

Pennington Borough Council Handbook and Bylaws

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I. Purpose

This document is intended as a guide and resource for Borough Council Members and other members of the Borough governing body and administration.

The text draws heavily from the language of State statutes. This is important to note because a municipality is a subdivision of the State and derives its powers and responsibilities from the State Legislature.

The information provided defines the powers and duties of local officials in their defined roles, explains key features of statutes having particular importance in the conduct of Borough affairs, and includes a “bylaws” section reflecting local rules within the powers of the municipality to prescribe.

References to New Jersey statutes are provided to permit consultation when further information is required to answer particular questions.

II. Powers and duties

A. Mayor

1. Term. The Mayor is elected for a four-year term.
2. Head of Government. The Mayor shall be the head of the municipal government and shall have all powers designated by general law. The Mayor shall see to it that the laws of the State and the ordinances of the Borough are faithfully executed, shall recommend to the Council such measures as determined by the Mayor to be necessary or expedient for the welfare of the Borough, and shall maintain peace and good order in accordance with law.
3. Approves Ordinances. In compliance with statutory procedures, the Mayor may either approve an ordinance by signing it and returning it to the Clerk or veto the ordinance by returning it to the Clerk with a statement describing objections. A veto is subject to override by a vote of two-thirds of all the members of Council. No ordinance or any item or part thereof shall take effect without the Mayor’s approval unless the Mayor fails to return the ordinance as required or Council overrides a veto. If an ordinance contains more than one distinct section, clause or item, the Mayor may approve one or more of them and veto the rest.
4. Presides at Council Meetings. The Mayor is the Presiding officer over all deliberations and shall conduct all regular and special meetings of Council. The Mayor shall vote only in the case of a tie. (See Section IV - Council Bylaws)

5. Nominates and Appoints. The Mayor shall nominate and, with the advice and consent of Council, appoint all subordinate officers of the Borough, unless the specific terms of the general law clearly require a different appointment procedure. To the extent practicable, nominations should be made within thirty (30) days of the office becoming vacant. The Mayor shall have authority to appoint, without advice and consent, ad-hoc committees and other municipal bodies as prescribed by ordinance.
6. Requires a Stand-in When Absent. If the Mayor is absent from the Borough for three days or more or unable to perform the duties of the office, the Council President shall perform all the duties of the Mayor during the absence. Where such absence is intended, the President of Council shall become the Acting Mayor until the Mayor's return. If the Council President is unable to perform the duties of the Acting Mayor, then the Council Member with the longest consecutive tenure on the council body may act temporarily for the President of the Council.

Relevant Legal Authority: N.J.S.A. 40A:60-5; N.J.S.A. 40A:60-3; N.J.S.A. 10:4-6, et seq..

B. Council

1. Term. Council Members are elected for a 3-year term.
2. General Powers. Borough Council is the legislative body of the Borough. Subject to the provisions of statute and other general law, Council shall have full power to exercise all powers of local government in such manner as Council may determine.
3. Specific Powers. Subject to general law and the provisions of statute. Council may:
 - a. pass, adopt, amend and repeal any ordinance or, where permitted, any resolution for any purpose required for the government of the municipality or for the accomplishment of any public purpose for which the municipality is authorized to act under general law;
 - b. control and regulate the finances of the municipality and raise money by borrowing or taxation;
 - c. create such offices and positions as Council deems necessary, provided the appointed officers shall perform the duties required by law and the ordinances of the Borough;
 - d. investigate any activity of the municipality;
 - e. remove for cause any officer of the municipality, other than those officers excepted by law;
 - f. override a veto of the Mayor as provided above.

4. Council shall have all the executive responsibilities of the Borough not placed by general law or applicable statutes in the office of the Mayor.
5. Whenever Council fails to confirm the Mayor's nomination of an official to a subordinate office within 30 days of being presented the nomination, Council shall make the appointment if there are three affirmative votes for it, with the Mayor not having a vote except in the case of a tie.
6. Council may, by ordinance, delegate all or a portion of the executive responsibilities of the municipality to an administrator, who shall be appointed pursuant to N.J.S.A. 40A:9-136.
7. Council may, by ordinance, adopt an administrative code, setting forth the manner in which the Council shall perform its duties. If Council organizes itself into standing committees, the administrative code shall specify the powers and duties of such committees and the manner in which they are appointed.
8. Council may create such advisory councils to the Borough as it may choose.

Relevant Legal Authority: N.J.S.A. 40A:60-6, 60-7.

C. Council President

The Council President is elected by Council at the annual reorganization meeting and serves for one year. The Council President presides at meetings of Council in the Mayor's absence but maintains the right to vote. When the Mayor is absent from the Borough for three days or more or is unable to perform the duties of the office, the Council President serves as Acting Mayor and is charged with performing all the duties of Mayor in the Mayor's absence.

D. Mandatory Legislative Procedures

Three types of legislation can be enacted at meetings: motions, resolutions and ordinances, all of which must be moved, seconded, and voted on at least once.

1. Motions

Actions that do not create municipal laws, spend money or commit any funds may be taken by simple motions such as approval of minutes, direction to perform a task, or actions taken by the Mayor to open or close a meeting to public comments and questions or to adjourn.

