and responsibility to plan for land use and its regulation lies exclusively with local government. Local governments have been given the power to plan their own community development through the Pennsylvania Municipalities Planning Code. No state agency has been assigned responsibility to administer any of the land use powers in the event a unit of local government fails to exercise a delegated power. The Planning Code is a true enabling act giving municipalities' great leeway in shaping their own land use programs. If a borough misuses any delegated power, a well-formulated article in the Planning Code outlines the steps a landowner or person aggrieved can follow to have their day in court.

The Pennsylvania Municipalities Planning Code establishes the basic legislation for a municipality in Pennsylvania to plan for community development through preparing a comprehensive development plan and to govern such development through zoning and subdivision and land development ordinances.<sup>1</sup> The Act provides for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards and authorizes those bodies to charge fees, make inspections and hold public hearings. The Act provides for appropriations, appeals to courts and penalties for violations.

Land use controls may be looked upon as an ounce of prevention since they offer protection against undesirable effects of development or the need for costly correction later. A subdivision with a poorly designed circulation system or otherwise inadequate streets will cause traffic problems and higher taxes. Inadequate drainage can be prevented by a subdivision and land development ordinance. Zoning can establish adequate building setbacks so that later road widening need not wipe out substantial portions of front yards and can reduce costs of right-of-way acquisitions or avoid costly relocations. Land use controls must be exercised through the appropriate ordinances. Any denial of a proposal must cite the specific section(s) of the ordinance the plan would violate. Denial of an application cannot be based merely on what an individual council member believes is good planning. Also, conditions may not be placed on approvals that are not authorized by the Planning Code and the local ordinance. For example, a recent court case has held that municipalities cannot condition subdivision approval on dedication of additional abutting road frontage property to the municipality.<sup>2</sup>

### **Comprehensive Planning**

Development controls are the tools to implement comprehensive land use plans, or master plans as they are sometimes called. A comprehensive plan for a relatively isolated or slowly growing community may need little or no change for a decade. Conversely, any municipality within commuting distance of a growth-inducing facility such as a new industrial plant, recreation complex or an expanded mining operation needs to reassess the adequacy of its comprehensive plan frequently.

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

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

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

3. A plan providing for the character and timing of future facilities and utilities such as recreation, sewage disposal, refuse disposal, water supply and similar services
4. A plan to meet the housing needs of present residents and of those individuals and families anticipated to reside in the municipality. The plan may include conservation of presently sound housing, rehabilitation of housing in declining neighborhoods and the accommodation of expected new housing in different dwelling types and at appropriate densities for households of all income levels
5. A transportation plan indicating future needs for local street and road systems, parking facilities and highways
6. A map illustrating how the municipality relates to adjoining municipalities and how the development in your borough corresponds to theirs

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

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

A comprehensive plan is often viewed as a requirement of the Municipalities Planning Code which has to be completed, but has no real relevance. This is incorrect. The comprehensive plan should be viewed as a picture of how the community wants to look in the future, as determined by borough council after public input. The comprehensive plan should be able to provide a vision of the future and allow other ordinances, such as the zoning ordinance and the subdivision and land development ordinance to fill in the gaps and create the mechanisms to reach this desired goal.

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

## **The Zoning Ordinance**

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

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

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

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

The subdivision regulations should be based on the concept of equal protection of rights for every landowner and every resident. In the interest of equity, developers and those they sell land to must pay their fair share of the direct costs incurred by the subdivision or development. Direct costs of development include onsite sewer systems, water systems, street paving, street lighting, curbing and storm sewers. Through a 1990 amendment to the Planning Code, the state legislature has restricted the levy of impact fees for off-site development to situations where a sophisticated transportation capital improvements plan has been adopted based on a roadway sufficiency study. Levy of tap-in, connection or other similar fees for connection to municipal water and sewer systems is likewise controlled by provisions found in the Municipality Authorities Act and extended by reference to municipally-owned systems.

Subdivision and land development regulations do not, by their mere existence, assure careful designs for subdivisions or lots. Design standards must be developed very carefully and with an eye toward the intended goal. A number of places across the state have developed alternative standards which result in styles of development radically different from the prevalent suburban pattern. Council has serious decisions to make which will affect how the community looks and functions for decades to come. Through careful formulation of a subdivision ordinance, a community can maintain quality standards for improvements, coordinate private development with public facilities and create a pattern for the development of the area into a community where residents will be happy to live.

