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Borough Council Handbook

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Borough Council Handbook

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Foreword

This edition of the *Borough Council Handbook* employs the word *councillor* to describe a member of council. Since a large proportion of borough council membership in Pennsylvania is now made up of women, a more inclusive term than councilman is needed. The words councilperson and council member are considered long and somewhat awkward; the word councillor, meaning a member of council, seems more appropriate. The word councillor, however, should not be confused with counselor. The latter is defined as an advisor, an attorney or a supervisor. Councillor is a separate and distinct word.

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I. Borough Government

Boroughs are the second most common form of municipal government in Pennsylvania, their number exceeded only by the number of second class townships. The 962 boroughs represent 37.5% of all general purpose municipal governments in Pennsylvania. There are an average of fifteen boroughs per county. The number ranges from one in Forest County to 82 in Allegheny County. The state's boroughs govern a combined population of 2.6 million, representing 22% of the state total.

Boroughs are almost evenly divided between those urban and rural in character. One third of all boroughs are located within the state's urbanized areas: 64 in the Philadelphia Urbanized Area, 124 in the Pittsburgh Urbanized Area and 143 in the thirteen smaller urbanized areas. An additional 126 boroughs with populations exceeding 2,500 and located outside urbanized areas are classified as urban. The 508 boroughs with populations less than 2,500 and located outside urbanized areas are classified as rural, constituting 52.5% of all boroughs.

Regardless of their urban or rural character, boroughs are generally small local units. Only 16% of the total boroughs have populations exceeding 5,000.

Boroughs by Population Size, 1990 Census

Population	Number
20,000 and over	9
15,000-19,999	8
10,000-14,999	15
5,000-9,999	123
2,500-4,999	163
1,000-2,499	245
under 1,000	400

The largest boroughs are State College, 38,923, Bethel Park, 33,823, Norristown, 30,749, Monroeville, 29,169 and Plum, 25,609. Sixteen boroughs have populations under 100. The smallest are S.N.P.J. (Lawrence County), 12, New Morgan (Berks), 16, Valley-Hi (Fulton), 19, Green Hills (Washington), 21 and Seven Springs (Somerset), 22.

Serving a mixed urban, small town and rural population, boroughs occupy a middle ground between city and township governments. Borough revenues and expenditures per capita exceed those of townships but are less than those of cities. Net municipal debt per capita for boroughs exceeds that for townships, but is less than that for cities.

Development of Borough Government

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

Borough government in Pennsylvania did not develop early in contrast to county and township government. At the time of the Revolution there were only four boroughs in Pennsylvania compared to 255 townships. Philadelphia appears to have been a borough between 1684 and 1691 when its first city charter was granted, but no record of this survives. The first surviving borough charter was that of Germantown in 1691. Other colonial boroughs were Chester, 1701, Bristol, 1720 and Lancaster, 1741. After the Revolution, renewed growth brought the spread of municipal government, and fifteen more boroughs were incorporated between 1782 and the end of the century.

Early boroughs had a governing body composed of two or more burgesses and a number of assistants. This body adopted local ordinances and also formed a court to hear and dispose of local cases. The burgesses were also empowered to call town meetings, but these were generally meetings of borough officers as opposed to New England town meetings of the general populace. Early charters were granted by special acts of the legislature, but they soon developed common patterns. By 1800 the first councillors had appeared in borough charters and references to town meetings were dropped. The number of burgesses was standardized at two, a chief burgess and an assistant burgess. The chief burgess was the presiding officer of council meetings, had a full voice and vote in all deliberations, and was also the chief executive charged with the preservation of order and administration of the borough government.

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

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

In 1887, the judicial power of the burgess was expanded when the office was given the jurisdiction of a justice of the peace to hear criminal actions under state law as well as borough ordinances. In 1893, powers of the principal borough officers were reshuffled. Council was given the power to select its own president. The term of office for the burgess was extended to three years, and the assistant burgess was abolished. The burgess was no longer the presiding officer, nor a voting member of council. In exchange for these lost legislative powers, the burgess was given the power to veto legislation. The 1893 amendment was an attempt to remodel borough government to resemble the weak mayor form then current in city government, but to be replaced for cities twenty years later by the commission form. Boroughs were first authorized to appoint police officers in 1893, but they were under the direction and control of council until 1911 when this power was transferred to the burgess.

The late nineteenth century saw the greatest increase in numbers of boroughs. More than two thirds of existing boroughs and cities originally formed as boroughs were incorporated between 1850 and 1910. In this period boroughs were formed at the rate of roughly ten per year as Pennsylvania underwent industrialization, an extensive railroad network was put in place, and the urban proportion of the population increased from 23% to 60%. The rate of borough formation dropped to six per year in the 1910s, three per year in the 1920s, and one per year since 1930.

In 1909, the terms of borough officers were extended to four years to comply with the new election schedule. The General Borough Act of 1915 codified the 1834 and 1851 borough laws and their subsequent amendments. Boroughs were first authorized to establish the office of manager in 1917, but not until 1939 was the burgess authorized to delegate authority over the police force to the manager. The General Borough Act was reenacted in 1927 and revised and reenacted in 1947 as the Borough Code. The latest reenactment of the Borough Code came in 1966. The title of burgess was changed to mayor in 1961. In 1968, the new judicial article of the Pennsylvania Constitution removed all judicial powers from the mayor, gutting the office of its prior principal responsibility. The president of council gradually became recognized as the chief elected officer of a borough.

Role of Municipal Government

The municipality is the focus of governmental legitimacy on the local level. Boroughs are given power and acknowledged the right to use that power to circumscribe individual rights for the good of society at large. People living in society need rules to govern their behavior. Government is the vehicle which writes and enforces these necessary rules. Local government performs this function for the community it governs.

Municipal government is acknowledged as legitimate because its officers are chosen in popular elections, and because it is subject to constraints found in written constitutions and laws. Many of these constraints are designed to protect the rights of individuals from undue infringement by the municipality on behalf of society. Municipal governments provide the only authentic organized voice for a community. Human communities have a life of their own, continuing through the lifetimes of generations of citizens. The municipal government is the institutionalized representative of the community. It has an important role in planning for the community's future development or renewal, finding solutions to present-day problems and conserving important parts of the community's past in terms of buildings and traditions.

