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Borough Mayors Manual

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Borough Mayors Manual

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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 961 boroughs represent 37.5 percent of all general purpose municipal governments in Pennsylvania. There are an average of 15 boroughs per county. The number ranges from one in Forest County to 84 in Allegheny County. The state's boroughs govern a combined population of more than 2.5 million, representing 20.6 percent 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 13 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 percent 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, 2000 Census

population	number
20,000 and over	7
15,000 - 19,999	7
10,000-14,999	19
5,000-9,999	111
2,500-4,999	174
1,000-2,499	238
under 1,000	416

* For statistical purposes the Town of Bloomsburg is included as a borough.

The largest boroughs are State College, 38,420; Bethel Park, 33,556; Norristown, 31,282; Monroeville, 29,349; and Plum, 26,940. Twenty-two boroughs have populations under 100. The smallest are S.N.P.J. (Lawrence County), 0*; Green Hills (Washington), 18; Valley-Hi (Fulton), 20; Centralia (Columbia), 21; New Morgan (Berks), 35.

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.

*SNPJ Borough has filed for a correction to the official 2000 Census figure.

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 17th century, boroughs were corporate towns not granted the status of city. William Penn's Charter of 1681 from Charles II gave him the power to erect and incorporate towns into boroughs and boroughs into cities.

Borough government in Pennsylvania did not develop early in contrast to county and township government. At the time of the Revolution, there were only 4 boroughs in Pennsylvania compared to 255 townships. Philadelphia appears to have been a borough between 1684 and 1691 when its first city charter was granted, but no record of this survives. The first surviving borough charter was that of Germantown in 1691. Other colonial boroughs were Chester, 1701; Bristol, 1720 and Lancaster, 1741. After the Revolution, renewed growth brought the spread of municipal government and 15 more boroughs were incorporated between 1782 and the end of the 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 councilmen had appeared in borough charters and references to town meetings were dropped. The number of burgesses was standardized at two, a chief burgess and an assistant burgess. The chief burgess was the presiding officer of council meetings, had a full voice and vote in all deliberations, and was also the chief executive charged with the preservation of order and administration of the borough government.

Between 1800 and 1830, 64 additional boroughs were formed. The growing burden of local legislation led to the enactment of the first general borough law in 1834, authorizing county courts to incorporate boroughs upon petition of the citizens of a town. These boroughs had a governing body of one burgess and five councilmen. The burgess was president of the council with all rights of a member and continued responsibility for preserving order and hearing cases involving infractions of borough ordinances. Boroughs also continued to be incorporated by special legislation up until 1873 when a new state constitution prohibited the legislature from enacting special or local laws. Between 1782 and 1873, 260 boroughs were incorporated by special act, 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 councilmen was increased to six to give the council a total of seven members. Division of boroughs into wards was first authorized by general law in 1874, although various special acts had authorized it for particular boroughs before then. Special charters enacted by the middle of the nineteenth century provided for a president of council to preside in the absence of the burgess, and in some of these charters the burgess retained the right to preside, but was restricted to voting only in case of ties. These changes presaged an important alteration in the structure of borough government.

In 1887, the judicial power of the burgess was expanded when the office was given the jurisdiction of a justice of the peace to hear criminal actions under state law as well as borough ordinances. In 1893, 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 20 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 19th century saw the greatest increase in numbers of boroughs. More than two thirds of existing boroughs and cities originally formed as boroughs were incorporated between 1850 and 1910. In this period boroughs were formed at the rate of roughly 10 per year as Pennsylvania underwent industrialization, an extensive railroad network was put in place and the urban proportion of the population increased from 23 percent to 60 percent. The rate of borough formation dropped to 6 per year in the 1910s, 3 per year in the 1920s, and 1 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 powers and acknowledged the right to use those powers 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 the 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 their 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 traditions and actual buildings.

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 Mayor

Although the role of the office of mayor has changed considerably over time, with functions formerly performed by borough mayors now assigned to others in borough government under the Borough Code, the office continues to be very important in local government and carries with it considerable prestige. In the middle of the nineteenth century the burgess (forerunner of the modern mayor) was the central figure in borough government. The burgess presided over council meetings, had a vote on all issues and appointed committee members. The burgess also was the chief executive officer, appointing many officials and exercising general supervision over borough government. In addition, the burgess was a judicial officer hearing all cases involving violation of borough ordinances. Over time, the judicial powers formerly held by state burgesses are now exercised through the Magisterial District Courts, which are a part of the Pennsylvania Court System. Borough Councils now exercise most appointive and legislative powers formerly exercised by burgesses. Nevertheless, the mayor remains as the ceremonial head of borough government even though not technically a member of the Borough Council.

Even though modern mayors under Pennsylvania's present Borough Code possess less legislative, administrative and judicial powers than before, they exercise important powers and duties under it and are also in a unique position to exercise leadership in the community because of the prestige of the office and its elected status. In fact, in many boroughs the mayor is the only borough-wide elected person who participates in the work of the borough on a regular basis. The extent of the mayor's complete role will be defined by the individual officeholder's view of civic responsibilities, personal skills, background in governmental affairs and individual interest. To a large degree, the mayor's role is also defined by the local political culture, the generalized local attitudes toward municipal government and commonly-held expectations of how officials should operate.

Structure of Borough Government

A typical governmental structure for boroughs is outlined in the organization chart on page 6. 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 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. The controller 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. Over half of all boroughs now have appointed auditors.