2. Resolutions

Resolutions are formal actions that are written out before a meeting when the Borough Council's intent is known or action is required or routine.

Resolutions are passed by a one-time vote upon formal roll call. A copy of each adopted Resolution is formally filed by a clearly identified resolution number and description. Some may require approval by the affirmative votes of a two-thirds majority rather than a simple majority, such as when:

- a. Introducing and adopting the municipal budget;
- b. Making emergency appropriations;
- c. Authorizing payment of bills;
- d. Fixing interest rates on past-due taxes;
- e. Refunding tax overpayments;
- f. Awarding contracts;
- g. Transferring between appropriation accounts or reserves.

3. Ordinances

Ordinances are local laws. They address such subjects as traffic, debt, creating municipal positions and departments, salaries or salary ranges for municipal employees, zoning, construction, licensing and other regulation. Once enacted, ordinances usually remain permanently in effect unless a rescinding ordinance is enacted. At least a majority of the full Borough Council must vote in favor on an ordinance for its adoption.

- a. Introduction and adoption: Ordinances are voted on twice, first to introduce the ordinance and then, after an advertised public hearing, a second to adopt it.
- b. Advertising: By law, the Clerk must advertise the pending ordinance at the time of introduction and at least once no less than 10 days before public hearing. The advertising must be placed in a newspaper designated by the Borough Council for the publication of the Borough's legal advertisements.
- c. Public Hearing: All ordinances must receive a public hearing prior to adoption on a date fixed at introduction and then advertised. The hearing must be open to all present for comments. If necessary the Borough Council may continue the public hearing at a later date.

E. Council Committees

1. Appointment. At the first regular meeting, the Mayor shall recommend to the Council President and Council the appointment of all committees of Council. Standing committees, consisting solely of Council members, are appointed to facilitate the work of the Council within statutory limits.
2. Members. Each Standing Committee shall consist of no more than 3 members of the Council.

3. Committees: The current Council committees include:
 - a. Finance
 - b. Personnel
 - c. Public Safety
 - d. Public Works
 - e. Building Department/Construction Code Office/Zoning Administration
4. Chairperson Duties and Responsibilities. The Committees are intended to facilitate the policy and decision-making work of the Council. The Chairs of standing committees do not have any operational responsibility for the administrative departments of the Borough government (i.e. Public Works, Public Safety, Building Department etc.). All operational concerns and issues are the responsibility of the Borough Administrator and respective department heads.
5. Succession. The Mayor and Council shall name a successor to any chair in case of removal, resignation or death while serving in such capacity.
6. Removal. The Borough Council, by a majority vote, shall have the power to remove a member of a committee for cause.
7. Ad-Hoc Committees. Ad-hoc Committees shall be appointed by the Mayor for purposes other than those included in the duties of the standing committees.

F. Borough Boards and Committees Having Council Liaisons

1. By recommendation of the Mayor, Council shall by resolution appoint one or more members of the Governing Body to serve as a liaison for boards, committees and any other agencies as they see fit.
2. Borough Council Members have been appointed to serve as liaisons on the following boards and committees:
 - a. Parks & Recreation Commission
 - b. Board of Health
 - c. Library Board of Trustees
 - d. Environmental Commission
 - e. Shade Tree Committee
 - f. Open Space Committee
 - g. Economic Development Commission
 - h. Senior Advisory Board
 - i. Historic Preservation Commission
 - j. Hopewell Valley Green Team

G. Board of Health

The Board of Health is mandated by statute. (NJSA 26:3-1) It consists of five members appointed by the Mayor with the advice and consent of Council. The Board meets quarterly and serves without compensation. (Borough Code, Ch.30)

The Board of Health has all the rights powers and duties conferred upon local boards of health by statute. It is authorized to pass, alter or amend ordinances and make rules and regulations in regard to the public health within its jurisdiction for the purposes prescribed by statute. These statutory purposes range from protection of the public water supply and prevention of pollution, to the licensing and regulation of the sanitary conditions of hotels, restaurants, cafes and other public eating houses, to the prevention and prohibition of nuisances. (N.J.S.A. 26:3-2, -31)

The Borough Board of Health has not been active in passing ordinances in recent years. When it has, advertising and related scheduling services were provided by the Borough Clerk. Borough Council, at the request of the Board or in collaboration with it, may also enact health-related ordinances.

An appointed Health Officer serves as the general agent for enforcement of applicable ordinances and the sanitary laws of the State. All boards of health in municipalities containing a population of 2,000 inhabitants or more are also required to have at least one registered environmental health specialist appointed by the board.

As permitted by statute, Pennington Borough and the Pennington Board of Health contract with the Township of Montgomery and the Montgomery Township Board of Health to provide all health services to Pennington required by law, using personnel properly licensed to perform such services. The Township Health Officer is designated by contract to be the Borough's Health Officer and to serve as its general agent for the enforcement of Pennington ordinances and the Public Health laws of New Jersey.

The core documents prescribing State-mandated health services, activities and standards are N.J.S.A. 26:3A2-10 and *Public Health Practice Standards of Performance for Local Boards of Health in New Jersey* as set forth in N.J.A.C. 8:52-1.1, et seq.. These documents are incorporated by reference in the shared services agreement with Montgomery Township.