The municipal government speaks for the community to the outside world. This includes state and federal administrative agencies, as well as in the state legislature and Congress. A rapidly growing role is in economic development where the municipal government represents community interests in encouraging or seeking employment-generating economic activities.

The municipality provides important community services which are unsuited to private enterprise. Boroughs have traditionally been heavily involved in maintenance of streets, a function of growing importance in a society heavily dependent on the automobile. Municipal governments have the ultimate responsibility for public safety, including police, firefighting and emergency management. Boroughs often provide water, sewer and refuse collection services, although these may also be provided by private firms or municipal authorities.

The municipality is the tool for regulation of the quality of life within the community. It can promulgate health and safety regulations to protect citizens and often has a role in enforcing state regulations in this field. The municipality can influence aesthetic factors and amenities which contribute much to the quality of life. This can be done by removal of nuisances, control of noxious activities, building regulation, control of development through zoning and subdivision ordinances, animal control and other regulatory activities.

Through their elected representatives, citizens of a community can have a great deal of control over the general appearance and desirability of the community. This is also achieved through sponsorship or encouragement of local cultural or recreational activities, such as libraries, museums, concerts, parks, playgrounds, swimming pools, tennis courts, senior citizen centers and other community activities.

Role of Councillors

Council plays the central role in borough government. Section 1202 of the Borough Code places general supervision of the affairs of the borough in the hands of council. Councillors combine many of the roles found in

separate branches or levels of the state and federal governments. Council serves as the legislative body of the borough, setting policy, enacting ordinances and resolutions, adopting budgets and levying taxes. Council also performs executive functions such as formulating the budget, enforcing ordinances, approving expenditures and hiring employees. Some boroughs operating under the Code have hired managers, and most others use the borough secretary for general administrative purposes. In many boroughs councillors also play a large role in administrative activities, overseeing the day-to-day operation of borough government.

Because of the councillor's elected status, an individual in that position is often looked to as a community leader. Certainly councillors are the proper recipients of complaints, ideas and suggestions concerning borough affairs. In many cases the councillor is called upon to perform as a problem solver, acting as an agent for borough citizens with municipal or even outside agencies. The councillor has a role in representing the borough's communal interests, past, present and future. Although assisted by a planning commission, paid administrator or historical commission, many of the final decisions must be made by elected officials.

The extent of any one councillor's activities in these roles will be defined by the individual's own view of civic responsibilities, particular fields of individual interest and personal skills and talents. To a large degree the councillor's role is also defined by the local political culture, the generalized local attitudes toward municipal government and commonly-held expectations of how officials will operate.

Structure of Borough Government

A typical governmental structure for boroughs is outlined below in the organization chart. It indicates the relationships between elected officials, staff and employees and where appointed boards and commissions fit into the overall structure. Although the organization shown can be called typical, very few boroughs are actually structured in this manner and most boroughs do not have all the positions shown in the chart. Very few boroughs in Pennsylvania have managers, so often the council committees or the borough secretary supervise the operating departments. Very few small boroughs have created all the boards and commissions authorized in the Code.

Your borough structure may not correspond closely with the organization chart illustrated. The Code contains few organizational details and allows wide flexibility in defining the operating departments of the borough. Small boroughs may have no formal department structure or may have only a department of streets or public works. Larger boroughs will have separate departments for functions such as parks and recreation, police, finance, water or others. The number of departments and their respective functions is based on local needs as determined by council.

Other elected borough officers include the mayor, three auditors or controller, the tax collector and in some boroughs an assessor. Although elected from a borough, the constable is an independent officer and does not form part of the municipal government. Assessors are elected only in boroughs within the 51 fourth through eighth class counties.

The elected auditors or controller conduct the annual audit of borough finances, and the controller also must approve all expenditures before they are made. By ordinance the borough may abolish the elected office of auditor or controller and provide for an annual audit by an outside independent auditor.

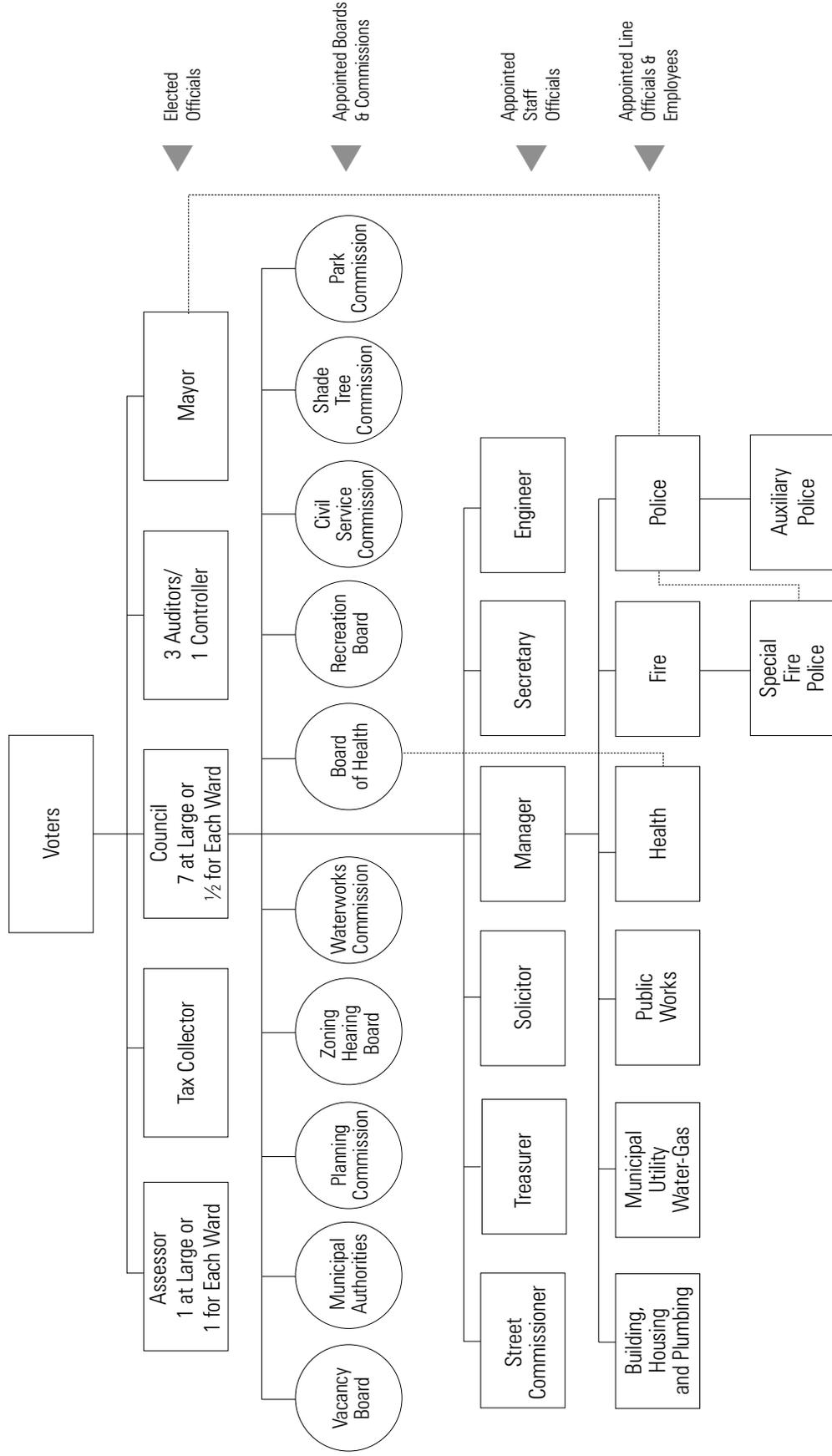
The tax collector collects school and borough real estate taxes and in some cases county real estate taxes. In addition they are often appointed to collect some of the taxes levied under the authority of the Local Tax Enabling Act.