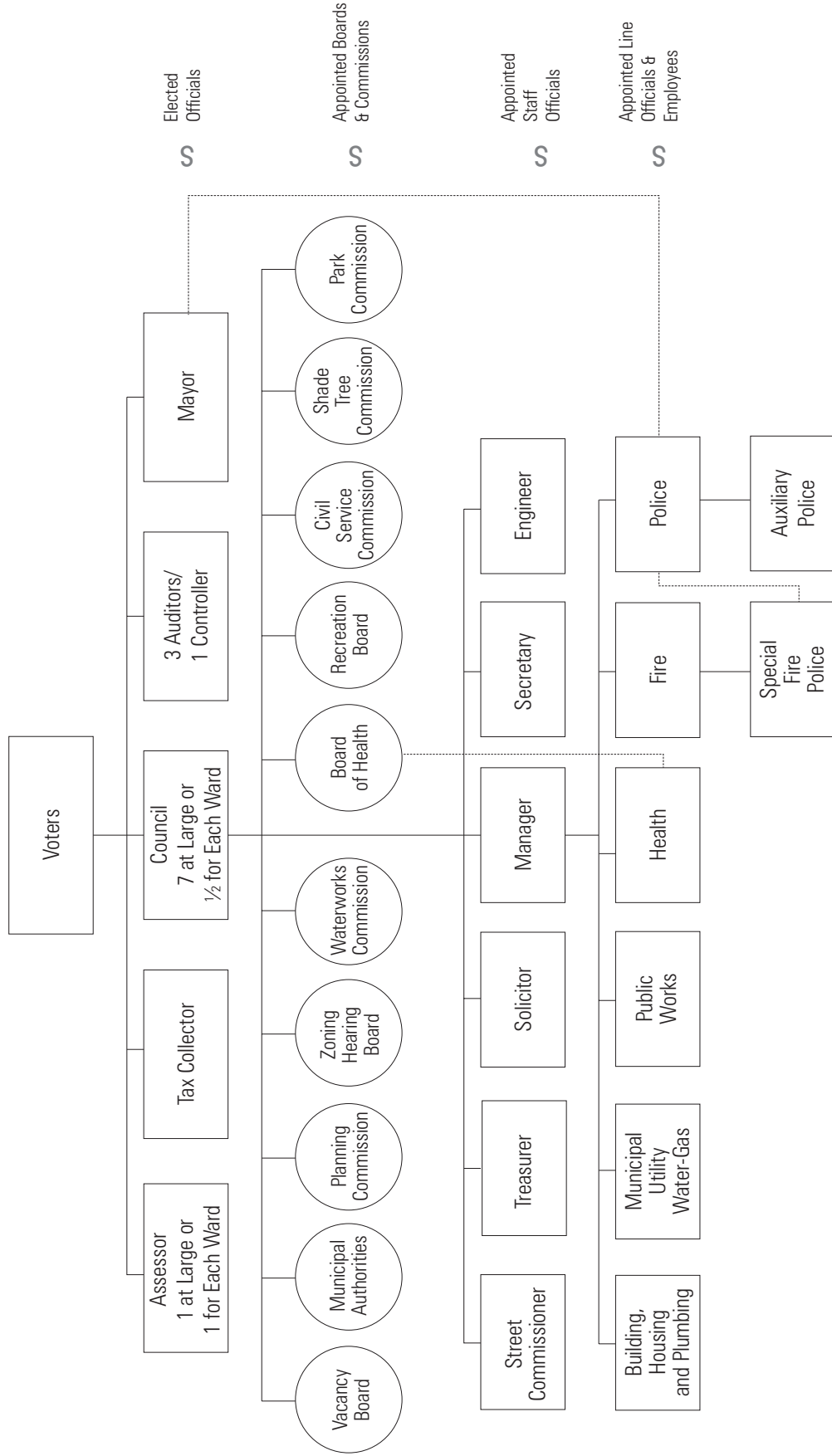
The tax collector collects school and borough real estate taxes and, in some cases, county real estate taxes. In addition, they are often appointed to collect some of the taxes levied under the authority of the Local Tax Enabling Act.

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 Mayor

One mayor is elected from each borough by the electorate of the entire borough. Mayoral elections are to occur every fourth year from 1969. The term of office begins on the first Monday of January following the municipal election and continues for four years.¹ Shorter terms may occur in cases of appointment or election to fill vacancies.

Qualifications

To serve as mayor, one must have been a resident of the borough for one year before the election and be a registered voter of the borough.² To qualify as a voter, a person must be 18 years of age and a resident of the election district. To continue to serve as mayor, an individual must retain residence within the borough. 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.³ Legal residence includes not only a person's intention, but also a physical presence.

Incompatible Offices. The mayor may hold no other borough elected office, nor serve as a school board member.⁴ No mayor may also serve as a district magistrate⁵ or district attorney.⁶ No member of Congress nor any federal officer or employee may hold the office of mayor.⁷

The Borough Code does not prohibit the mayor from holding most other borough appointive offices, but it does stipulate the mayor may not receive compensation for discharging the duties of any appointed office. This effectively prevents the mayor from serving as a paid employee of the borough government or any of its agencies. The mayor is specifically prohibited from serving as borough manager, treasurer or secretary.⁸ The mayor may not be appointed to serve as a member of the borough's civil service commission.⁹ The mayor may serve as one of the members of the borough planning commission,¹⁰ but is prohibited from being a member of the zoning hearing board.¹¹ The mayor is prohibited from serving as a zoning officer.¹²

It appears the mayor may be appointed to the board of a municipal authority created by the borough. In a 1993 case, the Pennsylvania Supreme Court determined a township supervisor could legally serve on the board of a municipal authority created by the township.¹³ The court held any incompatibility of office must be established by the legislature, not the courts. While this ruling involved a township supervisor, the court's finding appears to apply to all local elected officials.

