

# NEW JERSEY MUNICIPAL CLERK STUDY GUIDE

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DISCLAIMER: Municipal Clerks are advised that this Study Guide has been prepared to provide you with the best reference material possible, however, it is not intended to replace the advice of Municipal Attorneys.



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## MUNICIPAL CLERK STUDY GUIDE

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A word of caution regarding the use of this volume. With this printing, an effort has been made to provide accurate information as of January 1, 2021. However, law changes and judicial decisions are issued and regulations are altered frequently. The reader should be aware that future developments may render some sections obsolete and should take appropriate steps to keep in touch with changing conditions.

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### ACRONYMS/ABBREVIATIONS USED IN THIS BOOK

ABC .....	(State Division of) Alcoholic Beverage Control
AGO .....	Attorney General's Opinion
AIDS .....	Acquired Immunodeficiency Syndrome
BPU .....	(State) Board of Public Utilities
CAFR .....	Comprehensive Annual Financial Report
CAO .....	Chief Administrative Officer
CEU .....	Continuing Education Unit
CFO .....	Chief Financial Officer
CMC .....	Certified Municipal Clerk
Cr .....	(Finance) Credits
CY .....	Calendar Year
DCA .....	(NJ) Department of Community Affairs
DLGS .....	Division of Local Government Services
Dr .....	(Finance) Debits
EUS .....	Extraordinary Unspecifiable Service
FCOA .....	Flexible Chart of Accounts
FY .....	Fiscal Year
GRC .....	Government Records Council
HBV .....	Hepatitis B Virus
HIV .....	Human Immunodeficiency Virus
IIMC .....	International Institute of Municipal Clerks
LGCCC .....	Legalized Games of Chance Control Commission
LOSAP .....	(Fire/Rescue Volunteers) Length of Service Awards Program
MCANJ .....	Municipal Clerks' Association of New Jersey
MLUL .....	Municipal Land Use Law
N.J.A.C. ....	New Jersey Administrative Code
NJDOT .....	New Jersey Department of Transportation
N.J.S.A. ....	New Jersey Statutes Annotated
OPRA .....	Open Public Records Act
OSHA .....	Occupational Safety & Health Administration
PAL .....	Peer Alliance for Learning
PERC .....	Public Employment Relations Commission
PERS .....	Public Employees' Retirement System
PFRS .....	Police & Firemen's Retirement System
P.L. ....	Public Law
RFP .....	Request for Proposal
RMC .....	Registered Municipal Clerk
RTK .....	(Workers/Community) Right to Know
SFY .....	State Fiscal Year
UCC .....	(NJ) Uniform Construction Code

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## Chapter 1

### LOCAL GOVERNMENT

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In New Jersey, the four (4) forms of local government (**counties, municipalities, school districts and special districts**) are considered "creatures of the state." That is, they may be created, altered or abolished only by state government. Additionally, state statutes mandate the authority of local officials to perform their functions.

#### § 1-1. COUNTIES

[N.J.S.A. 40:41a-1 et seq.] 9/15/2021

Effective 1/1/2021, N.J.S.A. 1:1-2 revised to rename the "Board of Chosen Freeholders" to "Board of County Commissioners."

A. CLASSES - For legislative purposes, New Jersey's twenty-one (21) counties are classified on the basis of size, geographic location and population density. The classes are defined as follows:

1. First class - Over 550,000 with a density of over 3,000 persons per square mile.
2. Second class - All other counties over 200,000 not bordering on Atlantic Ocean.
3. Third class - Not less than 50,000 nor more than 200,000 not bordering on Atlantic Ocean.
4. Fourth class - Less than 50,000 not bordering on Atlantic Ocean.
5. Fifth class - Over 125,000 bordering on Atlantic Ocean. 10/31/05
6. Sixth class - 125,000 or less bordering on Atlantic Ocean. 10/31/05

#### B. ORGANIZATION OF COUNTY GOVERNMENT

1. The traditional organization of county government has been the Board of County Commissioners, elected to three (3) year terms, serving as policymakers and as individual administrators of county departments.
2. The Optional County Charter Law, enacted in 1972, enables the voters to select one (1) of four (4) plans of organization, all of which limit the Board of County Commissioners to legislative, policymaking functions.



- a. County Executive Plan - Elected Board of County Commissioners, Elected County Executive supervising an appointed County Administrator.
  - b. County Manager Plan - Elected Board of County Commissioners, appointed County Manager.
  - c. County Supervisor Plan - Elected Board of County Commissioners, appointed County Administrator supervised by elected County Supervisor.
  - d. Board President Plan - Elected Board of County Commissioners, appointed County Administrator supervised by President of the Board of County Commissioners.
3. In all four (4) plans, a Board of County Commissioners:
- a. Consists of five (5), seven (7) or nine (9) members;
  - b. Is elected for concurrent or overlapping terms of office;
  - c. Is elected at large, from districts drawn within the county or through a combination of districts and at large.