Borough assessors work under the direction of the chief county assessor. They are usually not involved in assessment of real estate but are primarily used for assessment of occupations and preparation of the per capita tax roll. The only two mandatory appointed officers are the secretary and the treasurer. These two offices may

be combined by local action. The treasurer may be a financial institution. The duties of the offices of solicitor and engineer are outlined in the Code, but appointment of these officers is not mandatory. Almost all boroughs have solicitors. The solicitor has control of the legal matters of the borough including bonds, real estate transactions, review of ordinances and actions in court. About two thirds of the boroughs have engineers. The engineer does engineering for borough work on streets and other public works and also prepares plans, specifications and estimates for work to be performed under contract.

Other offices, such as manager, police chief or building inspector may be created with the duties defined by borough ordinance. Other state laws authorize appointment of officers such as the sewage enforcement officer, emergency management coordinator, earned income tax officer and zoning officer. These duties may be held by borough employees or assigned to persons outside borough government.

MUNICIPAL STRUCTURE PENNSYLVANIA BOROUGH GOVERNMENT



Broken line indicates operational control, but not appointment.

II. Office of Borough Councillor

Boroughs are governed by an elected council. The membership of council varies depending on the method of election. Boroughs may elect their councillors at large by a vote of the entire borough, or by wards. Boroughs may be divided into not more than thirteen wards; each ward must contain a minimum of 300 registered voters.¹ Where a borough is divided into wards, one or two members may be elected from each ward.² Those boroughs electing three per ward may continue to do so until the number is changed.

Where boroughs are not divided into wards, seven councillors are elected at large.³ Boroughs with a population of under 3,000 may reduce the size of council to five or three members by court action.⁴ The Borough Code contains detailed provisions for altering the number of ward councillors and for transition to a different size council. There has been a marked tendency in recent years for the size of councils to be reduced and at large voting systems to replace ward systems. Three fourths of the boroughs now have seven-member councils. The distribution in 1994 is shown below.

No. of Members	No. of Boroughs
12	8
10	8
9	38
8	42
7	648
6	121
5	81
4	5
3	13

Term of Office. The term of office for a borough councillor 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 councillor the office may appear on the ballot as a short term.⁵ If the vacancy occurs more than 60 days before a municipal election and if 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

State law provides two separate procedures for redrawing ward lines in boroughs. The traditional procedure found in the Code requires petition to the court, appointment of special commissioners to redraw the ward lines and court review of their report.⁶ The amended local government article of the Pennsylvania Constitution, adopted by the voters in 1968, requires governing bodies elected by districts to realign their district lines after each decennial census. This procedure is set forth in the Municipal Reapportionment Act.⁷ This Act requires council to reapportion wards in the year following the official report of any decennial or special federal census. If the governing body fails to act, any one or more registered voters may petition the court to realign the wards. Any reapportionment plan approved by council may also be appealed to the court by a petition of at least ten registered voters.

Pennsylvania's courts have ruled both these procedures are available for changing the wards of a borough.⁸ Redistricting after a census to equalize the population of the wards is primarily a legislative function and judicial action should only occur in the event of inordinate delays or where the governing body has failed to satisfy constitutional and statutory standards.⁹

The Municipal Reapportionment Act has not repealed the Code provisions for altering ward boundaries. The Code procedure may be used to abolish all wards,¹⁰ or it can be used to draw ward lines for the first time where council had previously been elected at large.¹¹

Wards drawn by either method must be composed of compact and contiguous territory and as nearly equal in population as practicable.¹² 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.¹³ 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 councillor is to be a registered voter and resident of the borough.¹⁴ Councillors must have resided in the borough continuously for at least one year before their election. To continue serving as a councillor, an individual must retain residence within the borough. To qualify as a voter, a person must be eighteen 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.¹⁵ Legal residence includes not only a person's intention, but also a physical presence. The requirement of residence approximates domicile. Intention or voter registration is not enough; the actuality of an individual's residence is better determined by conduct than by words. A person cannot declare a domicile inconsistent with the facts of where one actually lives.¹⁶

Councillors elected from a ward must be residents of the ward from which they are elected.¹⁷ Councillors moving to residences outside the ward they are elected to represent automatically disqualify themselves from holding office.¹⁸ Where the borough has been redistricted all councillors serve the remainder of their terms.¹⁹

Incompatible Offices. Borough councillors may not hold any other elective borough office.²⁰ The Borough Code does not prohibit a councillor from holding other borough appointive offices, but it does stipulate a councillor may not receive compensation for discharging the duties of any appointed office.²¹ A councillor is prohibited from also serving as borough treasurer, secretary or manager.²² Only one councillor at a time may serve on the borough's civil service commission.²³ A limited number of councillors can serve as members of the borough planning commission,²⁴ but are prohibited from becoming members of the zoning hearing board.²⁵ A borough councillor cannot also serve as a member of a school board.²⁶

The eligibility of members of municipal governing bodies to serve on authority boards had long been an unsettled issue. However, in 1993, the Pennsylvania Supreme Court determined a township supervisor could legally serve on the board of a municipal authority created by the township.²⁷ This dual office holding did not violate the Second Class Township Code which limits the appointed offices supervisors can fill, because authorities are independent agencies of the Commonwealth and not part of the township government. While this ruling involves townships, because of similar wording in the municipal codes, it appears to apply as well to boroughs. 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.²⁸ An appellate court recently ruled an elected official violated the State Ethics Act when he voted to appoint himself to an authority board where he received compensation.²⁹

Oath of Office. Before entering office, each councillor whether elected or appointed must take an oath or affirmation of office.³⁰ The oath can be administered by a judge, district magistrate, notary public or the mayor. The councillor 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 councillor with fidelity. A copy of this oath 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 courts or failure to qualify.