Oath of Office. Before entering office, the mayor must take an oath or affirmation of office. The mayor must swear to support the Constitution of the United States and the Constitution of Pennsylvania and to perform the duties of office with fidelity. The oath may be administered by a judge, district magistrate or notary public. A copy of the oath as well as the mayor's certificate of election must be filed with the secretary and retained in the borough records for six years.¹⁴

Bond. The mayor may be required to give bond. This is likely to be the case where borough ordinances authorize the mayor to issue licenses and permits or otherwise handle public moneys. Council has the responsibility for determining which officers and employees must be covered by a fidelity bond.¹⁵

The basic purpose of the bond is to protect the borough from monetary loss through dishonesty or willful neglect by its employees or officers. The premium of the bond is paid by the borough.¹⁶

Vacancies

Vacancy in office may occur from time to time due to death, incompetency, moving out of the borough or for various family, business or health reasons. The most common reason for vacancies in the office of mayor is through resignation. Individuals sometimes find the demands on their time, the pressure of private business activities, personal health, or family matters prevent them from completing their terms. Vacancies can also occur because of failure of a successful candidate to qualify for office by taking the oath and posting bond. Pennsylvania county courts are divided on the issue of whether a resignation requires acceptance by the governing body or whether it is unconditionally effective.¹⁷ 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 30 days of its submission. A resignation cannot be withdrawn after it is effective. Nor can the acceptance of a resignation by the governing body be rescinded.¹⁸

Vacancies in all borough elected offices are filled by council.¹⁹ Council must fill the vacancy within 30 days after the vacancy occurs. If council fails to act, then the vacancy board fills the vacancy within 15 additional days. The vacancy board consists of the members of council and one registered voter selected by council at the reorganization meeting who serves as chairman of the vacancy board. If the vacancy board fails to act within 15 additional days, the chairman petitions the court of common pleas to fill the vacancy. In the case of a vacancy in the chairmanship, the remaining members of the vacancy board petition the court. The person appointed must be a registered voter of the borough. In all cases, the successor is appointed to serve until the first Monday of January following the first municipal election occurring more than 60 days after the date 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.

Borough council may appoint one of its own members to fill a vacancy in the office of mayor.²⁰ The council member nominated may not vote for himself or herself. If appointed, the council member must resign the council seat before taking the oath of office as mayor.

Substitute for Mayor. Whenever the mayor is absent from the borough or incapacitated, the duties of the office are discharged by the president of council, or in the absence or incapacity of the president by the vice-president of council.²¹ The mayor does not receive the normal compensation during this period; this compensation is paid to the president or vice-president performing the duties. When acting as mayor, the president or vice-president has the power of the mayor to veto ordinances or break tie votes but cannot vote as a member of council.

Compensation

The mayor may or may not receive a salary. Council establishes the salary and fixes the amount by ordinance. Once set, the salary cannot be increased or decreased more often than once in two years, but this can be done during the term of an incumbent mayor.²² The Borough Code sets a maximum limit to the salary based on the borough's population at the latest official census.²³

Population	Salary Limit
Under 5,000	\$2,500
5,000-9,999	\$5,000
10,000-14,999	\$7,500
15,000 and over	\$500 per thousand population

Salaries are payable monthly or quarterly. The mayor cannot be deprived of the salary, except in cases of absence or incapacity where the president of council is serving as acting mayor. The mayor can no longer be compensated by fees; all moneys collected must be paid into the borough treasury.²⁴

Fringe Benefits. Boroughs are authorized to provide insurance benefits for employees and for the mayor and council members covering life, health, hospitalization, medical and surgical service and accidents, but provide for pensions for employees only.²⁵ Benefits provided to the mayor under Section 1202 (37) of the Borough Code shall not be considered pay, salary or compensation; but payment for all or a part of the premiums or charges for the benefits shall be in accordance with Section 1202 (37). Elected officials, including the mayor, are also excluded from coverage for unemployment compensation and worker compensation benefits. Boroughs are authorized to purchase insurance for borough elected officers and employees for legal liability arising from performance of their duties.²⁶ This is commonly known as errors and omissions insurance.

Although elected officials cannot be included in the borough's own pension plan, municipalities joining the Pennsylvania Municipal Retirement System can make membership compulsory, optional or prohibited for elected officials.²⁷ The mayor is also included in the coverage if the borough brings its officers and employees under the Social Security system.²⁸ Effective July 1, 1991, the mayor and council members are not covered by a retirement system must be covered by Social Secretary.

Expenses. When travel on official business is authorized by council, the mayor can receive a mileage fee for use of a personal vehicle. The amount for mileage is to be set by council for all borough personnel.²⁹ Council may authorize the mayor to attend meetings of organizations concerned with municipal affairs, professional organizations or study or training sessions and receive reimbursement for expenses after submission of an itemized expense statement.³⁰

The mayor may join a mayor's association and attend the annual meeting of the association held within Pennsylvania. Reasonable dues, not to exceed \$100, are paid by the borough. The mayor may attend the annual meeting of the association and be reimbursed for expenses which include the registration fee, mileage or actual transportation expense plus all other actual expenses the council agreed to pay. Time spent in attending the meeting must not exceed four days, including travel time.³¹ Mayors may also be designated by council as delegates to the Boroughs Association annual convention and be reimbursed for similar expenses.³² Mayors may also be designated to attend meetings of county or regional associations of boroughs and receive actual expenses.³³

Additionally, Act 7 of 2002 provides the borough council with sole authority to authorize the borough mayor to receive total or partial reimbursement for lost wages or salary while attending the annual meeting of the state Boroughs Association, provided that sufficient documentation is presented to the Borough Council to justify the Reimbursement.