C. MONEY AND FINANCE:

- 1. The Board of County Commissioners may raise by taxation all money necessary to pay for current expenses, improvements, acquisition of property, obligations and debts, and for the fulfillment of all obligations imposed by law on the county.
- 2. The sources of revenue for counties are property taxes, miscellaneous revenue, State Aid and Institutional Revenue, in the order given.

## § 1-2. MUNICIPALITIES

9/15/18

### A. FORM OF GOVERNMENT

The form and operation of local government in New Jersey is derived from State law. New Jersey's five hundred sixty five (565) municipalities are technically creatures of the Legislature, regulated by the statutes which authorized their creation. At various times in the history of New Jersey, new forms of municipal government have been authorized by the State. Generally, municipalities are identified their form of government.

Specific forms of municipal government have been authorized by statute and the New Jersey Constitution. There is a difference between the type of municipality and its form of government. A municipality may be called the "Township of X" even when that municipality has adopted one of the optional forms under the Faulkner Act. Even though a municipality is named "Township of X," it is likely that the municipality operates under a modern form of government.

It is also possible for a municipality to continue to operate under one of the original forms of municipal government: City, Town, Township, Village, or Borough.

1. Special Charters. A municipality, with the approval and support of its electorate, may petition the Legislature to create or modify special charter. Special charters are the incorporating documents for the municipality. There is virtually no limitation on the provisions of the special charter, because the Legislature has broad discretion to authorize forms of local government. If an existing special charter needs to be amended, as recommended by a charter study commission, a particular process must be followed in order to successfully petition the Legislature. See N.J.S.A. 40:69A-16 and consult with your municipal attorney or special counsel if necessary.
  2. Commission (Walsh Act) [N.J.S.A. 40:70-1 et seq.]
  3. Municipal Manager [N.J.S.A. 40:70-1 et seq.]
  4. Optional Municipal Charter ("Faulkner Act") [N.J.S.A. 40:69A-et seq.]
    - a. Mayor-Council. Colloquially referred to as the "strong Mayor" form of government. Rather than an appointed, unelected individual, this form of government has its Chief Executive directly elected, separate and apart from the governing body.
    - b. Council-Manager Plan. The Council is the elected policymaker and appoints the Manager who acts as Chief Executive and Administrative Officer for the municipality. The manager serves at the pleasure of the governing body. While other municipal officials have statutory responsibilities and obligations, the manager serves as the decision maker with respect to day-to-day operations of the municipality.
    - c. Small Municipalities Plan. Only available to municipalities with a population of less than 12,000, it is a hybrid of the borough form and the township form of government organization.
    - d. Mayor-Council-Administrator Plan. The Council exercises the legislative power, the Mayor exercises the Executive power, and the appointed Municipal Administrator supervises the administration.
- B. POWERS - [N.J.S.A. 40:43 et seq.] The municipality is a corporation, having a corporation seal, and corporate officers, with full power to:
1. Organize and regulate its internal affairs. The New Jersey Constitution prohibits the Legislature from enacting a law which regulates the internal affairs of a particular municipality.
  2. Adopt and enforce policy ordinances and impose penalties.
  3. Sue and be sued; contract and be contracted with; appropriate and expend moneys; and adopt, amend and repeal ordinances and resolutions as may be required.
  4. Exercise powers of taxation, borrowing and condemnation.
- C. MONEY AND FINANCE - The sources of revenue for municipalities are property taxes, miscellaneous revenue, Public Utility Tax, Surplus Appropriations and State Aid.

**§ 1-3. SCHOOL DISTRICTS**

[N.J.S.A. 18A:9 et seq.]

**A. TYPE I**

1. Members of the Board of Education are appointed by the Mayor.
2. School tax levy is determined by the Board of Education.
3. School tax levy is approved by the Board of School Estimates which consists of the Mayor, two (2) members of the School Board and two (2) members of the Governing Body.
4. School debt is the debt of the municipality.

**B. TYPE II**

1. Members of the Board of Education are elected by the voters.
2. School tax levy is submitted to the voters for approval. If defeated, it is submitted to the municipality's Governing Body.
3. School debt is the responsibility of the school district, not the municipality.

**C. REGIONAL (TYPE II) -** The area of a school district is usually the same as that of the municipality. There are provisions in state law, however, enabling districts to encompass two or more municipalities, thus creating consolidated and regional school districts. 9/15/18

1. Representation on the Board of Education is apportioned among the participating districts according to population.
2. Board of Education is classified as Type II; board members are elected and tax levy is approved by the voters.

**D. MONEY AND FINANCE -** The sources of revenue for school districts are property taxes, State Aid and Federal Aid, in the order given.**§ 1-4. SPECIAL DISTRICTS**

Established to provide specific governmental services within a municipality (i.e. fire protection, garbage collection, street lighting). Funded and administered in one of two ways:

- A. Election of Special District governing body and approval of tax levy by the voters within the district.
- B. Tax levy determined by the municipal Governing Body and administered by appointed personnel.