The Code provides for the remaining members of council to fill a vacancy by resolution.³¹ Pennsylvania county courts are divided on the issue of whether a resignation requires acceptance by the governing body or whether it is unconditionally effective.³² This is critical because of the timetable established to fill vacancies. The safest course for governing bodies is to take official action to accept any resignation and to fill the vacancy within thirty days of its submission.

Commonwealth Court has ruled that a governing body member's resignation was effective when tendered and accepted.³³ The resigning officer establishes the effective date of the resignation and from that time the office is vacant. In this case, the court voided an action by the board to rescind the resignation acceptance at a subsequent meeting. The court held a vacancy existed on the board and could only be filled by action of the board members to appoint a successor until the next municipal election.

Council has thirty days to take action to fill a vacancy. If council fails to fill the vacancy within the prescribed limit, then the vacancy board fills the vacancy within fifteen 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 councillor are vacant at any one time, the vacancies are filled by the court upon petition of at least fifteen 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 sixty 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 councillors 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.³⁴

Borough population	Maximum Compensation
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 councillors, covering life, health, hospitalization, medical and surgical service and accidents, but provide for pensions for employees only.³⁵

Elected officials including councillors are also excluded from coverage for unemployment compensation and worker's compensation benefits. Boroughs are authorized to purchase insurance for borough elected officials and employees for legal liability arising from performance of their duties.³⁶ This is commonly known as errors and omissions insurance.

Expenses. When travel on official business is authorized by the council, councillors 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.³⁷ When attending meetings of professional organizations or training sessions as authorized by council, a councillor may be entitled to payment of all or any part of the necessary expenses agreed to by council.³⁸ 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.

Councillors are authorized to attend meetings or conventions of county and regional associations of boroughs. Councillors attending such meetings may be entitled to payment of the registration fee, mileage and other expenses the council agreed to pay.³⁹ Likewise, borough councillors authorized by the council to attend the annual convention of the State Association of Boroughs are entitled to the registration fee, mileage and other actual expenses the council agreed to pay. Each councillor 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.⁴⁰

Conflicts of Interest

Borough councillors should be very careful to avoid the possibility of conflict between their personal and private interests and their role as a public officer. The Ethics Act states the people have a right to be assured the financial interests of public officers do not conflict with the public trust.⁴¹

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 councillor should refrain from voting on the issue. Pennsylvania courts have long upheld as a fundamental public policy principle the rule that members of a governmental body cannot vote on any matter where they have a direct personal interest.⁴²

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

Under the Ethics Act, revised in 1989, no public official such as a borough councillor, 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.⁴³ The Code prohibits councillors from having any personal interest in contracts over \$1,000.⁴⁴ In cases where a contract is made with a firm employing a councillor in a nonmanagement position, the councillor 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. However, a court determined this prohibition did not apply where the connection between an elected official and a bidder is remote and there is no evidence of collusion or ulterior motive in awarding a contract.⁴⁵ Any councillor facing the possibility of a conflict of interest under the Ethics Act may request an advisory opinion from the State Ethics Commission. Alleged violations can be reported to the Commission for further investigation.

Any contract, purchase or appointment a borough wishes to make where a councillor 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 Ethics Act 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.⁴⁶ 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.⁴⁷

There is a specific provision for surcharge in cases of evasion of advertising requirements in making purchases. Any councillor who contracts for purchases piecemeal to avoid advertising for a purchase of more than \$10,000 may be subject to a surcharge of ten percent of the full amount of the contract or purchase.⁴⁸

Limiting surcharges to the amount of actual loss does not apply to cases of fraud or official collusion. For such activities councillors 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

Under provisions in section 904 of the Borough Code, Council may remove a member from office under very limited circumstances. Removal can occur if the councillor has neglected or refused to attend two successive meetings of council, unless detained by illness or necessary absence from the borough. It can also occur if any councillor attending a meeting neglects or refuses to vote, withdraws from the meeting or otherwise refuses to act in their official capacity.

Removal from office is accomplished by a majority vote of the remaining council members. The disciplined member must first be given an opportunity for a hearing before council with at least ten days written notice. The hearing is to determine the necessity for absence or failure to act.⁴⁹

However, a case arose in 1995 to recall the Mayor of Kingston.⁵⁰ While, this case deals with the recall of an elected official in a Home Rule Community the unanimous opinion of 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 crime, or misbehavior in office.⁵¹

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.⁵² 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 councillor for an act or omission claimed to be within the scope of official duties, the borough must defend the action when requested by the councillor. 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.⁵³

References

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7. 53 P.S. 11601; Municipal Reapportionment Act.
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21. 53 P.S. 46104; Borough Code, Section 1104.
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III. Legislative Powers

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 corporate and 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 municipal corporate powers include the right to sue and be sued, to complain and defend in the courts of the Commonwealth, the right to make and use a common seal and the right to purchase, acquire, hold, lease and sell real and personal property in the best interests of the municipality.¹ The Borough Code invests the corporate power of the municipality in council.²

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.³ 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.⁴

The Legislative Role

As an elected borough councillor, 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.

Because the actions of a governing body have an impact and potential consequences on a municipality, 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 or resolution.⁵

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 discus-

sion is either specific or of a temporary nature, pertains to the transaction of current business or ordinary administration of municipal affairs.⁶

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.

Because of the vagueness of the term legislative action, the borough solicitor should be consulted when the governing body is uncertain whether to use an ordinance or resolution.