H. Borough Clerk

1. Statutory Position. Every municipality must have a certified municipal clerk, appointed by the governing body for a three-year term. The Borough Clerk currently serving the Borough is tenured.
2. Duties. The Borough Clerk shall perform the following duties prescribed by statute:
 - a. act as secretary to the municipal corporation and custodian of records;
 - b. act as secretary to the governing body, preparing meeting agendas as directed, attending all meetings of the governing body, retaining the original copies of all ordinances and resolutions, recording the minutes of every meeting, and performing related responsibilities;
 - c. serve as chief administrative officer in all elections;
 - d. serve as chief registrar of voters;
 - e. serve as the administrative officer responsible for the acceptance of applications for licenses and permits and the issuance of licenses and permits;
 - f. serve as coordinator and records manager responsible for implementing local archives and records retention programs required by law;
 - g. perform such other duties as are imposed by statute, regulation or municipal ordinance or regulation.

Applicable statutes: N.J.S.A. 40A:9-133.

I. Borough Administrator

1. Office of Administrator. A Borough ordinance creates the position of Borough Administrator and specifies that the person appointed shall serve at the pleasure of Council for a term of one year. Required education, experience and abilities of the Administrator are also specified. The position is assigned a central leadership role in discharging the executive responsibilities of the Borough.
2. Appointment. The Borough Administrator is appointed by the Mayor with the advice and consent of Council.
3. Purpose. The Borough Administrator is the chief administrative officer of the Borough and is responsible to the Mayor and Council for the proper and efficient administration of the affairs of the Borough, integrating and coordinating the functions of the Borough according to its policies.

4. Specific Duties. The specific responsibilities of the Borough Administrator, as defined by the current ordinance, are the following:
 - a. handle all day-to-day Borough operations, including personnel management, budget control, departmental oversight and municipal operations;
 - b. coordinate operations of all departments to enhance the efficiency of overall Borough activities;
 - c. handle public relations with residents, including citizen complaints and/or requests for services;
 - d. prepare job descriptions and performance evaluations for all non-police employees;
 - e. analyze, review and suggest revisions of municipal policies, procedures, resolutions and ordinances to make local government more responsive to the needs of its residents;
 - f. know state regulations and implement them in a timely manner and keep current of changes;
 - g. review municipal programs/activities and evaluate their administration, objectives, efficiency, effectiveness and suitability to current conditions, costs and accomplishments, and suggest, develop and organize new programs where necessary;
 - h. advise the governing body in matters of policy;
 - i. prepare and develop, with departmental input, the annual budget for presentation to the governing body;
 - j. perform any other duties or tasks assigned by the governing body.
5. The Administrator attends all Borough Council meetings.

Relevant Legal Authority: N.J.S.A. 40A:9-136,-137; Borough Code, Chapter 39, Sections 39-23 through 39-27.

J. Interrelationships

1. The Administrator serves as a liaison between the Borough Council and the departments, boards and officials of the Borough. **Council Members seeking information from employees and officials should communicate through the Administrator.**
2. The Mayor shall serve as the liaison between and among Borough Council and all boards, committees and agencies or organizations not assigned to a specific Council Member for liaison purposes.
3. Council Committees advise Mayor and Council and perform such other functions as may be delegated to them by ordinance.
4. Council members liaise with boards and committees and report to Mayor and Council on developments.

III. Key Statutes

A. Open Public Meetings Act (OPMA)

1. Legislative Policy

The public has a right to have adequate advance notice and the right to attend all meetings of Borough Council and other public bodies at which any business affecting the public is discussed or acted upon in any way, subject only to exceptions in the public interest defined by statute. A covered body must be organized by law and collectively empowered as a multi-member voting body to spend public funds or affect persons' rights.

2. Definition of Meeting (Requiring Adequate Notice)

A meeting is any gathering whether in person or by means of communication equipment which is attended by or open to all of the members of a public body held with intent to discuss or act as a unit upon specific public business. However, a meeting does not include any such gathering (1) attended by less than an effective majority of the members of the public body or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.

3. Definition of Adequate Notice

Adequate notice means written advance notice of at least 48 hours giving the time, date, location, and to the extent known, the agenda of any regular, special or rescheduled meeting, stating whether formal action may or may not be taken. The meeting notice must be (1) prominently posted in at least one public place reserved for such or similar announcements, (2) mailed, telephoned, telegrammed or hand delivered to at least two newspapers designated by the body to receive such notices, and (3) in the case of the Borough, filed with the municipal clerk. A 48-hour notice is not required for any meeting covered by the annual notice of meetings published by the municipality.

4. Annual Notice

Within 7 days of the annual reorganization meeting, the governing body must publish and maintained posted throughout the year in the public place reserved for such notices, mail to the newspapers described above and submit to the municipal clerk, a schedule of regular meetings to be held during the year. The schedule must contain the location of each meeting to the extent known, and the time and date of each meeting. In the event of a change during the year, the revised schedule must be published and circulated in the same manner as the initial annual notice.