**§ 1-5. RELATIONSHIP TO OTHER LEVELS OF GOVERNMENT**

9/15/18; 9/15/2021

- A. **FEDERAL** - Municipal Clerks should be familiar with all departments of the federal government, especially those where interaction between local and federal entities frequently occur; i.e. Department of Labor, Environmental Protection Agency, Occupational Safety and Health Agency, and Census Bureau.
- B. **STATE OF NEW JERSEY** - In the course of their duties, Municipal Clerks may reach out to State bodies including: Department of Community Affairs, Bureau of Archives and Records, Department of Personnel, Department of Transportation, Division of Pensions, Alcoholic Beverage Control, Legalized Games of Chance Control Commission, Local Finance Board and Public Employment Relations Commission.

**Helpful tip:** The Division of Local Government Services offers a searchable excel index of all Local Finance Notices (LFN) currently posted on their website at [http://www.state.nj.us/dca/divisions/dlgs/resources/local\\_fin\\_notices.html](http://www.state.nj.us/dca/divisions/dlgs/resources/local_fin_notices.html)  
9/15/15

- C. **COUNTY** - Municipal Clerks often need to communicate with various County agencies, especially the Commissioner of Registration, Superintendent of Elections, County Board of Elections, County Board of Taxation, Prosecutor and Clerk of the Board of County Commissioners.
- D. **LOCAL**
1. **Municipal Department** - Municipal Clerks are vital members of the municipal team, interacting with:
    - a. **Administration** - Administrator, Business Manager, Personnel, Attorney
    - b. **Public Safety** - Police and Fire, Municipal Court, Prosecutor, Public Defender
    - c. **Finance** - Chief Financial Officer, Treasurer, Purchasing Agent, Tax Collector, Tax Assessor
    - d. **Health and Human Services** - Welfare, Vital Statistics, Environment, Senior Citizens, Individuals with Disabilities, Drug and Alcohol Abuse
    - e. **Public Works** - Engineering, Traffic, Shade Trees, Refuse, Recycling
    - f. **Parks and Recreation** - Permits, "Green Acres", Sports Programs
    - g. **Planning** - Zoning, Building, Code Enforcement
  2. **Elected and Appointed Officials** - Reserved. 9/15/18
  3. **Board and Commissions**

E. **LOCAL INSTITUTIONS**

Municipal Clerks must also interact with local institutions such as:

1. Schools/School Boards/School Districts
2. Public Libraries
3. Historical Societies
4. Chamber of Commerce/Economic Development Corporations
5. Media

## § 1-6. SOURCES OF BASIC LAW

9/15/18

- A. CHAPTER LAWS - Compilation of laws passed during a legislative session and signed by the governor, bound together in numerical order and indexed by subject matter. A separate volume appears for each year. For example, Chapter 174 of the Laws of 1985 is the Municipal Clerk Certification Law and would be cited as P.L. 1985, c.174. 10/31/05
- B. NEW JERSEY STATUTES ANNOTATED - Unofficial compilation of all legislation currently in effect, numbered so that the statutes concerning the same subject are grouped together within fifty-nine (59) titles. The titles then are divided into chapters, and the chapters are divided into sections. For example, a statute may be designated by a series of three (3) numbers: *N.J.S.A. 19:12-6* means *New Jersey Statutes Annotated*, Title 19, Chapter 12, Section 6. The volumes include annotations consisting of comments on legal history, previous statutes and court decisions. The *New Jersey Statutes Annotated* is published commercially and is kept up to date with "pocket part" supplements. 10/31/04
- C. NEW JERSEY ADMINISTRATIVE CODE - The "how to" book, an official publication of the State of New Jersey which contains the rules, regulations and other documents issued by state agencies. It is kept up to date by periodic supplements. The *New Jersey Administrative Code*, cited as *N.J.A.C.*, also uses a system of titles, chapters and sections. 10/31/04
- D. CASE LAW - Court decisions which create, alter or abolish New Jersey Statutory provisions. 10/31/04

### § 1-6.1. EXHIBIT - TITLES/CHAPTERS/SECTIONS COMMONLY USED BY MUNICIPAL CLERKS

Alcoholic Beverage Control	<i>N.J.S.A. 33</i>
Alcoholic Beverage Control	<i>N.J.A.C. 13.2</i>
Assessment Searches	<i>N.J.S.A. 54:5-14</i>
Board of Health/Vital Statistics	<i>N.J.S.A. 26</i>
Boards of Education 10/31/05	<i>N.J.S.A. 18A</i>

Civil Service/NJ Personnel	<i>N.J.S.A. 11</i>
Civil Service	<i>N.J.A.C. 4A</i>
Dogs (Agriculture)	<i>N.J.S.A. 4</i>
Elections	<i>N.J.S.A. 19</i>
Faulkner Act 9/15/14	<i>N.J.S.A. 40:69A-1</i>
Legalized Games of Chance	<i>N.J.A.C. 13.1</i>
Local Public Contracts Law	<i>N.J.S.A. 40A:11</i>
Local Budget Law	<i>N.J.S.A. 40A:4</i>
Local Bond Law	<i>N.J.S.A. 40A:2</i>
Municipal Land Use Law	<i>N.J.S.A. 40:55D</i>
Non-Partisan Elections 9/15/14	<i>N.J.S.A. 40:45</i>
Open Public Meetings Act	<i>N.J.S.A. 10:4-6</i>
Public Records 10/31/04	<i>N.J.S.A. 47:1A-1</i>
Reorganization Meetings	<i>N.J.S.A. 40:45A-1</i>