Your role as a legislator will not be confined to enacting borough laws. As an elected official, you represent the borough and will be expected to be concerned with, and at times attempt to influence state legislation affecting your municipality. The General Assembly considers legislation affecting all boroughs, all local governments in Pennsylvania and your municipality or region.

As a representative of the borough, you are in a position to exert some influence on the decisions of state legislators. The relationship between you and legislators is more effective if council takes an official position by adopting a resolution prior to contacting your legislator. The methods of communication with your legislator may vary. Use the telephone, send a telegram, write a letter, e-mail or visit personally. If your contact has been verbal, follow it with a letter. Make sure your facts are accurate, precise and brief. Don't hesitate to contact legislators from districts other than your own, particularly the committee chair or other members of either chamber sponsoring a bill. This activity has been approved by the courts as part of a local official's role, however, expenditures of public funds for lobbying should not become unreasonable.⁷

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 as a 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 Planning Code. The formulation of legislative policy involves full and free public discussion of issues, often with a councillor 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, a different pattern of behavior is required. In a case appealing denial of conditional use and site plan applications, Commonwealth Court found the applicant's right to due process was denied by the participation in the vote of one of the council members who had actively opposed the proposal before it was brought before the governing body.⁸ His actions included speaking in opposition at public hearings on the proposal, writing to constituents on official stationery, expressing opposition and encouraging the public to attend meetings to pressure council to defeat the proposal, and alleged 'vote trading' with another council member. The court held that due to the council member's clear bias and actions against the proposal, allowing him to vote on it was a denial of the applicant's right to a fair hearing. This case underscores the need for councillors to avoid the appearance of bias in cases where they are acting as a tribunal, performing a role quite different from the role in formulating public policy.

Meetings

The Borough Code requires council to meet at least once a month at a time and place designated by council.⁹ 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.¹⁰

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.¹¹ If a quorum is present, then a majority of the votes cast on any particular question will carry the issue.¹² 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 councillor 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 councillor, 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. 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.¹³ 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; and (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.

3. *Treasurers 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. *Persons to be Heard* - Any resident, taxpayer or representative of any organization may request to appear before council to present any matter they feel is of municipal concern. Some boroughs require persons wishing to participate in the meeting to be placed on the agenda prior to the meeting. 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 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. See the section on the Sunshine Act (page 18) for details regarding recent legislation regulating the public participation portion of meetings.
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. *Jeffersons 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.¹⁴ 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.

Borough councils are required to provide an opportunity for public comments at each advertised regular and special meeting. A 1998 amendment to the Sunshine Law requires that council must allow for public comment prior to taking official action. The right of citizens to make comments is limited to matters of concern, official action or deliberation which are or may be before the governing body. A board may limit the right to speak during this period to 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 enumerated purposes. These include discussing personnel matters relating to a specific individual, strategy sessions and negotiations for collective bargaining agreements, purchase or lease of real estate, consultation with the solicitor in connection with ongoing or pending litigation, or to discuss any municipal business which if conducted in public would violate a legal privilege or protected confidentiality. Since the Act contains the legislative declaration of public policy as ensuring the right of citizens to attend meetings of public bodies, any use of the executive session should be limited to situations clearly falling within the list of enumerated purposes. Executive sessions may be held during a public meeting or announced for some other time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. Any official action taken on the basis of discussions held at an executive session must be taken at an open meeting.

Public notice is not required for emergency meetings, but these must still be open to the public. Emergency meetings are defined as those called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property. 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.¹⁵ All minutes, records and books must be open to public inspection by any taxpayer at any reasonable time. 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, photostated or microfilmed. The minutes of the proceedings of council may be recorded in a bound book or mechanical post binder book. Any records, attachments or transcriptions added to a record book must bear the official borough seal impressed upon each page.¹⁶

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. Councillors disagreeing with a majority action of council should make certain their no votes are recorded. A councillor 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. Councillors cannot change their votes after the meeting is adjourned and the vote is recorded.¹⁷

Intergovernmental Cooperation

Throughout the United States and Pennsylvania, elected local government officials are being confronted with problems which lend themselves to regional solution. 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 Merger and Consolidation Law, Act 93 of 1994, 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 acts of the General Assembly such as the Intergovernmental Cooperation Act of 1972. 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

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2. 53 P.S. 46202; Borough Code, Section 1202.
3. 53 P.S. 46006(3), 46202(74); Borough Code, Sections 1006(3) and 1202(74); *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. 53 P.S. 46006(3); Borough Code, Section 1006(3).
6. *Almy v. Borough of Wilkinsburg*, 416 A.2d 638, 53 Pa.Cmwlth. 46, at 50, 1980; *Sheetz v. Borough of Lansdale*, 438 A.2d 1048, 64 Pa.Cmwlth. 24, at 27, 1982; *Donivan v. Dallastown Borough*, 835 F.2d 486, 1987.
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8. *Prin v. Council of the Municipality of Monroeville*, No. 203, C.D., Pa.Cmwlth., 1993.
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10. *Kline v. Fawkes*, 51 D.&C.2d 467, at 476, 1970, C.P. Bucks Co.; *Quashnock v. Sigmund*, 85 D.&C. 584, at 585, 1953, C.P. Allegheny Co.; *Commonwealth v. Pope*, 21 Dist. 1123, at 1124, 1912, C.P. Allegheny Co.
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13. 65 P.S. 280; 1986 P.L. 388, No. 84, Section 10; *Almy*, supra, at 55; *Berger*, supra, at 131.
14. 65 P.S. 274; 1986 P.L. 388, No. 84, Section 4.
15. 65 P.S. 276; 1986 P.L. 388, No. 84, Section 6.
16. 53 P.S. 46009; Borough Code, Section 1009.
17. *Penn Wynne v. Lower Merion Township*, 124 A.2d 487, 181 Pa.Super. 524, at 531, 1956.
18. Pennsylvania Constitution, Article IX, Sections 8 and 14.

IV. Administrative and Appointive Powers

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 groups. 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 or her 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, 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.¹ 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. Fringe benefits are an important part of the total compensation picture and should be examined carefully.

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

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

A separate act 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.³ 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.⁴ 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 councillors 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 councillor 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, councillors 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. Councillors 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 have an emergency management coordinator and an emergency plan.⁵ 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.⁶ 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.⁷

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.⁸ 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 must appoint its own solicitor to assist in its deliberations, written decisions and appeals.⁹ 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 councillors. 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.¹⁰ Shade tree commissions have the authority to plant, remove, maintain and protect shade trees on public streets and highways of the borough.