5. Emergency Exception to Notice Requirement

A public body may hold a special meeting without 48-hour notice upon the affirmative vote of three quarters of the members present if all of the following conditions are satisfied:

- a. the meeting is required to deal with a matter of such urgency and importance that a delay for the purpose of providing adequate notice would be likely to result in substantial harm to the public interest;
- b. the meeting is limited to discussion of and acting with respect to such matter of urgency and importance;
- c. notice of such meeting is provided as soon as possible following the calling of the meeting, by posting written notice in at least one place reserved for public notices and by notifying the two newspapers designated for notices; and
- d. either the need for such a meeting could not have reasonably been foreseen at a time when adequate notice could have been provided, or adequate notice could have been provided but the public body nevertheless failed to do so.

6. Electronic Notice

A public body may provide electronic notice of any meeting through the Internet, although in ordinary circumstances, such notice may not substitute for “adequate notice” defined above. However, during a period declared under State law a state of emergency, public health emergency or state or local disaster emergency, the body may conduct remote meetings electronically and provide electronic notice in lieu of adequate notice. To the extent practicable, the meeting should be limited to subjects relevant to the emergency. However, this provision shall not be construed to limit any authorization under other law.

7. Notices of Ordinance Introduction, Public Hearing and Adoption

Required notices for ordinance introduction, hearing and adoption are not governed by the OPMA but by separate statute. These notices must take the form of paid legal advertisements and be placed as such.

8. OPMA Requirements for Conduct of Meetings

- a. Sunshine Statement: At the commencement of every meeting of a public body, the presiding officer shall announce publicly and cause to be entered into the minutes an accurate statement that (a) adequate notice of the meeting has been provided, specifying the time, place and manner of notice, or (b) that adequate notice was not provided, describing how the conditions for emergency notice are satisfied, or if the need for notice could have reasonably been foreseen but it was not provided, the reason it was not provided.
- b. Public Comment: The Open Public Meetings Act requires as a minimum that *a portion of every meeting be set aside for public comment on any governmental issue that a member of the public feels may be of concern to the residents of the municipality.* The

length of this portion of the meeting is subject to the discretion of the governing body.

- c. Discretion in Conduct of Meeting: Nothing in the Open Public Meetings Act limits the discretion of Council in permitting, prohibiting or regulating the active participation of the public at any meeting as long as the minimum standard for public comment, described above, is met.
- d. Two Periods for Public Comment: A common practice is to provide two periods for public comment, one at the beginning of the meeting for comment on agenda items and one at the end of the meeting for general comment not restricted to the agenda. This allocation permits Council to hear public comment on agenda items before they vote while deferring comment of a more general nature until the business before Council is completed.

9. Meetings Not Required to be Public

All meetings of public bodies must be open to the public at all times subject only to the exceptions defined by statute, when meetings in executive or closed session are permitted. The exceptions involve discussion of the following matters:

- a. matters required to be confidential by federal law, State statute or rule of court;
- b. matters in which release of information would impair a right to receive federal funds;
- c. matters necessitating disclosure of information that would constitute an unwarranted invasion of individual privacy, unless the individual concerned has requested in writing that the material be disclosed publicly;
- d. collective bargaining agreement and related negotiations;
- e. matters involving purchase, lease or acquisition of real property or other investment of public funds if discussion in public could adversely affect the public interest;
- f. discussion of tactics and techniques used in protecting public safety and property, and investigations of violations of law;
- g. pending or anticipated litigation or contract negotiation (other than labor negotiation covered above), or matters falling within the attorney-client privilege;
- h. personnel matters, unless (following Rice notice) all the individual employees or appointees whose rights could be adversely affected request in writing that the matter or matters be discussed in public;
- i. deliberations after a public hearing that may result in the imposition of a specific civil penalty or the suspension or loss of license.

10. Procedural Requirements for Going into Executive or Closed Session.

Before going into closed session, the governing body must first adopt a resolution stating the general nature of the subject to be discussed and

as precisely as possible, the time when and the circumstances under which the discussion in closed session can be disclosed to the public.

11. Minutes

Minutes of all meetings are required by law. The minutes must show at a minimum the time and place of the meeting, the members present, the subjects considered, the actions taken, the vote of each member and any other information which in a particular matter (eg, land use) must be recorded in the minutes.

Relevant Legal Authority: N.J.S.A. 10:4-6, et seq.

B. Local Government Ethics Law

1. Covered Officers and Employees; Definitions

- a. The Local Government Ethics Law establishes a statutory code of ethics for Local government officers and employees. Covered local government officers include, among others, Members of Council and the Planning Board and managerial executive employees as defined by regulation.
- b. Members of Council and other local “officers” must also file annual financial disclosure statements with the Department of Community Affairs. The filed disclosure statements are public records.
- c. Covered local employees (as opposed to “officers”) include all paid employees of the Borough as well as any person serving on a Borough board, committee or commission that performs a function other than of a purely advisory nature. Coverage is broad. It is not affected by whether the person is compensated or not, part-time or full-time. N.J.S.A. 40A:9-22.3.