## **Chapter 2**

### **OFFICE OF THE MUNICIPAL CLERK**

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|--|---|
| § 2-1. APPOINTMENT/TERM OF OFFICE  | § 2-10. SALARIES, WAGES & COMPENSATION                                      |
| § 2-2. VACANCY IN THE OFFICE OF THE MUNICIPAL CLERK/ACTING MUNICIPAL CLERK | § 2-11. REVOCATION OR SUSPENSION OF REGISTERED MUNICIPAL CLERK CERTIFICATES |
| § 2-3. QUALIFICATIONS  | § 2-12. LEGAL DEFENSE   |
| § 2-4. RE-APPOINTMENT  | § 2-13. DEPUTY MUNICIPAL CLERK  |
| § 2-5. EDUCATIONAL REQUIREMENTS  | § 2-14. CORE DUTIES   |
| § 2-6. CERTIFICATION   | § 2-15. PROFESSIONALISM AND PUBLIC RELATIONS                                |
| § 2-7. CERTIFICATION APPLICATION   | § 2-16. APPOINTED MUNICIPAL OFFICERS  |
| § 2-8. RECERTIFICATION (CEU'S)   | § 2-17. INTERACTION WITH STATE AGENCIES                                     |
| § 2-9. CONTINUATION OF OFFICE OF MUNICIPAL CLERK                           |   |
-

The Municipal Clerk holds one of the most important and exacting positions in municipal government. So important, in fact, that in New Jersey 1) the position is a statutory one, 2) Municipal Clerks may attain tenure in office, and 3) Municipal Clerks must achieve certification through education and testing.

What began in 1973 as a project of self-improvement and professional growth, the Municipal Clerks' Association established the "Registered Municipal Clerk Concept Development Committee." It was this hard-working group that drafted the initial legislation calling for certification. Originally introduced as S411/A893, prefiled in 1974 as A2659, the bill was conditionally vetoed.

For the next ten years, the Association worked with Rutgers, the State University, to enhance educational course content and to develop a voluntary certification program. In 1983, the Association's "Registered Municipal Clerk Statute Implementation Committee" modified the initial legislation and found sponsorship for A3917, prefiled as A593, in 1984. On May 31, 1985, Governor Thomas H. Kean signed the bill which became Chapter 174 of the Public Laws of 1985 thereby establishing the designation of **Registered Municipal Clerk**.

So diverse is the role of the Municipal Clerk, encompassing a myriad of state statutes and serving all levels of government, that legislation was enacted in 1991 specifically designed to define the "Core" duties of this statutory office.

#### § 2-1. APPOINTMENT/TERM OF OFFICE

[N.J.S.A. 40A:9-133.1]<sub>12/98</sub>

- A. No person shall be appointed or reappointed as a Municipal Clerk unless that person holds a Registered Municipal Clerk Certificate. 9/14/07
- B. Within 90 days of the occurrence of a vacancy in the office of Municipal Clerk by reason of the departure of a registered Municipal Clerk, the Governing Body may appoint a person who does not hold a registered Municipal Clerk certificate to serve as Acting Municipal Clerk for a period not to exceed one (1) year and commencing on the date of the vacancy. Any person so appointed may, with the approval of the Director of the Division of Local Government Services in the Department of Community Affairs, be reappointed as Acting Municipal Clerk for a maximum of two (2) subsequent one-year terms following the termination of the temporary appointment. No local unit shall fill the position of Acting Municipal Clerk for more than three (3) consecutive years. Time served as Acting Municipal Clerk may be credited toward the experience authorized as a substitute for the college education requirement pursuant to section 2 of P.L.1985, c.174 (C.40A:9-133.2). Time served as Acting Municipal Clerk may not be credited as time served as Municipal Clerk for the purpose of acquiring tenure pursuant to section 7 of P.L.1985, c.174 (C.40A:9-133.7). The term begins on the actual date of appointment. 9/15/10

**§ 2-2. VACANCY IN THE OFFICE OF THE MUNICIPAL CLERK/ACTING MUNICIPAL CLERK**

[P.L. 1997, C. 279]

- A. In the case of a vacancy, an appointment is made for a new term and not for the unexpired term.
- B. (Reserved) 10/31/04; 9/14/07; 10/15/10
- C. If an RMC has been appointed as Municipal Clerk and then vacates the office, within ninety (90) days of the date of the vacancy, the Governing Body can appoint a non-RMC as Acting Clerk for a one (1) year term. 10/31/04
  - 1. With written permission from the Director of the Division of Local Government Services, the Governing Body may appoint an Acting Clerk for two (2) additional one (1) year terms. 10/31/04
    - a. The person being appointed for the second or third year term must complete a questionnaire from the Division of Local Government Services. Said questionnaire must be submitted with the letter from the Governing Body for the Director's review. No approvals for temporary positions will be granted without provision of these two (2) documents. [REFERENCE-October 15, 2013 GovConnect Update] 9/15/13
  - 2. Time served as Acting Clerk may not be credited as time served as Municipal Clerk for the purposes of tenure.
  - 3. A Governing Body may not appoint someone who holds an RMC certificate as an Acting Clerk.
- D. If a Governing Body fails or refuses to comply with this section, the Director may order the Governing Body to comply by a certain date which shall afford the Governing Body a reasonable time within which to comply.