Civil Service Commission. Any borough employing three or more members in its police or fire department must establish a civil service commission.¹¹

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.

Board of Health. Boroughs may establish a board of health composed of five members, or appoint a health officer or officers who have the same powers and duties as prescribed for the board of health.¹² 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.

Municipal Authorities

Boroughs may form municipal authorities for certain purposes.¹³ 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 answer-

able 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 areawide 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.¹⁴

References

1. 29 U.S.C. 201 *et seq.*
2. 43 P.S. 1101.1; Public employee Relations Act.
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.A. 7502.
6. 53 P.S. 10201; Pennsylvania Municipalities Planning Code, Section 201.
7. 53 P.S. 47708; Borough Code, Section 2708.
8. 53 P.S. 10901; Pennsylvania Municipalities Planning Code, Section 901.
9. 53 P.S. 10017.3; Pennsylvania Municipalities Planning Code, Section 617.3.
10. 53 P.S. 47721; Borough Code, Section 2721.
11. 53 P.S. 46172; Borough Code, Section 1172.
12. 53 P.S. 48101; Borough Code, Section 3101.
13. 53 P.S. 303; Municipality Authorities Act, Section 3.
14. *Mifflin County v. Mifflin County Airport Authority*, 437 A.2d 781, 63 Pa.Cmwlth. 56, 1981.

V. Fiscal Powers

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 seeing municipal 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% of the revenues of boroughs.¹ The other significant sources of revenue were earnings from electric and water utilities, 14.6% of revenues, grants from federal and state agencies, including liquid fuels funds, totaling 7.5% of revenues and sewer rents and charges constituting 17.0% 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% of all revenues, while the earned income tax came in second, contributing 13.5% 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.² 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.³

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, street lights, 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 nonreal 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.⁴ These include per capita, realty transfer, business gross receipts, amusement, occupational privilege and occupation taxes. In 1997, these minor nonreal estate taxes contributed 4.3% 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 50.⁵ Act 50, 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”)⁶, 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.
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, 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 Act⁷, (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. 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 record keeping and the probable level of participation in the program.

The Homestead Property Exclusion Program Act⁸, 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.

For 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.

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 councillor 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 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.⁹ 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.

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.

Typical Budget Calendar

Due Date	Budget Activity	Responsible Person
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 3-23	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
January 15	File budget with DCED	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.¹⁰ Boroughs may also establish revolving funds for street improvements and fund them with special taxes.¹¹

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. Negotiated contracts are permitted for all purchases and contracts not exceeding \$10,000. The Borough Code requires at least three written or telephone price quotations for contracts between \$4,000 and \$10,000.¹² 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 \$4,000, but are a sound business practice. Contracts within certain specified categories for purchases above \$10,000 are exempted from mandatory bidding requirements.

For most purchases or contracts in excess of \$10,000 a municipality must advertise for a competitive bid contract.¹³ 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 \$10,000. Neither can council contract for services on a piecemeal basis. Any councillor who knowingly votes in violation of these provisions is subject to a surcharge of ten 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.

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.¹⁴ 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, for example 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.¹⁵ 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% of the borrowing base must be approved by the Office of Legal Services, Department of Community Affairs. The Local Government Unit Debt Act sets the nonelectoral debt limit for boroughs at 250% of average total revenues over the past three years. It establishes important procedural requirements for incurring debt. Major provisions are listed below.

1. No limit has been established on electoral debt.
2. Bond anticipation notes may be issued in order to obtain funds pending the sale of long-term bonds or notes.
3. Bonds or notes may be sold at public or private sales.
4. The maturity date on bonds and notes may not be more than 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% 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 the Department of Community and Economic Development.

Pension Funding

Boroughs are authorized to create pension funds for their employees or join the Pennsylvania Municipal Retirement System. 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 actuarial funding requirements of their pension plans.¹⁶ 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.

References

1. *Local Government Financial Statistics, 1993*. Municipal Statistics and Information Division, Pennsylvania Department of Community and Economic Development, November, 1994, p.556-7.
2. 53 P.S. 46302; Borough Code, Section 1302.
3. 53 P.S. 46302.1; Different and separate tax levies.
4. 53 P.S. 6901; Local Tax Enabling Act.
5. Act 50 of 1998.
6. 53 Pa. C.S. §8421 *et seq.* Local Taxpayers Bill of Rights.
7. 53 Pa. C.S. §8571 *et seq.* Deferment Act.
8. 53 Pa. C.S. §8581 *et seq.* Homestead Act.
9. 53 P.S. 46310; Borough Code, Section 1310.
10. 53 P.S. 46202(33); Borough Code, Section 1202(33).
11. 53 P.S. 46304; Borough Code, Section 1304.
12. 53 P.S. 46402(a.1); Borough Code, Section 1402(a.1).
13. 53 P.S. 46402; Borough Code, Section 1402.
14. 53 P.S. 46006(7); Borough Code, Section 1006(7).
15. 53 P.S. 6780-1; Local Government Unit Debt Act.
16. 53 P.S. 895.101; Municipal Pension Plan Funding Standard and Recovery Act.

VI. Municipal Services

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% of all borough expenditures. Over 26% of borough road expenditures were met from liquid fuels funds.

The Code imposes explicit duties on council in regard to keeping the roads open.¹ Council has a statutory duty to repair and maintain public roads and this duty can be enforced in the courts by mandamus.² 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.³ 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.⁴

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.⁵ 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.⁶ Boroughs are authorized to establish police departments and prescribe regulations to define the duties of police officers.⁷ They may also contract for police services from adjoining municipalities.⁸ In January, 1994, 726 boroughs or 75.2% 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 in 1997 with 17.5% of all expenditures.

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.⁹ 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.¹⁰ 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.

The Code requires civil service coverage for police officers in boroughs with three or more police officers.¹¹ All appointments and promotions must be made under civil service regulations. Additional information can be found in *Model Rules and Regulations for a Municipal Civil Service Commission* published by the Department of Community and Economic Development. Any borough with three or more full-time police officers must establish a police pension fund.¹²

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.¹³ 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.¹⁴ The borough may also contract with nearby municipalities or fire companies for fire protection services. In 1997, fire protection expenditures totalled 3.0% of all borough expenditures.