2. The Code of Ethics set forth further below incorporates the following definitions of key terms:

- a. “member of immediate family” means a spouse or dependent child residing in the same household;
- b. “business organization” means any corporation, partnership, firm, enterprise, franchise, association, trust, sole proprietorship, union or other legal entity;
- c. “interest” means the ownership or control of more than 10% of the profits, assets or stock of a business organization (not including control of the assets of a non-profit entity or labor union).

3. Prohibited Conduct under the Local Government Ethics Law

- a. The following ethical standard is likely to raise the most frequent questions for decision-makers:
 - i. No Member of Borough Council shall act in an official capacity in any matter where the Member, or someone in the Member’s immediate family, or a business organization in which the

Member has an interest has a **direct or indirect financial or personal involvement** that might reasonably be expected to impair the Member's objectivity or independence of judgment.

ii. The term "**involvement**" as used here is different than an "interest" as earlier defined. Whether a Member has a prohibited "involvement" in a matter before Council often requires a case by case judgment based on the particular facts. Factors weighed in the process of making a judgment include not only actual conflict of interest but also the "appearance of conflict."

iii. Members are advised to ask for advice with respect to particular situations they have any uncertainty about. Advice may be obtained from the Borough Attorney and/or advisory opinions as needed may be obtained from the Local Finance Board in the Department of Community Affairs.

b. The other provisions of this code of ethics include:

i. No Member and no one in a Member's immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity which is in substantial conflict with the Member's proper discharge of his duties in the public interest.

ii. No Member shall use or attempt to use the Member's official position to secure unwarranted privileges or advantages for himself or others.

iii. No Member shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice the Member's independence of judgment in the exercise of official duties.

iv. No Member or anyone in the Member's immediate family or any business organization in which any of them has an interest shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment or other thing of value that may appear to be given or offered for the purpose of influencing the Member, directly or indirectly, in the discharge of official duties. (This prohibition does not apply to solicitation or acceptance of a contribution to the campaign of a Member who is an announced candidate for elective public office and has no knowledge or reason to believe that the contribution was made with the intent of influencing the Member in the discharge of official duties.)

v. No Member shall use or allow to be used the Member's office or any information not generally available to the public, received in the course of being in office, for the purpose of securing

financial gain for the Member or the Member's immediate family or any business organization with which the Member is associated.

vi. No Member or business organization in which the Member has an interest shall represent any person or party other than the Borough in connection with any cause, proceeding, application or other matter pending before Council or any agency in the Borough. (This provision does not apply to one employee representing another in the context of official labor union or similar representational responsibilities.)

vii. A Member shall not be prohibited from making an inquiry for information on behalf of a constituent if no fee, reward or other thing of value is promised or given to the Member or the Member's immediate family, directly or indirectly, in return.

- c. Nothing shall prohibit a Member or the Member's immediate family from representing themselves in negotiations or proceedings concerning his or their own interests, provided such activity is compliant with the other provisions.
- d. No Member shall be deemed in conflict with these provisions if by participating in Council action the Member obtains material or monetary gain as part of a business, profession, occupation or group, provided any such gain could reasonably be expected to accrue to other members of the business, profession, occupation or group.

C. Laws Against Discrimination

The New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-2.1, et seq., prohibits unlawful discrimination in employment, public accommodation, housing, land use, lending and association membership. Compliance with Equal Employment Opportunity by vendors and contractors is a condition of every Borough contract, whether for services or for construction of public works.

Unlawful Employment Practices

The NJLAD defines as an unlawful employment practice and an unlawful discrimination the refusal to hire or employ or to bar or discharge from employment, or require to retire, unless justified by lawful considerations other than age; or to discriminate in compensation or in terms, conditions or privileges of employment, for a reason prohibited by the Law. The reasons prohibited by law include:

“race, creed, color, national origin, ancestry, age,

marital status, civil union status, affectional or sexual orientation, genetic information, pregnancy or breast-feeding, sex, gender identity or expression, disability or atypical heredity cellular or blood trait of any individual, or . . . liability for service in the Armed Forces of the United States, or the nationality of any individual, or . . . the refusal to submit to a genetic test or make available the results of a genetic test . . .” (N.J.S.A. 10:5-12)

Borough Personnel Policies and Procedures make clear that the Borough is committed to the principle of equal employment opportunity and anti-discrimination pursuant to Title IV of the 1964 Civil Rights Act as amended by the Equal Opportunity Act of 1972 and the NJLAD. Decisions regarding hiring, promotion, transfer, demotion or termination are based solely on the qualifications and performance of the employee or prospective employee. If any employee or prospective employee feels that they have been treated unfairly, they have the right to address their concern with their supervisor, or if they prefer, their Department Head, the Borough Administrator, the Borough Clerk or the Borough Attorney. See the full text of Borough Policy 1.1, Equal Employment Opportunity Policy.

Americans With Disabilities Act

In compliance with the Americans with Disabilities Act, the ADA Amendments Act and the NJLAD, the Borough shall not discriminate against any employee or job applicant on the basis of a known or perceived disability and shall make reasonable accommodations for applicants and employees with disabilities, provided the individual is otherwise qualified to safely perform the essential functions of the job and the accommodation does not impose undue hardship on the Borough.