**§ 2-3. QUALIFICATIONS**

Required for appointment as well as for application to take the examination for certification as Registered Municipal Clerk (RMC)<sub>12/98</sub>

- A. At least twenty-one (21) years of age.
- B. Citizen of the United States.
- C. Of good moral character.
- D. In receipt of a high school diploma or an equivalent certificate accepted by the Commissioner of Education.
- E. Completion of at least two years of education at a college of recognized study which can be substituted with year-for-year full-time experience or the equivalent part-time experience in county or local government performing duties relative to those performed by a Municipal Clerk. 10/31/04

**§ 2-4. RE-APPOINTMENT**

[N.J.S.A. 40A:9-133(b)] 9/15/10

The re-appointment of an incumbent Municipal Clerk within sixty (60) days of the expiration of the prior term shall date back to the expiration date of the initial term (for purposes of tenure). If an incumbent Municipal Clerk is not reappointed at the date of expiration, it is suggested that the Municipal Clerk notify the Governing Body of the requirement to reappoint within sixty (60) days or appoint a new Municipal Clerk at completion of the sixty (60) days. 10/31/04

**§ 2-5. EDUCATIONAL REQUIREMENTS** 12/98

In addition to the above qualifications, the applicant must present proof of completion of the following courses offered through Rutgers, the State University, or similar courses offered at a college or university approved by the Division of Local Government Services of the Department of Community Affairs.

- A. Introduction to the Duties of the Municipal Clerk
- B. Advanced Duties of the Municipal Clerk
- C. Local Election Administration
- D. Information and Records Management
- E. Municipal Finance Administration for Municipal Clerks 10/31/04

**§ 2-6. CERTIFICATION** 12/98

- A. The Director of the Division of Local Government Services, Department of Community Affairs, conducts examinations for certification as Registered Municipal Clerk (RMC).
- B. All Municipal Clerk Certificates issued pursuant to this statute shall be renewed upon application, payment of the required fee, and verification that the applicant has met the requirements set forth below for recertification:
  - 1. Each renewal shall be for a period of two (2) years.
  - 2. The renewal date shall be thirty (30) days prior to the expiration date.
- C. Nothing in the statute shall be construed as requiring a Governing Body to pay any of the costs an individual may incur in complying with the requirements for obtaining or renewing a Registered Municipal Clerk Certificate.
  - 1. The Governing Body, by resolution, may determine to reimburse an individual for all or any portion of the costs an individual may incur.
  - 2. Costs shall include but not be limited to the costs associated with course registration, application fees, transportation and leaves of absence.

**§ 2-7. CERTIFICATION APPLICATION** <sup>12/98</sup>

## Application for and Issuance of Registered Municipal Clerk Certificates (RMC)

- A. Proof of the above shall be provided on the application forms for the examinations in the manner as prescribed by the Director.
- B. Each application shall be accompanied by a fee in the amount of fifty dollars (\$50.00) payable to the order of the State Treasurer.
- C. Upon successful completion of the examination, a Registered Municipal Clerk (RMC) certificate shall be issued for a fee of fifty dollars (\$50.00) payable to the order of the State Treasurer.

**§ 2-8. RECERTIFICATION (CEU'S)** <sup>12/98</sup>

- A. Terms of Certifications:
  1. All Municipal Clerks who were issued their RMC certificates prior to October 1, 1998 must be recertified by September 30, 2000 and every two (2) years thereafter.
  2. All Municipal Clerks who were issued their RMC certificates after October 1, 1998 must be recertified two (2) years from the date on which the certificate was issued originally, and every two (2) years thereafter.
- B. Each applicant for renewal of a Registered Municipal Clerk Certificate shall submit:
  1. On a form prescribed by the Director, furnish proof of having earned at least 2.0 continuing education units in subject areas related to the statutory duties of the Municipal Clerk and minimum contact hours as prescribed by the Director. A continuing education unit equals ten (10) contact hours. Contact Hours must be earned as shown in each of the following subject areas:

10/31/04; 9/15/06; 9/15/14

    - a. Elections: 2 contact hours
    - b. Finance: 2 contact hours
    - c. Licensing: 2 contact hours
    - d. Professional Development: 2 contact hours
    - e. Records: 2 contract hours
    - f. Ethics: 3 contact hours
    - g. The remaining seven contact hours can be earned in Information Technology, which is optional, and/or in any of the above subject areas at the preference of the Municipal Clerk.

10/31/04; 9/15/06; 9/15/14



2. Payment of a fee of fifty dollars (\$50) to the order of the Treasurer of the State of New Jersey.

Upon submission of the above, the Director shall renew the Registered Municipal Clerk Certificate.