The Code gives council broad 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.¹⁵ These powers extend even to the point of enacting an ordinance preventing a particular fire company from responding to fire calls within the municipality and enforcing the ordinance through an injunction.¹⁶ In almost every case, fire service activities are delegated to independent volunteer fire companies. Decisions on budgeting and paying appropriated funds are entirely at the discretion of council, unless controlled by an enforceable contractual obligation.¹⁷ The amount of borough financial support can range from substantial to nothing. A special fire tax millage may be levied for fire protection purposes.

Where the fire company is located within its borders the borough is responsible for carrying worker's compensation coverage for the firefighters.¹⁸ Where the borough is served by one or more fire companies outside its boundaries, there is a moral, but not a legal obligation to contribute to the cost of worker's compensation premiums paid by the host municipality. Boroughs are also legally liable for damages caused by action of volunteer firefighters in performing their official duties.¹⁹ 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 authorized to support ambulance and rescue services.²⁰ 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.²¹ 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 township 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.²² 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 the efforts of each other 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.²³ 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.²⁴

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.

In 1999, legislation establishing a state-wide Uniform Construction Code (UCC) was signed into law.²⁵ The UCC is expected to go into effect in 2001.

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.

Since regulations will likely be finalized at some date after December 31, 2000, the law essentially mandates the utilization of the International Building Code as the minimum standard for the construction, alteration, and repair of commercial and residential structures throughout the Commonwealth.

The International Building Code standards will go into effect 90 days after notice is published in the Pennsylvania Bulletin that the required final-form regulations have been adopted. Boroughs will have up to 90 additional days to decide whether they will assume administrative and enforcement responsibilities.

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 its own employees.
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.²⁶ 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. The operation of the authority is governed under the terms of the Municipality Authorities Act.²⁷ 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 is one of the fastest growing expenditure areas for local governments. In 1997, sewer expenditures by borough governments (not counting authorities) comprised 11.3% 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.²⁸ 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.²⁹ 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.³⁰ In 1984, only 34 boroughs operated electric utilities. However, in a number of these boroughs, net profits from sale of electricity was an important contribution to municipal revenues.

Following an adverse federal court decision in 1992, the Borough Code was amended to clarify that boroughs have the power to build, own and operate cable television systems.

References

1. 53 P.S. 46202(17); Borough Code, Section 1202(17); *Burton v. Borough of Dormont*, 437 A.2d 532, 63 Pa.Cmwlth. 43, at 47, 1983; *Drew v. Laber*, 383 A.2d 941, 477 Pa. 297, at 300, 1978.
2. *Lank v. Hughes*, 167 A.2d 268, 402 Pa. 284, 1961.
3. *Bruce v. Commonwealth, Department of Transportation*, 588 A.2d 974, 138 Pa.Cmwlth. 187, 1991.
4. 53 P.S. 46801; Borough Code, Section 1801; *Sweigart v. Borough of Ephrata*, 344 A.2d 766, 21 Pa.Cmwlth. 280, at 282, 1975.
5. 53 P.S. 46202(50); Borough Code, Section 1202(50).
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7. 53 P.S. 46121; Borough Code, Section 1121; *Almy v. Borough of Wilkinsburg*, 416 A.2d 638, 53 Pa.Cmwlth. 46, at 51, 1980; *Slifer v. Dodge*, 362 A.2d 471, 26 Pa.Cmwlth. 99, at 104, 1976.
8. 53 P.S. 46202(35); Borough Code, Section 1202(35); *Appeal from Ordinance No. 384 of the Borough of Dale*, 382 A.2d 145, 33 Pa.Cmwlth. 430, at 437, 1978.
9. 53 P.S. 748; 1974 P.L. 359, No. 10, Section 9.
10. *Model Rules and Regulations for a Municipal Civil Service Commission*, Pennsylvania Department of Community and Economic Development, January, 1994.
11. 53 P.S. 46171; Borough Code, Section 1171.
12. 53 P.S. 767; 1955 P.L. 1804, No. 600.
13. 53 P.S. 46202(21); Borough Code, Section 1202(21); *Palmer Township Fire Co. v. Palmer Township*, 1 D.&C.3d 417, at 424, 1973, C.P. Northampton Co.
14. 53 P.S. 46202(52); Borough Code, Section 1202(52).
15. *Lacey Park Volunteer Fire Co. v. Board of Supervisors of Warminster Township*, 365 A.2d 880, 27 Pa.Cmwlth. 54, at 57, 1976.
16. *West Manchester Township v. Bair Community Fire Co.*, 6 D.&C.4th 271, C.P. York Co., 1991.
17. *Commonwealth ex rel. Fortney v. Bartol*, 20 A.2d 313, 342 Pa. 172, at 176, 1941; *Uzdilla v. Hanover Township*, 39 Luz.L.Reg.Rep. 317, at 318, 1947.
18. 77 P.S. 1031; Worker's Compensation Act, Section 601.
19. 42 Pa.C.S.A. 8501; Political Subdivision Tort Claims Act.
20. 53 P.S. 46202(66); Borough Code, Section 1202(66).
21. 53 P.S. 47701; Borough Code, Section 2701; *Pidstawski v. South Whitehall Township*, 380 A.2d 1322, 33 Pa.Cmwlth. 162, at 164, 1977.
22. 53 P.S. 10503; Pennsylvania Municipalities Planning Code, Section 503(11).
23. 53 P.S. 46302; Borough Code, Section 1302(8); 24 P.S. 4401; Library Code, Section 401.
24. 53 P.S. 46202(67); Borough Code, Section 1202(67).
25. Act 45 of 1999; Statewide Building Code; Borough Code.
26. 53 P.S. 47001; Borough Code, Section 2001.
27. 53 P.S. 301 *et seq.*; Municipality Authorities Act.
28. 53 P.S. 47401; Borough Code, Section 2401.
29. 35 Pa.C.S. 7501 *et seq.*; Emergency Management Services Code, Section 7501.
30. 53 P.S. 47471; Borough Code, Section 2471.

VII. Land Use Control and Environmental Regulation

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.¹ 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 councillor 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.²

Copies of publications regarding municipal planning and zoning functions including the *Planning Code*; as well as, *Pennsylvanians Speak: Sound Land Use Forums Report*; *Land Use in Pennsylvania: Practices and Tools and Inventory*; and *the Annual Report on Land Use* are available from the Department of Community and Economic Development.