Conflicts of Interest

Mayors must be very careful to avoid the possibility of a 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.³⁴

In any issue brought before council where the mayor has a conflict of interest, or there is an appearance of a conflict of interest, the mayor should refrain from discussing the issue, should not exercise the tie-breaking vote if the occasion arises, and should neither approve nor veto the measure if passed by council and submitted for the mayor's approval. Pennsylvania courts have long upheld as a fundamental public policy principle the rule that a member of a governmental body cannot vote on any matter where the individual has a direct personal interest.³⁵

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, no public official such as a borough mayor, 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.³⁶ The Code prohibits mayors from having any personal interest in contracts over \$1,000.³⁷ In cases where a contract is made with a firm employing a mayor who cannot personally benefit from the contract, the mayor must inform council of such status and refrain from participation in awarding the contract. The Code includes specific penalties for violation of the personal interest prohibition. Any mayor 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 mayor 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. In addition to the statement required of candidates, the Ethics Act requires local elected and appointed officials, including the mayor, to file financial interest statements no later than May 1 of each year and one year after leaving office.³⁸ Statements of incumbent officials are filed only with the borough and 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.³⁹ When the borough auditors 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 includes 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.⁴⁰

Auditors must limit surcharges to the amount of the actual loss, except in cases of fraud or official collusion. For such activities, mayors would also be subject to the criminal laws of the Commonwealth. Officials convicted of crimes relating to the conduct of their public office are subject to removal from office by the courts.

Removal from Office

The Constitution of Pennsylvania requires all elected officers to be removed from office upon conviction of misbehavior in office or of any infamous crime.⁴¹ The court convicting an elected official of a crime constituting misbehavior in office must apply the constitutional penalty of removal from office as part of the sentence. While the Constitution also provides for removal for cause by the Governor upon address of two-thirds of the Senate, there is no record of this procedure being used for municipal officials in recent times.

Borough Council has no inherent power to remove the mayor on its own action, since no authority is conferred by the Constitution or by state law.⁴² To get rid of an elected officer, a municipality must follow constitutional or statutory remedies. Courts have no authority to remove the mayor in a civil action on petition of council; removal by the courts must be after conviction in a criminal action.⁴³

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.⁴⁴ Mayors are exempted from official liability if the acts or omissions in question are held to be within the policymaking discretion granted to them by law. If an action is brought against a mayor for an act or omission claimed to be within the scope of official duties, the borough must defend the action when requested by the mayor. The borough is authorized to purchase liability insurance for itself and its officers and employees or to initiate a risk management program. However, the Pennsylvania Supreme Court has ruled that 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.⁴⁵

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III. Legislative Powers

The meetings of council are the place where basic decisions on borough government matters are made. The Borough Code clearly places the responsibility for controlling and operating the municipal government in the hands of council.¹ Up until 1893, the mayor occupied the central role in council activities, presiding over meetings, voting on all matters and appointing members of committees. Changes to the Borough Law enacted that year relegated the mayor to the role of a minor actor in council activities and placed the mayor in a tenuous position. The extent of a mayor's participation in council activities can vary greatly, depending on past governmental experience, leadership capabilities and local traditions and expectations. The Borough Code itself gives the mayor only limited and peripheral activities in the legislative process.

Organization Meetings

The mayor presides over council only twice during each four-year term of office. This comes at the beginning of the organization meeting of council held the first Monday of January in even-numbered years. At this meeting, newly-elected council members take their seats. The mayor opens the organization meeting and presides over the selection of a president and vice-president of council. Once council is organized, the mayor turns the meeting over to the president of council. The mayor can be counted as a member of council at this meeting only if necessary to constitute a quorum. The mayor has no vote at the organization meeting unless in the exercise of the power to break a tie. If the mayor is unable to attend the organization meeting, council members select a temporary chair until the president of council is elected.²

The activities of council at the organization meeting are not limited to choosing a president and vice-president. Council may appoint any other officers necessary for the conduct of borough affairs and transact any other municipal business.³ The mayor can vote to break ties on any action at the organization meeting, including fixing the time and place of council's regular meetings.⁴ The authority of the mayor to preside over the organization of council and to break a tie allows the mayor to cast the deciding vote on whether to remove the council president. A court determined the mayor has this authority even if the vote occurs at some time other than the statutorily-required organization meeting in January of even-numbered years.⁵

Regular Council Meetings

The Borough Code gives the mayor the right to attend all regular and special meetings of council. This right extends to executive sessions held under the Sunshine Act, except where the executive session relates to a legal dispute between the council and the mayor.⁶ The mayor is permitted to take part in discussions of the council, subject to the same rules of procedure applicable to council members.⁷ The mayor also has the responsibility of reporting to council periodically on the state of the borough and making recommendations to council on matters of borough concern.⁸ When a community problem has come to the mayor's attention, it is the responsibility of the mayor to bring the matter before council along with any suggestions for dealing with it. The amount and nature of the mayor's participation in council deliberations can vary widely. Sometimes mayors have had long previous service as council members and their opinions are sought on all matters. In other cases, strained relations between mayor and council can lead to the mayor being almost totally ignored at council meetings.

Vote in Council

The mayor has not had a vote in council since 1893. The only exception is the power given the mayor in the Borough Code to break tie votes to enable the council to take action. Whenever any ordinance, resolution or motion put to council results in a tie vote and prevents the council from taking action on a matter before it, the mayor may cast the tie-breaking vote.⁹ The mayor may break the tie immediately, or request the matter be reconsidered at a special meeting to be held within five to ten days. If council is still split on the issue at the special meeting, the mayor must then break the tie. If the council is divided on an issue and the mayor is not present at the meeting, the matter must be reconsidered at a special meeting to be held within five to ten days. The mayor is given notice of the special meeting and must attend to break the tie.