- C. Where the holder of a Registered Municipal Clerk Certificate has allowed the certificate to lapse by failing to renew the Certificate, a new application and certificate shall be required. If application is made within six (6) months of the expiration of the Certificate, then application may be made in the same manner as renewal by the application shall be accompanied by the fee for a new application; provided, however, that such application may be made in the same manner as a renewal within twelve (12) months of the expiration of the certificate if the Director determines that either of the following circumstances prevents a certificate holder from earning the required continuing education units within six (6) months of the expiration of the certificate:
  1. A flood, hurricane, superstorm, tornado or other natural disaster, and a state of emergency has been declared as a result thereof by the Governor; or
  2. A medical event or condition.

9/15/15

## § 2-9. CONTINUATION OF OFFICE OF MUNICIPAL CLERK

[N.J.S.A. 40A:9-133.7] 10/31/04

- A. A Registered Municipal Clerk who has served for three (3) consecutive years and is reappointed as Municipal Clerk cannot be removed from office except for good cause shown after a fair and impartial hearing by the Director (or designee) of the Division of Local Government Services. 10/31/04
- B. The definition of good cause for removal of a Municipal Clerk may include the failure of the Municipal Clerk to meet the continuing education requirements set forth in the statute.

## § 2-10. SALARIES, WAGES & COMPENSATION

[N.J.S.A. 40A:9-165]

Determined by ordinance of the Governing Body for elective officials, managerial, executive and confidential employees, and in some municipalities, for all other municipal officers and employees as well.

- A. Unless the Governing Body can show good cause, it cannot deny an increase in salary (given to all other municipal officers and employees) to the Municipal Clerk, Tax Assessor, Chief Financial Officer or Tax Collector.
- B. The Governing Body cannot **reduce** the salary of the Municipal Clerk, Tax Assessor, Chief Financial Officer or Tax Collector unless a similar **reduction** is imposed for all other municipal officers and employees. 9/15/10



**§ 2-11. REVOCATION OR SUSPENSION OF REGISTERED MUNICIPAL CLERK CERTIFICATES**

[N.J.S.A. 40A:9-133.5]

- A. Any Registered Municipal Clerk's Certification may be revoked or suspended by the Director for: 9/15/10
  - 1. Dishonest practices;
  - 2. Willful or intentional failure, neglect or refusal to comply with the Constitution or laws;
  - 3. Other good cause.
- B. The Governing Body or Chief Executive Officer of any municipality may request a review by the Director of the practices of the Municipal Clerk.
- C. No Certificate shall be revoked or suspended except upon a proper hearing by the Director or his designee after due notice.
- D. If the Certificate is revoked, such person shall be removed from office by the Director, his office declared vacant, and he shall not be eligible to hold that office nor make application for recertification for a period of five (5) years from the date of the revocation.

**§ 2-12. LEGAL DEFENSE**

The Governing Body shall provide for the defense of any action or legal proceeding directly related to the official duties of the Municipal Clerk except for:

- A. A criminal proceeding instituted on behalf of the municipality.
- B. A disciplinary proceeding instituted by the municipality.

(Members of the Legal Defense Fund of the Municipal Clerks' Association **may** be entitled to representation through the Fund in matters under subsections A and B. Review and approval by the Legal Defense Committee is required.)

**§ 2-13. DEPUTY MUNICIPAL CLERK**

[N.J.S.A. 40A:9-135]

- A. This position may be created by ordinance adopted by the Governing Body. Term of appointment, compensation, power, duties and functions are determined by the ordinance.
- B. In the absence or disability of the Municipal Clerk, the Deputy shall have all the powers of the Municipal Clerk and shall perform the functions and duties of the office. 10/31/05
- C. The Deputy is **not** covered by laws pertaining to tenure or salary, wages and compensation for Municipal Clerks.

- D. The Governing Body of a city of the first class having a population of not less than 240,000 persons or more than 250,000 persons according to the 2000 federal decennial census, may appoint two (2) persons to serve as Deputy Municipal Clerks and provide for appointments, compensation, term, powers, duties and functions. The Governing Body shall appoint one (1) of the Deputy Municipal Clerks to serve as Acting Municipal Clerk during the absence or disability of the Municipal Clerk, and that person shall have all the powers of the Municipal Clerk and shall perform the functions and duties of that office. 10/31/05

## § 2-14. CORE DUTIES

[N.J.S.A. 40A:9-133]

### A. SECRETARY OF THE MUNICIPAL CORPORATION

1. Custodian of the municipal seal.
2. Maintain custody of all minutes, books, deeds, bonds, contracts and archival records of the municipal corporation.
3. Attest to the signatures of municipal officers and officials.
4. Maintain receipt of service of legal documents.