Comprehensive Planning

Development controls are the tools to implement comprehensive land use plans, or master plans as they are sometimes called. Planning is the process of making decisions today for actions to occur in the future. A comprehensive plan for a relatively 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 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 on-site 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 floodprone municipalities to adopt floodplain regulations. When adopting floodplain regulations, municipalities must address minimum standards for the 100-year floodplain established both by the National Flood Insurance Program Act and the Pennsylvania Floodplain Management Act. Municipalities wishing to adopt regulations exceeding these standards may do so. The Governor's Center for Local Government Services, Department of Community and Economic Development provides information and assistance on preparation, adoption and administration of floodplain regulations necessary under both laws, as well as information on the National Flood Insurance Program.

The National Flood Insurance Program provides for flood insurance coverage of 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.³ While the Act allows municipalities to adopt floodplain regulations exceeding minimum flood insurance program standards, the Act requires municipalities to give special consideration to certain obstructions posing special hazards in floodplains. The Act also authorizes the Department of Community and Economic Development to provide both technical and financial assistance to help municipalities administer local floodplain regulations. In addition, the Department is to oversee the coordination of local floodplain management regulations among municipalities and assure their uniform enforcement. The Department of Environmental Protection is authorized to regulate those obstructions in floodplains which cannot be regulated by the municipalities.

Stormwater Management

The Stormwater Management Act encourages the local administration and management of the accelerated storm water runoff resulting from land development.⁴ 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 a vital component 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.⁵ 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.

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.⁶ Local zoning ordinances dealing with sewage and sewers are not preempted 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.⁷

As part of the planning process, boroughs have the responsibility to review and submit sewage modules to the Department of Environmental Protection 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 the Department 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, if 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 Department 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 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 the Department. 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 101.⁸ This law requires larger municipalities to implement a local recycling program. Recycling programs are voluntary for municipalities under 5,000 population. Each larger municipality must enact its own recycling ordinance. The local ordinance must designate at least three materials that residents will be required to separate and store until collection. Leaf wastes must also be separated from the waste stream. In addition, Act 101 requires each municipality to develop and implement a comprehensive public information program on recycling and waste reduction.

The Borough Code gives council power to regulate and control collection, removal and disposal of solid waste.⁹ Courts have held this includes reasonable regulations and zoning ordinances governing sanitary landfills, not inconsistent with the Solid Waste Management Act.¹⁰ Although the Act protects hazardous waste facilities from local prohibition, boroughs can adopt reasonable regulations to protect the health and safety of residents.¹¹ 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.¹² But municipalities may not regulate solid waste disposal or landfill operations, since these are governed by state regulations.¹³ 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.¹⁴

Historic Districts

The Historic Districts Act permits municipalities to designate certain areas as historic districts subject to special controls.¹⁵ The boundaries of the district are defined by surveys of local architectural and historic resources. Controls cover demolition or alteration of existing buildings and new construction within the district. Regulations on building spacing, texture and type of materials and architectural details are intended to preserve the exterior appearance of the district. The degree of controls enacted and their ongoing administration are local choices.

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

References

1. 53 P.S. 10101; Pennsylvania Municipalities Planning Code.
2. *Board of Supervisors of West Marlborough Township v. Fiechter*, 566 A.2d 370, 129 Pa. Cmwlth. 537, 1989.
3. 32 P.S. 679.101; Flood Plain Management Act.
4. 32 P.S. 680.1; Storm Water Management Act.
5. 35 P.S. 750.1; Pennsylvania Sewage Facilities Act.
6. *Holland Enterprises, Inc. v. Joka*, 438 A.2d 1048, 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. 53 P.S. 46202(11); Borough Code, Section 1202(11).
10. *Kavanagh v. London Grove Township*, 404 A.2d 388, 486 Pa. 133, at 138, 1979; *Daugherty v. Messner*, 172 A.2d 288, 404 Pa. 235, at 237, 1961; *Lutz v. Armour*, 151 A.2d 108, 395 Pa. 576, 1959; *Kuhl v. Board of Supervisors of Greene Township*, 11 D.&C.4th 568, 1991.
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*, 489 A.2d 297, 88 Pa.Cmwlth. 603, at 609, 1985.
14. 53 P.S. 46202(4), 46202(29); Borough Code, Sections 1202(4) and 1202(29); *Commonwealth v. Sadecky*, 398 A.2d 1073, 41 Pa.Cmwlth. 86, at 89, 1979; *Talley v. Borough of Trainer*, 394 A.2d 642, 38 Pa.Cmwlth. 434, at 442, 1978; *Commonwealth v. Corliss*, 13 D.C.4th 291, 1992.
15. 53 P.S. 8002; 1961 P.L. 282, No. 167.

Glossary of Terms

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.

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. In boroughs, 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 multi-story 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 providing a constant source of funds for assessable public improvements. General obligation bonds, repayable from general revenues, as well as assessed taxes, may be used as sources for establishing such a fund.

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

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

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

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

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

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

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).

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

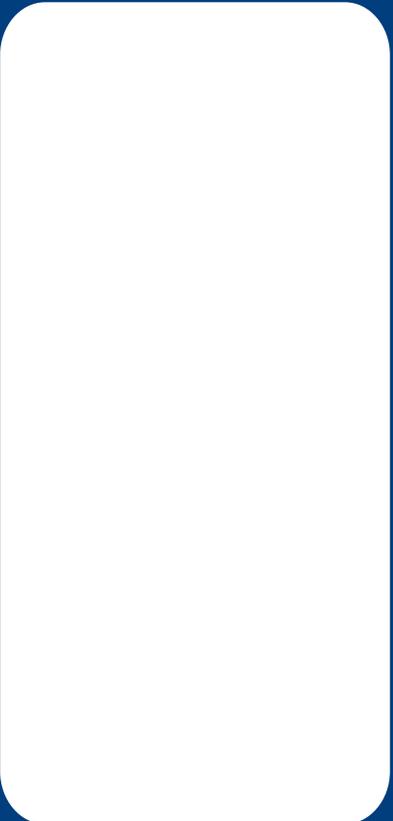
Special Revenue Funds. These funds are established to account for revenues specifically raised for a particular purpose. A special fund is usually created for each purpose (fire tax fund, library tax fund).

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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