The power of the mayor to break ties is restricted in some circumstances. Appointment of an independent auditor must be by a two-thirds vote of the entire council membership and an appointment of a borough manager must be by a majority of all members of council.¹⁰ Provision for a vacancy board to fill vacancies in elected borough offices where council has been unable to act has limited the mayor's power to break ties in filling vacancies to the initial 30-day period where council acts on its own. The mayor is not a member of the vacancy board and does not participate in its activities.¹¹ The mayor cannot use the tie-breaking power to assert authority over appointing or removing police officers because this authority is exclusively vested in council.¹² The Commonwealth Court has ruled that the power of council to set its own rules of procedure can work to deny the mayor the opportunity to cast a tie-breaking vote.

Council is prohibited from delegating its legislative powers over borough affairs by creating a special board or commission.¹³ Giving the mayor a seat and vote on a board created to manage the municipal electric utility violates the provision of the Borough Code limiting the mayor's voting power to tie breaking.

Consideration of an Ordinance

Every ordinance and every resolution of a legislative nature must be presented to the mayor for consideration after passage by council. The mayor has at least a ten-day period to consider the measure. The mayor may veto the ordinance and return it to council with a statement of objections at council's next regular meeting occurring at least ten days after the meeting when the ordinance was passed. The mayor may approve the measure and sign it. If the mayor takes no action, the ordinance or resolution becomes effective as of the next regular meeting of council occurring after the ten-day period.

Any vetoed ordinance or resolution returned to council can be reconsidered at the meeting where it is returned by the mayor, or at any further meeting within ten days of this date. Council can override the veto by a two-thirds vote of all members elected to council, where council has nine or more members. Where council has eight or fewer members, a veto override requires a majority of council plus one, even where this constitutes greater than a two-thirds vote.¹⁵ The most usual number for council members is seven and a veto override requires five votes.

The date of enactment of ordinances is the date of the mayor's signature, the date of council's veto override, or the date of the next succeeding council meeting in cases where the mayor has neither signed nor vetoed an ordinance. All ordinances must be entered into the borough's ordinance book. The signature of the mayor or president of council is not required on the copy of the ordinance entered into the ordinance book.¹⁶

Actions of a Legislative Character. All ordinances and all resolutions of a legislative character must be presented to the mayor. There is no clear distinction in borough government between ordinances and resolutions, and many administrative actions by council will be taken by resolution. As a result, there is a hazy line between what constitutes a legislative action that must be presented to the mayor and what is considered a ministerial or administrative action.

The general rule is that acts of legislative nature have a general purpose and those of nonlegislative or ministerial nature are specific. Legislative acts are permanent. Nonlegislative acts are temporary or pertain to transaction of current business or ordinary administration of municipal affairs.¹⁷ Legislative actions include permanent regulations for the government of the borough, granting franchises to occupy streets and creation of financial liability by contract.

Ministerial or administrative affairs include transaction of current business, the ordinary administration of municipal affairs and awarding contracts previously authorized.¹⁸

Actions authorizing the expenditure of borough funds must be approved by the mayor.¹⁹ These include authorizing contracts or awarding contracts not previously authorized.²⁰ All capital expenditures must be authorized by ordinance.²¹ Fixing the annual real estate tax levy is a legislative act and the tax ordinance must be submitted to the mayor.²² Actions creating new borough departments or offices are legislative, as well as regulation of volunteer fire companies in defining their authorized duties for purposes of worker compensation coverage.²⁴

Council actions on matters such as establishing its own procedures, actions relating to its own members and actions relating to the detail work of municipal affairs are administrative and need not be submitted to the mayor.²⁵ These include the general operation of municipal departments within existing ordinances or laws. Appointment and removal of police officers and other borough employees is administrative.²⁶ Appointments of borough officers such as the treasurer, as well as filling vacancies in elective borough offices, are also administrative actions.²⁷

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8. 53 P.S. 46029(3); Borough Code, Section 1029(3).
9. 53 P.S. 46003; Borough Code, Section 1003; *Morelli v. Borough of St. Marys*, 275 A.2d 889, 1 Pa.Cmwlth. 612, at 618, 1971; *Commonwealth ex rel. Lafayette v. Black*, supra.
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27. *Nicoletti v. Veitch*, 191 A.2d 383, 411 Pa. 216, at 221, 1963; *Davis v. Lewis*, 2 D.&C. 268, at 269, 1922, C.P. Luzerne Co.

IV. Administrative Powers

Borough mayors retain only very limited administrative powers, chiefly centered around supervising the daily operations of the police department. This situation is in direct contrast to large cities where mayors are actually the chief executives, responsible for operation of the city governments. Under the Borough Code, council is responsible for almost all administrative operations of the borough government. In boroughs where the office of manager has been created, administrative responsibility can be delegated by council to the manager. The mayor is also authorized to delegate any mayoral administrative duties to the manager with the approval of council.¹

General Administrative Powers

The Borough Code states the mayor is to preserve order in the borough, enforce the ordinances and resolutions, remove nuisances, exact a faithful performance of the duties of the officers appointed and perform such other duties assigned by law or ordinance.² While this paragraph seems to give broadbrush authority to the mayor, it is not backed up by any detailed powers elsewhere in the Borough Code outlining how these duties are to be performed. In reality, this clause has been carried down from the General Borough Law of 1851 almost intact and reflects a time when the mayor presided over council, directed borough activities and heard cases involving borough ordinances. While this clause has been retained, over the years all implementing authority has been granted to council.

Preservation of Order. The mayor's responsibility to preserve order is implemented solely by the power to direct the activities of the borough police force. Most ordinary problems connected with preservation of order will be met by issuing directions to the police force. The only specific reference to preserving order in state law is found in the Election Code. At the request of election officers, the mayor must clear the approach to the polling place, maintain order or quell any disturbance at the polling place on election days.³

Enforcement of Ordinances. The mayor's duty to enforce ordinances is chiefly restricted to the power to direct the police force. The Borough Code and other state laws provide council detailed powers to enforce ordinances through other borough officers such as the zoning officer, the building inspector, the sewage enforcement officer and the earned income tax collector. Where the borough has a manager, most non-police enforcement activities are assigned to that office, and in other boroughs many such activities are delegated to the borough secretary.