### **Floodplain Regulations**

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

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

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

The management of flood plains can be made easier in undeveloped sections of boroughs by including flood plains into the land development and subdivision ordinance and requiring special treatment for flood plains in much the same manner as wetlands. If no additional development occurs in the flood plain, problems related to flooding will not increase in severity. By actually allowing the flood plain to flood, downstream damage will be lessened. Many communities plan areas along rivers, creeks and even stormwater drainage areas to become linear greenways to connect different neighborhoods, parks and open space areas, to create conservation areas and to provide for future development of hiking or biking trails. Flood plain management can be used to further positive development goals of the borough.

The Floodplain Management Act encourages floodplain management by requiring participation in the National Flood Insurance Program.<sup>3</sup> While the Act allows municipalities to adopt floodplain regulations exceeding minimum flood insurance program standards, the Act requires municipalities to give special consideration to certain obstructions posing special hazards in floodplains. The Act also authorizes the DCED to provide both technical and financial assistance to help municipalities administer local floodplain regulations. In addition, DCED is to oversee the coordination of local floodplain management regulations among municipalities and assure their uniform enforcement. The Department of Environmental Protection (DEP) is authorized to regulate those obstructions in floodplains which cannot be regulated by the municipalities.

## **Stormwater Management**

The Stormwater Management Act encourages the local administration and management of the accelerated stormwater runoff resulting from land development.<sup>4</sup> Under the Act, counties develop stormwater management plans for specific watersheds. The county plan must then be submitted to the Department of Environmental Protection for approval. Once approved by the Department, municipalities must adopt or amend resolutions, codes, subdivision regulations, zoning ordinances and any other necessary ordinances to regulate development in a manner consistent with the county plan for that watershed.

Stormwater regulations and planning are vital components of boroughs' ordinances which guide and regulate growth. Plans and regulations should be in effect in each borough even if the county has not yet prepared its watershed plan. Stormwater regulations, like flood plain regulations, should include a planning element going beyond simple restrictions. The combination of regulations affecting flood plains, stormwater and land use should follow the comprehensive plan and become a tool to guide the borough toward a future where stream ways contribute to the local quality of life.

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

Many boroughs will assume the responsibility for maintenance of facilities serving an entire area where they are properly constructed and a cash payment into a stormwater maintenance fund assures perpetual maintenance will not be a burden to the taxpayer. These retention areas are often "wet," meaning that they contain a pond during dry periods, are planted with an eye towards both beauty and natural habitat, and are used as conservation areas where no attempt is made to keep open areas mowed as in a park. Stormwater management facilities need not be a series of unsightly depressions which actually detract from the community.

## **Sewage Enforcement**

The Pennsylvania Sewage Facilities Act provides for planning and regulating both community and individual sewage disposal systems.<sup>5</sup> It requires municipalities to submit plans for sewage systems and requires permits for the installation of all sewage systems. These plans are usually called "537 Plans" after Act 537, the Sewage Facilities Act which details the requirements for these plans. The Act is administered by the Department of Environmental Protection (DEP).

In addition to implementing state regulations, municipalities can adopt and administer their own regulations relating to sewage facilities as long as they do not conflict with the Pennsylvania Sewage Facilities Act.<sup>6</sup> Local zoning ordinances dealing with sewage and sewers are not pre-empted by the Sewage Facilities Act where local legislation is consistent with the terms of the Act. The General Assembly's intent is to combine state and local power into a comprehensive regulatory scheme for sewage disposal.<sup>7</sup>

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

## **Solid Waste Management**

A service which is becoming more prevalent in boroughs is solid waste collection and disposal. Increasing environmental concern and higher costs associated with government regulation have brought more boroughs into the business of solid waste management. Solid waste collection services differ greatly among boroughs. Small boroughs often have no policy or program for collection or disposal. Large boroughs may license haulers, contract with one or more private haulers to collect garbage, or even provide garbage collection using borough employees and equipment.