### B. SECRETARY TO THE GOVERNING BODY

1. Prepare agenda for annual Reorganization Meeting of the Governing Body. For Governing Bodies elected for terms of office commencing January 1, the date and time of its annual organization or reorganization meeting shall be at 12:00 Noon on January 1, or at some other hour on any day during the first week in January. [N.J.S.A. 40:45A-1] Terms of office for Governing Body members elected under the Uniform Non-Partisan Elections Law commence at 12 Noon [N.J.S.A. 40:69A-207] on July 1, and annual organization meeting must be held on July 1 of each year. 9/15/10
2. Maintain and keep new members of Governing Body aware of Rules of Order for conducting meetings including:
  - a. What constitutes a quorum.
  - b. Adopt a standard set of rules of order such as Robert's Rules or Cushing's Manual.
  - c. Order of business.
  - d. Time limit for discussion by the general public.
3. Prepare meeting agenda at the discretion of the Governing Body, be present at all meetings of the Governing Body.
4. Keep an official record of the proceedings of every meeting, retain the original copies of all minutes, ordinances and resolutions.

5. Process, record, file and, when necessary, advertise ordinances, resolutions and the municipal budget.
  6. Administer and record oaths of office: 10/31/04
    - a. Before assuming office, every person elected or appointed shall take and subscribe to an oath of office.
    - b. The oaths shall be filed with the Municipal Clerk and preserved as a public record for a period of five (5) years after termination of office.
  7. Maintain custody of all official records not specifically handled by other departments.
  8. Act as liaison to the public and correspondent on behalf of the Governing Body.
- C. CHIEF ADMINISTRATIVE OFFICER OF ALL ELECTIONS held in the municipality
1. Certify vacancies at a local level.
  2. Maintain receipt of nominating petitions and certification to the County Clerk of local candidates nominated by petition.
  3. Exercise quasi-judicial authority in determining the validity of petitions.
  4. Conduct the drawing for positions of candidates on the local ballot.
  5. Furnish material for local elections.
  6. Suggest polling places.
  7. Maintain receipt of election results.
  8. Certify to the County Clerk persons elected to partisan county committee offices in each election district.
  9. Canvass the votes for and certify election of candidates for municipal office in non-partisan local governments.
- D. CHIEF REGISTRAR OF VOTERS in the municipality
- E. ADMINISTRATIVE OFFICER with responsibilities as follows:
1. Acceptance of applications for licenses and permits and the issuance of licenses and permits, except where statute or municipal ordinance has delegated that responsibility to some other municipal officer.
  2. Issue assessment search certificates.
  3. Conduct business with other municipal departments as directed by the Governing Body.
  4. Purchase equipment and supplies when required.
  5. Maintain personnel records when required.

6. Certify to the municipality's Bond Counsel as to the proper advertising, filing of Supplemental Debt Statement and that no protests have been filed with the municipality as to the adoption of bond ordinances.

9/15/19

Helpful tip: See reference material LFN 2013-03; New Jersey Department of Community Affairs, Division of Local Government Services; [http://www.nj.gov/dca/divisions/dlgs/resources/local\\_fin\\_notices.html](http://www.nj.gov/dca/divisions/dlgs/resources/local_fin_notices.html)  
9/15/14

- F. RECORDS COORDINATOR AND MANAGER responsible for implementing local archives and records retention programs as mandated.
- G. OTHER DUTIES that may be imposed by state statutes and regulations or municipal ordinances or regulations.

## § 2-15. PROFESSIONALISM AND PUBLIC RELATIONS

The Municipal Clerk of New Jersey must continually strive for professional developments. A number of organizations are available to provide each Municipal Clerk with "networking" opportunities as well as opportunity for continuing education, research services and legislative support. All Municipal Clerks and Deputy Municipal Clerks are encouraged to join these organizations and participate in their sponsored activities. In addition to the three organizations listed below, Municipal Clerks are also encouraged to join their County Municipal Clerks' Associations.

- A. Municipal Clerks' Association of New Jersey, Inc. (MCANJ) 9/15/10; 9/15/18; 9/15/2021

MCANJ Executive Board members can be contacted through the website at [www.njclerks.org](http://www.njclerks.org)

MCANJ, whose membership is made up of NJ Municipal Clerks, Deputies, County Clerks and Clerks of the Board of County Commissioners, sponsors educational programs and conferences throughout the year. Working with Rutgers University, MCANJ sponsors educational programs at the spring and fall conferences, as well as educational seminars throughout the year and at the annual New Jersey State League of Municipalities Conference.

MCANJ also publishes the *QUILL* quarterly, which brings to its members up-to-date information regarding education, legislative concerns of the Municipal Clerk and recent court decisions which affect local government and the functions of the Municipal Clerk.

In addition to the scholarship fund program for continuing education for new and experienced Municipal Clerks, and the mentoring program "Peer Alliance for Learning" (PAL) which provides a tremendous networking program for new appointees, membership in MCANJ provides a much-valued networking program for all participants.

All members of MCANJ are qualified to join this Association's Legal Defense Fund and are encouraged to do so.

B. International Institute of Municipal Clerks (IIMC) 9/15/10

8331 Utica Avenue, Suite 200  
 Phone: (909) 944-4162  
 Toll Free: (800) 251-1639  
 Fax: (909) 944-8454

[www.iimc.com](http://www.iimc.com) 10/31/04

The IIMC conducts an educational program for the international certification of the Municipal Clerk, known as the Certified Municipal Clerk designation (CMC). Services include a monthly newsletter, an annual conference and publication of research reports pertinent to the Municipal Clerk's function. In addition to IIMC's monthly publication, *The News Digest*, two publications should be part of the Municipal Clerk's library - *The Language of Local Government* and *Roll Call, Strategy for a Professional Clerk*.