Council can grant additional enforcement power to the mayor by ordinance. Frequently the mayor is designated to issue various licenses or permits. When issuing permits, the mayor acts in a purely ministerial role. When the terms of the ordinance are met, the mayor must issue the license or permit. The mayor has no power to impose additional restrictions or regulations.⁴ Similarly, the mayor cannot revoke a license unless there is a clear violation of regulations established by council in the ordinance and after notice and a hearing.⁵

Removal of Nuisances. While general language authorizing the mayor to remove nuisances is retained, the Borough Code now grants more specific power to council and the health officer or board of health to remove nuisances.⁶ Council is authorized to recover costs of removal from the property owner. Minor nuisances can be handled directly by the police department or by informal contact with the appropriate party. Major nuisances, such as unsafe structures, should be referred to council for their attention.

The borough has the responsibility to maintain streets in a safe and passable condition and can act to prevent abuse of streets and abate nuisances.⁷ However, this power generally lies with council and is discretionary unless the known nuisances on a public highway make it unsafe for travel.⁸

Exacting a Faithful Performance. This language, carried down from 1851, appears to give the mayor some supervisory power over borough officers. However, later additions to the Borough Code have given council full authority to hire, fire and discipline borough employees. Other than the power to direct the police force, there are no provisions in the Borough Code authorizing the mayor to supervise other employees. In discussing this clause, the Pennsylvania Supreme Court stated it is implemented solely by the mayor's power to direct the police force.⁹

Mayors can be granted supervisory power over other borough employees by council through enactment of an ordinance. This apparently is very rare, though not completely unknown. When problems or issues come to the attention of the mayor, it is entirely appropriate for the mayor to direct the matter to the appropriate borough office if it does not have to be brought to the attention of council.

Legal Assistance. In most cases, legal assistance for the mayor is provided by the borough solicitor. This includes preparation of legal documents, representation in court and providing legal advice. Where the situation involves a dispute between the mayor and council, or if representation of both council and the mayor would create a conflict of interest for the solicitor, the mayor can retain outside counsel at a cost not to exceed \$2,500 for any twelve-month period.¹⁰

Reports and Documents

The Borough Code states the mayor is to sign all papers, contracts, obligations and documents as required by law.¹¹ This power has been curtailed at least as it pertains to contracts and agreements. When any action by council results in a specific written contract or agreement, the contract or agreement is to be signed by the president of council.¹² This 1980 change in the Borough Code removed from the mayor the authority to sign most administrative documents for the borough. The mayor does retain the right to sign all ordinances and resolutions of a legislative nature in exercising the power of legislative review. Once a course of action has been authorized by ordinance or resolution presented to the mayor for approval, implementing the policy through awarding contracts or signing agreements is ministerial and can be taken directly by council and the necessary papers being signed by the president of council with no further recourse to the mayor.

Financial Reports. The mayor is required to keep correct accounts of all moneys received and pay them into the borough treasury. Once a month, the mayor is to submit an itemized account of funds collected to council.¹³ This requirement was more important before 1968 when mayors heard cases involving violation of borough ordinances and collected fines and costs for the borough. However, where the mayor issues permits or licenses, this often involves collecting fees and accounting for them. Boroughs must furnish their mayors the necessary books and forms for the conduct of their office. All books and forms remain the property of the borough and must be surrendered to the mayor's successor in office.

Emergency Powers

Local disaster emergencies may be declared by council upon finding a disaster has occurred or is imminent. Council may authorize the mayor to declare a local disaster emergency subject to ratification by council. Such a declaration cannot be continued or renewed for more than 7 days without consent of council. The declaration must be given prompt and general publicity. It must be filed promptly with the Pennsylvania Emergency Management Agency. The effect of declaring a local disaster emergency is to activate the response and recovery aspects of local emergency management plans and to authorize the furnishing of aid and assistance.¹⁴

The Borough Code also authorizes the mayor to proclaim a state of emergency in situations involving mobs or rioting for a period not to exceed 7 days, unless sooner rescinded, modified or extended by resolution of council.¹⁵ The proclamation may prohibit certain activities in all or part of the borough. The proclamation must de-

scribe any geographical areas or hours when activities are prohibited. Activities the mayor may prohibit include the following:

1. Presence of persons on public streets or in public places during hours declared to be a period of curfew.
2. Entry or departure of persons into or from any restricted area.
3. Sale, purchase or dispensing of any commodities or goods designated by the mayor.
4. Transportation, possession or use of gasoline or other flammable or explosive materials, except in normal, legitimate uses.
5. Any other activities the mayor reasonably believes should be prohibited to help preserve life, health, property or the public peace.

Special Police. The mayor is authorized to appoint suitable persons as special police officers during an emergency when the safety and welfare of the public is endangered.¹⁶ This power is restricted to situations caused by a sudden or unexpected event creating a dangerous condition necessitating immediate or quick action. Ordinary or customarily existing conditions are not emergencies. A mayor cannot use this power to replace police officers lost when council reduces the size of the force¹⁷

Auxiliary Police. A borough may have auxiliary police in addition to special police. The chief of police may nominate persons to serve as auxiliary police officers. The nominees must have successfully completed a training course prescribed by the chief. All candidates must be confirmed by the mayor and take an oath. Auxiliary police must be called to duty by the mayor, and may serve only during a period of emergency.¹⁸ Auxiliary police cannot act with authority of law unless an emergency condition exists.