As required by law, the Borough Administrator shall engage in an interactive dialogue with disabled employees and prospective employees to identify reasonable accommodations. However, the ADA does not require the Administrator to offer permanent “light duty” or relocate essential job functions or provide personal use items such as eyeglasses, hearing aids, wheelchairs and the like. See the full text of Borough Policy 1.2, Americans With Disabilities Act Policy.

Policy Against Harassment/Sexual Harassment

The Borough prohibits harassment on the basis of actual or perceived sex, race, creed, color, religion, national origin or other characteristic for which discrimination is prohibited. While it is not

always easy to define precisely what harassment is, it includes slurs, epithets, threats, derogatory comments, unwelcome jokes, teasing and other verbal and physical conduct.

The Borough has a strong commitment to maintaining a workplace free of sexual harassment. Unwelcome sexual advances, requests for sexual favors and other verbal, physical or visual conduct of a sexual nature constitutes harassment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for an employment decision affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

It is the responsibility of all employees to bring these kinds of problems to the attention of the appropriate officials so that steps may be taken to correct them, whether the person violating the policy is a fellow employee, management representative, supplier, volunteer or business invitee.

This policy must be reinforced with effective training, for both supervisory and non-supervisory employees. The goal of effective training is to build a culture in which all employees feel safe. Training should empower participants to intervene appropriately when they witness harassment or discrimination and include tools for response and lodging complaints. See the full text of Policy 1.7, Policy Against Harassment; and Policy 1.8, Anti-Sexual Harassment Policy.

Anti-Discrimination Principles Applied to the Hiring Process

The Borough Personnel Policies and Procedures Manual describes a procedure for recruiting and hiring new employees, coordinated by the Borough Administrator in conjunction with the Borough Clerk, to ensure compliance with contractual, legal and equal opportunities and the Equal Pay Act.

Notification of vacancies are to be distributed to all departments and where positions are advertised, the media or other periodical used must have as wide circulation as possible to encourage applications from candidates from diverse backgrounds. These advertisements must prominently state that the Borough is an equal opportunity employer.

All candidates must complete a uniform application form. A resume will not be considered a substitute. The application will be a confidential document.

The Borough Administrator or Supervisor will coordinate the interview process including the scheduling of applicants and development of interview questions and standards to measure candidate responses. All questions must be in accordance with the New Jersey Division of Civil Rights Guidelines for Pre-Employment Inquiries.

After an offer of employment is made and prior to commencing employment, the Borough Administrator may require applicants to pass a physical examination in order to insure that they can perform the duties of their position without injury to themselves or others. The same post-offer physical examination must be performed on all applicants for a particular position.

The final decision will be made by the Borough Council after all references and other information has been verified. The employment offer must be made in a letter to the candidate outlining all terms and conditions of the offer, with a deadline for acceptance.

After acceptance, but before starting employment, all new employees shall be required to fill out an employment verification form and provide acceptable proof of right to employment in the United States.

All applications, interview notes, reference checks and other documents generated during the hiring process must be returned to the Borough Clerk. Documents related to the successful candidate will be placed in the employee's official personnel file except medical records must be maintained in a separate file. All records and documents relating to the other candidates must be retained for at least one year. All records and documents created during the hiring process are confidential and must be retained in a locked cabinet.

See full text of Procedure 6.1, Employment Procedure.

D. Municipal Vacancy Law

When the office of Mayor or Council Member becomes vacant by reason of death, resignation, moving out of town or the various other reasons recognized as creating a vacancy under the Municipal Vacancy Law, N.J.S.A. 40A:16-1, et seq., the vacancy must be filled in accordance with the following procedures.

General Requirements

1. If the vacancy occurs after September 1 of the next-to-last year before expiration of the officeholder's term, Council may fill the vacancy by

appointment. The process for making that appointment is described further below.

2. If the vacancy occurs at any other time, the office must be filled for its unexpired term at the next general election. The date of that election may not be less than 60 days after the occurrence of the vacancy. In the meantime, Council may fill the vacancy temporarily by appointment.

3. An appointment by Council to fill a vacancy in the office of Mayor shall be by a majority vote of the entire membership of Council (i.e., by four affirmative votes).

4. An appointment to fill a vacancy in the membership of Council shall be by a majority vote of the remaining members of Council. The Mayor shall be permitted to vote only in the case of a tie.

Appointment Procedures

5. If the officeholder whose office has become vacant was elected as the nominee of a political party, the municipal committee of that party shall no later than 15 days after occurrence of the vacancy, present to Council the names of 3 nominees to fill the vacancy. No later than 30 days after the occurrence of the vacancy, Council shall appoint one of the 3 nominees. If Council fails to do so, the municipal committee shall, within the next 15 days, appoint one of the nominees and that person shall be sworn in immediately.

6. If the municipal committee fails to submit 3 nominees within 15 days after occurrence of the vacancy, Council may within the next 15 days appoint a person from the same political party as the officeholder whose office has become vacant.

7. If the officeholder whose office has become vacant was not the nominee of a political party, Council may appoint a successor without regard to party.