The Solid Waste Management Act requires municipalities with a population density of 300 or more persons per square mile, or areas which have been identified by the Department of Environmental Protection (DEP) as having a waste problem or a potential waste problem to submit plans for solid waste management and revisions to the plan as deemed necessary or required by DEP. A borough may request the county in which it is located to perform this function on its behalf. It establishes rules, regulations, standards, procedures and a permit system for the operation of solid waste processing or disposal systems.

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

The Borough Code gives council power to regulate and control collection, removal and disposal of solid waste.<sup>9</sup> Courts have held this includes reasonable regulations and zoning ordinances governing sanitary landfills, not inconsistent with the Solid Waste Management Act.<sup>10</sup> Although the Act protects hazardous waste facilities from local prohibition, boroughs can adopt reasonable regulations to protect the health and safety of residents.<sup>11</sup> A court determined sewage sludge from a composting facility was considered refuse under the terms of the municipal codes and could be regulated by the municipality.<sup>12</sup> But municipalities may not regulate solid waste disposal or landfill operations, since these are governed by state regulations.<sup>13</sup> Boroughs have the power to regulate and license junkyards and have the power to declare certain activities to be nuisances, including storage of junked vehicles, when they constitute nuisances based on actual conditions.<sup>14</sup>

## **Historic Districts**

Historic district controls are intended to protect the local architectural and historic heritage of the community. Functioning historic districts can stabilize or even increase property values, encourage tourism, foster an increase in civic pride and contribute to the quality of life in the community.<sup>15</sup>

## REFERENCES

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2. *Board of Supervisors of West Marlborough Township v. Fiechter*, 566 A.2d 370, 129 Pa. Cmwlth. 537, 1989.
3. 32 P.S. 679. 201; Flood Plain Management Act.
4. 32 P.S. 680.1; Stormwater Management Act.
5. 35 P.S. 750.1; Pennsylvania Sewage Facilities Act.
6. *Holland Enterprises, Inc. v. Joka*, 439 A.2d 876, 64 Pa.Cmwlth. 129, at 133, 1982.
7. *Council of Middletown Township v. Benham*, 523 A. 2d 311, 514 Pa. 176, 1987; *Palmer v. Board of Supervisors of Upper Mount Bethel Township*, 615 A.2d 938, 150 Pa.Cmwlth. 323, 1992.
8. 53 P.S. 4000.1501; Municipal Waste Planning, Recycling and Waste Reduction Act; 1988 P.L. 566, No. 101.
9. 2014 P.L. 432, no. 37, Section 1202(45).
10. *Kavanagh v. London Grove Township*, 404 A.2d 393, 486 Pa. 133, at 138, 1979; *Daugherty v. Messner*, 172 A.2d 288, 404 Pa. 235, at 237, 1961.
11. *Sunny Farms, Ltd. v. North Codorus Township*, 474 A.2d 56, 81 Pa.Cmwlth. 371, at 376, 1984.
12. *Hunlock Township v. Hunlock Sand and Gravel Corporation*, 601 A.2d 1305, 144 Pa.Cmwlth. 499, 1992.
13. *Monroeville v. Chambers Development Corporation*, 491 A.2d 307, 88 Pa.Cmwlth. 603, at 609, 1985.
14. 2014 P.L. 432, no. 37, Sections 1202(4) and 1202(20); *Commonwealth v. Sadecky*, 398 A.2d 1073, 41 Pa.Cmwlth. 86, at 89, 1979; *Talley v. Borough of Trainer*, 394 A.2d 645, 38 Pa.Cmwlth. 441, at 442, 1978
15. 53 P.S. 8002; 1961 P.L. 282, No. 167.

## VII. Glossary of Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

**Constituent** — A person served by an elected official, normally a resident or voter. Council. The governing body of a city, borough and certain home rule municipalities.

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

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

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

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

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

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

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

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

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

**Flood Plain** — The area along a natural watercourse subject to periodic overflow by water.

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

**General Obligation Bonds** — A financial instrument giving borrowing power to a municipality, based upon pledging of taxing power to retire debt and pay interest.

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

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

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

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

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

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

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

**Judicial** — The power to judge, to administer justice and interpret laws and ordinances.

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

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

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

**Mayor** — An elected official of borough government who represents the borough at certain official and ceremonial functions, and who supervises the police department under the Borough Code. In cities, the chief elected officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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