The Police Force

Control over the day-to-day activities of the borough police force is the chief remaining responsibility of the office of mayor. In January, 1994, 726 of the 966 boroughs, or 75.2%, had some form of local police protection, including individual police departments, regional forces or purchased services from another municipality. In 1993, with 16.2% of total operational expenditures, police services constituted the largest category of expenditure for borough government. The police force is the most visible and familiar symbol of borough government.

Borough council establishes the police department by ordinance, creating the various ranks within the police force and designating the appropriate duties of each rank.¹⁹ Council may abolish the police department,²⁰ or eliminate one or more of the ranks within the department.²¹ Council can specify the duties of particular ranks in detail, such as requiring the police chief to maintain a daily log of police activities, including work hours of officers.²²

Appointing Officers. Council has the exclusive authority to appoint, suspend, reduce in rank or discharge police officers. Where the borough has three or more police officers, these actions are subject to the civil service provisions of the Borough Code. The mayor plays no role in choosing the members of the police force.²³ Likewise, the mayor plays no role in decisions on furloughing police officers. Reduction of a police force below its authorized strength does not amend the ordinance establishing the police department; it is a temporary action adopted to stay within budgeted amounts for the police department.²⁴ Compensation of regular police officers, special police and school police is set by council.²⁵

Directing Police Force. The Borough Code gives the mayor power to direct the police chief and the police force.²⁶ The mayor decides the time, the place and the manner police officers are to perform their duties. Where council has designated appropriate duties of each rank, the authority of the mayor extends only to how

the officer is to perform the council-prescribed duties.²⁷ The mayor cannot direct the police chief to perform the duties of a patrol officer. In the absence of an ordinance defining the duties of a police officer, duties are subject to the designation of the mayor, including assignment to teams.²⁸

Council retains the power to set the total weekly hours of employment for police officers. This includes granting individual members vacation leave to attend conventions subject to the power of the mayor to cancel vacations under emergency conditions.²⁹

The mayor may delegate to the chief of police or other officer supervision over and instruction of subordinate officers.³⁰ The increasing professionalism and demand for well-trained police officers seems to motivate considerable delegation, especially in large departments. When the office of manager has been created, the mayor may delegate authority over the police department to the manager, with consent of council.³¹ The mayor's control of the police department can also be circumscribed by the terms of collective bargaining agreements. Although regulation of the police work schedule may be an inherent managerial right of the mayor, when the borough chooses to negotiate, it is bound by the collective bargaining agreement to maintain the existing work-week schedule.³²

The mayor's control over the police department is often shared to some extent with a council police committee. Since council is responsible for the police department budget, controls expenditures and sets policy for the borough, there is a wide range of concerns overlapping with the mayor's powers. Where there is close cooperation between the police committee, the mayor and the police chief, this system can work well. Where that spirit of cooperation is lacking, there is considerable potential for conflict.

School Crossing Guards. Council has authority to appoint special school police to direct traffic at or near schools. When on duty, these school crossing guards are under the direction of the mayor.³³

Suspending Police Officer. The mayor has a limited power to suspend police officers. The suspension must be for cause. In boroughs with civil service, the mayor should specify one or more of the reasons listed in Section 1190 of the Borough Code, describe the particular conduct which is the basis for the suspension and file written charges with council.³⁴ In boroughs with fewer than 3 full-time police officers, suspensions are governed by the Police Tenure Act.³⁵ A mayor suspending a police officer in such boroughs should specify one of the reasons listed in the Police Tenure Act and file written charges with council within 5 days.³⁶ The mayor may suspend an officer without pay until the next regular meeting of council.³⁷ The mayor may also suspend officers for shorter periods of time. When the suspension expires before the next council meeting, council has no authority to change the suspension.³⁸ The mayor's power of suspension is in addition to council's power to suspend police officers.

Council has the primary responsibility and discretion for determining whether or not and how a police officer should be disciplined. The mayor's charges against an officer are considered at the next regular council meeting. Council may suspend, discharge, reduce in rank or reinstate with back pay the officer involved. The action of council can be appealed to the civil service commission in boroughs with civil service. Officers cannot appeal directly to the civil service commission from the mayor's suspension; council must act on the mayor's charges first.³⁹ In boroughs operating under the Police Tenure Act, any suspended officer can demand a public hearing before council.⁴⁰ The right to a hearing does not apply to furlough situations.⁴¹

The mayor's power of suspension is limited until the next regular meeting of council. If council takes no action at that meeting, the suspension expires and the officer returns to work. Council is not mandated to take action on a suspension. No action constitutes an endorsement of the suspension without pay, but allows the officer to return to work after the meeting.⁴²

A police officer suspended by the mayor cannot be reinstated by council at an effective date earlier than 10 working days from the date of the mayor's suspension. If council has reinstated a police officer, the mayor may not further suspend the officer for the same actions or for reasons that council has determined are not to be grounds for suspension.

Technical Resources. Further information on local officials' roles and responsibilities is available from the Governor's Center for Local Government Services, Department of Community and Economic Development. A basic introduction to police service issues is found in *Administering Municipal Police Services in Small Communities*. The Department also provides *Model Hiring Manual for Pennsylvania Municipalities*, and *Regional Police Services in Pennsylvania*. While development of a procedural manual is the responsibility of the police chief, the mayor must review and approve the manual. Training courses on police-related issues directed to local elected officials are offered through state contracted training organizations. For a listing of these organizations, call the Governor's Center for Local Government Services.

Special Services

Marriages. Under the terms of the Marriage Law, borough mayors are authorized to solemnize marriages.⁴³ Persons desiring to be married must produce a marriage license issued by the clerk of the orphans' court. There is no particular required form for a marriage ceremony. It should include words in the present tense stating the purpose of the participants of establishing the relation of husband and wife.