Failing or Declining to Make an Appointment

8. If Council fails or declines to fill a vacancy in the membership of Council by appointment within the time prescribed, the office shall remain vacant for the remainder of the term or until a successor is elected and qualified.

9. If Council fails or declines to fill a vacancy in the office of Mayor in conformance with prescribed procedures, and the vacancy occurs in other than the final 6 months of the Mayor's term, the Borough Clerk

shall fix a date for a special election to fill the vacancy. The special election may not be held less than 45 days nor more than 50 days after expiration of the time for filling the vacancy. If that date falls within 20 days prior to the general election or other scheduled election in the Borough, the vacancy shall be filled at that election and not by special election. If the date prescribed for a special election falls within 20 days after the general election or other scheduled election in the Borough, then the special election to fill the vacancy shall be held not less than 20 days nor more than 25 days from the date of the previously scheduled election.

10. If the vacancy in the office of Mayor occurs in the final 6 months of the Mayor's term, no special election shall be held.
11. No appointment shall be made by Council to fill a mayoral vacancy after a date for a special election has been fixed.

Vacancy After Election Before Taking Office

12. If after election for Mayor or Council Member the person elected shall die before commencement of the term, the applicable municipal committee shall appoint another person to fill the position until the next regular municipal election. If the person was not the nominee of a political party, Council shall appoint a successor to fill the office until the next regular municipal election without regard to party.

Other Statutory Provisions

13. All appointees to fill a vacancy, whether for an unexpired term or temporarily, shall take office immediately after appointment and qualification.
14. Persons elected to serve for an unexpired term shall take office immediately upon certification of the results of the election.
15. Persons elected to serve a full term shall take office on the date fixed for the commencement of the term.
16. The Municipal Vacancy Law and legal counsel should be consulted for unique situations. The statute also prescribes procedures for fixing the date of a special election, nomination of candidates for that election and the like.

IV. COUNCIL BY-LAWS

A. Rules of Conduct

1. Compliance with Law. All Council Members embrace their commitment to uphold the law and conform their actions to it at all times, consistent with their oath of office. This commitment includes meticulous compliance with the Open Public Meetings Act, the Local Government Ethics Law and the Law Against Discrimination.
2. Political Activity. Members shall not engage in partisan political activity on municipal time or property. This shall not be construed to prevent members from becoming or continuing to be members of any political party, club or organization, attending political meetings or expressing partisan political views or circulating petitions on public questions outside of working hours and off municipal property. Nor shall members be prevented from voting with complete freedom in any election.
3. Attendance. All Members recognize their obligation to attend conscientiously the meetings of Council and the committees and liaison activities to which they have been appointed.
4. Role as Liaison. No Council Member may vote on any board or committee on which they serve as liaison. In other words, Council liaisons are not voting members of the boards, committees, or commissions for which they serve as Council liaison.
5. References. The Mayor shall refer all communication addressed to Mayor and Council, petitions, proposed ordinances, proposed resolutions and reports, to the appropriate committees of Council as soon as practicable after receipt by the Borough.

B. Scheduling of Council Meetings

1. Annual Meetings. An annual Reorganization meeting shall be held within the first 7 days of January to administer the oath of office for newly elected members. Members shall elect one member as Council President to serve for the Calendar Year.
2. Regular Meetings. Regular council meetings shall be set by Resolution at the annual Reorganization meeting. Borough Council has traditionally conducted its regular meetings on the first Monday of every month at 7:00 p.m.
3. Special Meetings. The Mayor shall, when necessary, call special council meetings with at least 48 hours' notice to council members and the public. Any four members of Council may call such meetings if the Mayor neglects or refuses to do so.
4. Executive Sessions. Closed executive sessions shall be noticed and held in accordance with N.J.S.A. 10:4-12(b).

5. Actions to be Taken. Borough Council may not take action on any matter except in a regular, special or emergency meeting. No actions may be taken during closed sessions.

C. Agenda

1. The meeting agenda shall be prepared by the Mayor, the Borough Administrator and the Clerk. Any item that Council wishes to add to the agenda must be provided by the Wednesday of the week before the meeting.
2. Agendas for regular meetings will be made available to the Council and posted on the Bulletin Board in Borough Hall and the Borough website on the Friday before the Monday evening meeting.

D. Notice

Notice of all meetings shall be given by the Borough Clerk in accordance with the Open Public Meetings Act.

E. Quorum

1. Three (3) Council Members and the Mayor or four (4) Council Members in the absence of the Mayor shall constitute a quorum for transacting business.
2. In the Absence of the Mayor, the Council President shall preside as Mayor. If the Council President is unable to attend, the Council Member with the longest tenure on the Governing Body shall act temporarily for the President of the Council. The Council President or senior member shall retain the right to debate and vote on all questions before Council.

F. Order of Business

1. Subject to Authority of Mayor and Council. The order of business prescribed below may be changed by the Mayor or by a majority vote of the Council members present.
2. Regular Meetings
 - a. Meeting called to Order - Mayor
 - b. Roll call – Borough Clerk
 - c. Open Public Meeting Statement
 - d. Meeting Open to the Public for Comment on Agenda Items Only.
The speaker shall:
 - i. State their full name,
 - ii. State their full address
 - iii. Have 3 minutes to speak and can be permitted additional time by the Mayor
 - e. Mayor's Business
 - f. Approval of Minutes

- g. Ordinances for Introduction
- h. Ordinances for Public Hearing and Adoption
- i. Committee Reports
- j. Council Discussion
- k. Professional Reports
- l. Resolutions – Routine business may be done by Consent Agenda.
Any council member has the right to pull a resolution from this Agenda.
- m. Presentation and Approval of Bills and Claims
- n. Meeting Open to Public for General Comment
- o. New Business
- p. Adjournment

3. Special Meetings

- a. Meeting called to Order – Mayor
- b. Roll call – Borough Clerk
- c. Open Public Meeting Statement
- d. Open to the Public – Agenda Items only. The speaker shall:
 - i. State their full name,
 - ii. State their full address
 - iii. Have 3 minutes to speak and can be permitted additional time by the Mayor
- e. Business in order stated in the Notice
- f. Adjournment

B. Procedural Rules

- 1. OPMA Compliance. Meetings shall be held in compliance with the Open Public Meetings Act, N.J.S.A. 10:4–6 et. seq. (Refer to Rules of Conduct - section III)
- 2. Robert's Rules. All deliberations shall be governed by Robert's Rules of Order unless otherwise provided herein or by statute or Borough ordinance.
- 3. Debate. Every member of the Council shall request recognition of the Chair and address the chair for no more than 5 minutes unless consented to by the majority of the members present. The Mayor may engage in debate in matters brought before the Council.
- 4. Decorum. The Mayor shall preserve order and decorum on all occasions and may cause the removal of all persons who interrupt Council proceedings. To preserve order while a Member is speaking all others shall refrain from interruptions.

5. Recognition. The Mayor shall recognize speakers entitled to the floor and guide the proceedings. No Council member shall be denied recognition should they choose to speak.
6. Points of Order. The Mayor shall decide all questions on points of order.
7. Seconds. No question shall be put or debated unless seconded.
8. Reconsideration. Once a motion has been decided, a member of the majority vote may move to reconsider more than once.
9. Action. A motion is deemed to be in possession of the Borough Council when it has been stated by the Presiding officer or made by a committee report.
10. Motion. When a question is before the Borough Council, the only motions in order shall be in the order they stand and as follows:
 - a. to adjourn
 - b. to lay on the table
 - c. for the previous question
 - d. to postpone
 - e. to refer
 - f. to amend
11. Voting. The Mayor shall put to vote all questions which are regularly moved or otherwise arise in the course of proceedings.
12. Record Votes. The ayes and nays may be called for by a member or the Presiding officer, a record of which will be entered in the minutes. A member may change their vote at any time before the result is announced.
13. Disputes. Robert's Rules of Order shall govern in cases of disputes over the interpretation of rules and procedures.
14. Public Comment. The public shall be offered the opportunity to address the Borough Council at Council Meetings as follows:
 - a. Initial Comment Period (for Items on Agenda) - Members of the public may address the Council on any item listed on the agenda. Members of the public are asked to provide their name and address for the record and to limit their comments to no more than 3 minutes.
 - b. Ordinance Public Hearings - Members of the public may address the Council relative to specific ordinances scheduled for public hearing and adoption. Members of the public are asked to provide their name and address for the record and to limit their comments to no more than 3 minutes. It is noted that there is no public hearing

requirement for the introduction of Ordinances. However, the public may comment on such introductory ordinances during the initial comment period at the beginning of the Council meeting.

- c. Second Public Comment Period (Unrestricted as to Subject) - At the end of each Council meeting the public shall be provided the opportunity to address the Council on any matter of concern. Members of the public are asked to provide their name and address for the record and to limit their comments to no more than 3 minutes.
- d. Responses to Comments - Council members and the Mayor shall be given the opportunity to respond to the public's questions and comments.

15. Adjourn. A motion to adjourn shall always be in order except when a member is in possession of the floor, when the ayes and nays are being called and the members voting, and when adjournment was the last preceding question.

16. Record of Actions Taken.

- a. Ordinances and Resolutions - The Clerk shall maintain and keep all adopted Ordinances and Resolutions on file and submit the same to the website.
- b. Reports - The Clerk shall file all reports by Council Members and all papers presented to or acted upon by the Council.
- c. Minutes - The Clerk shall maintain an electronic copy of meeting minutes and make them available to the Mayor and Council Members and, once approved, publish them on the Borough website. The minutes shall indicate at minimum: date, time, and name of attendees and those absent, proposals considered and a record of any vote taken and how each member voted.

Relevant Legal Authority: N.J.S.A. 40A:60-3; N.J.S.A. 10:4-12, N.J.S.A. 10:4-6.

H. Adoption and Amendments

1. Adoption

The Council Bylaws shall be adopted by a resolution of the Council concurred in by a majority of the members of the Council. The bylaws shall become effective immediately after adoption and shall remain in effect until amendments are proposed and adopted.

2. Amendments

- a. The Mayor or any member of the Council may propose amendments to these Bylaws
- b. Amendment shall require a two-thirds vote on a roll call at a regular public session of the Council.