After the ceremony is completed, the mayor must sign the certificate attached to the marriage license. The original is given to the persons married and the duplicate must be returned to the clerk of the orphans' court issuing the license within ten days after the ceremony.

Oaths. The mayor is authorized to administer oaths and affirmations in matters pertaining to borough affairs.⁴⁴ The mayor can administer the oath of office to council members and other borough officers.

Ceremonial Role. Because of the status of the office, the mayor is often requested to participate in various community activities as the official representative of the municipal government. These can include speaking at national holiday celebrations, attending meetings of civic, fraternal or service organizations, participating in groundbreaking or ribbon cutting ceremonies and riding in parades.

Citizen's Affairs. The mayor is often the recipient of citizen complaints about borough services, opinions on community issues or concerns with developing problems. Although their power to deal with these matters directly is often limited, mayors should report to council on citizen reactions to municipal activities and developing problems brought to their attention.

Community Leadership. Individual mayors often serve a leading role in spearheading community projects, in both public and private sectors. Usually persons running for the office are dedicated to furthering their town's interests and can use the visibility of office to promote beneficial projects. These have included developing parks and recreation facilities, instituting recreation programs for youth, establishing programs and facilities to benefit senior citizens, encouraging historic preservation activities and organizing economic development programs.

Because the mayor's duties are limited, there is great opportunity to use the status of the office to bring together community resources to achieve special goals outside the ordinary administration of the municipal government.

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36. *Masemer v. Borough of McSherrystown*, 34 D. & C.2d 669, at 673, 1964, C.P. Adams Co.
37. 53 P.S. 46124; Borough Code, Section 1124; *Bell v. Borough of Conshohocken*, 381 A.2d 1345, 33 Pa.Cmwlt. 424, at 428, 1978.
38. *Moore v. Borough of Ridley Park*, 581 A.2d 711, 135 Pa.Cmwlt. 555, 1990.
39. *Civil Service Commission of the Borough of Jim Thorpe v. Kuhn*, 480 A.2d 1327, 85 Pa. Cmwlt. 85, at 89, 1984.
40. 53 P.S. 814; 1951 P.L. 586, Section 4.
41. *Minnick v. Borough of Hyndman*, 541A.2d 1179, 116 Pa.Cmwlt. 361, 1988.
42. *Decker v. Philipsburg*, 43 D.&C.2d 211, at 214, 1967, C.P. Centre Co.
43. 23 Pa.C.S.A. 1503(a); Marriage Law, Section 1503(a).
44. 53 P.S. 46028; Borough Code, Section 1028(a).

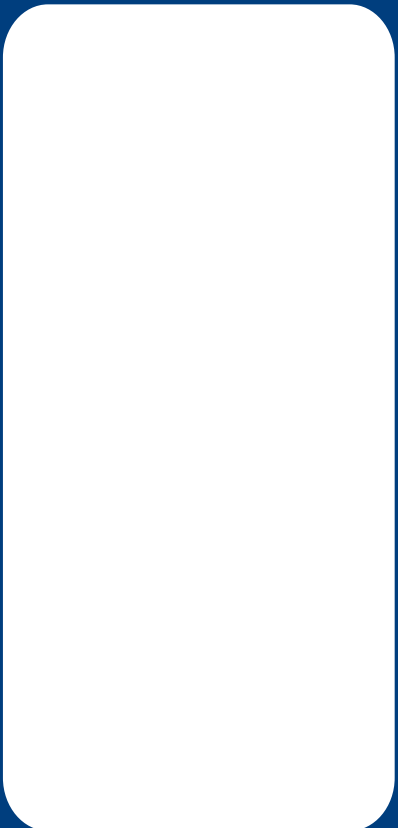
V. Practical Advice for Mayors

Though the official role of the mayor is defined in the Borough Code, here is a list of suggested ideas, from those who have already been there, to assist in carrying out the various functions of the office:

1. Be thoroughly familiar with those sections of the Borough Code which define, control and regulate the role of the mayor in borough government – namely Section 1028 dealing with the power of the mayor, Section 1029 dealing with various duties of the mayor and Section 1121 dealing with the mayor’s role as chief administrative officer of the borough’s police department.
2. Attend as many council meetings and committee meetings as your schedule will permit. Part of the role of the mayor is to be as well informed as possible. The mayor is often called upon to be the spokesperson for borough government and is called upon to cast a tie-breaking vote on council decisions from time to time. Being knowledgeable with respect to borough issues is essential to being an effective leader.
3. Think before you act and act only upon full and complete information. Insist that the media quote you completely, fairly and accurately.
4. Educate council members in a friendly yet firm and persuasive manner with regard to the powers and duties of a borough mayor.
5. Should a conflict result with the council over the respective roles of the council and mayor in borough government, use the borough solicitor as a resource. In the event the solicitor advises that a conflict exists (the borough solicitor is retained by and paid by the borough council), seek the advice of your mayors organization or retain private legal council, with funds provided by the borough, as provided under Borough Code Section 1117.
6. Make certain that your police department has an up-to-date policy manual. Follow it and demand that those you supervise do the same – amend as necessary to meet the needs of your borough police department.
7. Avoid petty arguments and bickering, which will only detract from your ability to perform the functions of your office. (Easier said than done!)
8. Use your power of veto very sparingly. Overuse of the veto can undermine the good relations with Council necessary for mayors to perform their jobs well.
9. Be accessible to other members of borough government, the media and, most importantly, your constituents.
10. Become a good listener. The more we listen, the more we learn. The more we learn, the more effective we are!
11. Be humble. The honor and prestige bestowed upon you can be easily taken away.
12. Enjoy!

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