C. New Jersey State League of Municipalities 9/15/10

222 West State Street, Trenton, NJ 08608  
 Phone: (609) 695-3481  
 Fax: (609) 695-0151

[www.njslom.org](http://www.njslom.org) 9/15/06

The League serves New Jersey municipalities and local government officials. Services include a Bureau of Municipal Information, ordinance and code files, research services and a legislative committee which protects the welfare of *municipal* government through careful study of all bills and resolutions. The League's many publications include *New Jersey Municipalities*, the League magazine.

## § 2-16. APPOINTED MUNICIPAL OFFICERS

[Relocated from Chapter 10, 10/31/04]

The following is an outline of the background and functions of the principal municipal appointed officials.

- A. Chief Administrative Officer (C.A.O.): This is an appointed position and although the specific title varies according to the form of government (manager, business administrator, municipal administrator), the C.A.O. generally coordinates the departmental activities of the municipality. Specific powers vary by form of government and provisions of the municipality's administrative code, but usually include responsibilities for personnel and the purchasing system. Many C.A.O.s hold a masters degree in public or business administration. In some forms of government the municipal manager is the chief executive officer (C.E.O.).
- B. Chief Financial Officer (C. F. O.): The C.F.O. is responsible for the preparation of the Annual Financial Statement, Annual Debt Statement, and Balance Sheet. The C.F.O. is also responsible for all general financial matters such as budget execution, bond issuance, investments, and revenue analysis. The person holding this position also prepares the official municipal budget based on spending decisions made by the business administrator, manager, mayor, and ultimately the governing body. The position of comptroller is used to denote the C.F.O. in the town form of government



(and in some cities). The functions are similar to the C.F.O. in other forms of government, including budget control and all other general fiscal functions.

- C. Municipal Attorney (Corporation Counsel): The Municipal Attorney is an appointed position carrying a one-year term, unless otherwise provided by law. The attorney provides legal counsel to the governing body and appointed officials. Also, in general, the attorney defends the municipality in instances of litigation.
- D. Municipal Engineer: The Municipal Engineer is a statutory municipal-appointed position with the individual holding a Professional Engineer's license (P.E.) and having a civil engineering background. Many municipalities have the Director of Public Works hold a P.E. and, thus, serve as the Municipal Engineer.
- E. Municipal Clerk: The Municipal Clerk is a mandatory position in every municipality. The principal duties are maintaining minutes and records of municipal governing body meetings, and supervising conduct of elections.
- F. Tax Collector: The Tax Collector must have the designation of Certified Tax Collector for permanent appointment. The Tax Collector collects taxes and other revenues. He or she also transmits tax bills and performs an annual tax sale. The functions of the Tax Collector are more fully described in the following section.
- G. Tax Assessor: The Tax Assessor must have the designation of Certified Tax Assessor (C.T.A.) prior to permanent appointment. The assessor must value all real property (commercial, industrial, and residential property) and maintain adequate property records. The functions of the Tax Assessor are more fully described in the following section.

	Method of Selection	Term of Office	Mandatory (M) or Permissive (P) Position	Certification Required	Tenure	Statutory Source
Finance Officer	Appointed	4 yrs	M	Yes	Yes	40A:9-140.1
Treasurer: In General	Appointed		M	Yes (as CFO)		
Comptroller Town	Appointed	3 yrs	P			
Tax Collector	Appointed by Governing Body or CEO	4 yrs	M	Yes	Yes	40A:9-141 - 145.12
Tax Assessor	Appointed	4 yrs	M	Yes	Yes	40A:9-146 - 148.1
Municipal Clerk	Appointed	3 yrs	M	Yes	Yes	40A:9-133
Attorney 9/15/13	Appointed	1 yr		Yes*	No	40A:9-139
Auditor 9/15/13	Appointed	1 yr	M	Yes**	No	40A:5
Engineer	Appointed	3 years unless otherwise specified by law	M	Yes	No	40A:9-140

\*Must be licensed attorney

\*\*Must be an RMA-Registered Municipal Auditor

## § 2-17. INTERACTION WITH STATE AGENCIES

Municipalities interact with numerous state agencies, which have broad oversight powers as well as providing assistance to municipalities and counties which impact on the policies and operations of the local unit. The following are some of the state agencies, which interact with municipalities and their major functions:

Department of Community Affairs 9/14/07

Division of Local Government Services — Financial and Managerial Assistance 9/14/07

Division of Housing — Housing Inspection

Department of Treasury

Division of Pensions — Pension Reporting

Division of Taxation — Tax Assessment Management

Division of Elections

Division of Alcoholic Beverage Control

Legalized Games of Chance Control Commission

Division of Revenue and Enterprise Services 9/15/17

### A. THE DIVISION OF LOCAL GOVERNMENT SERVICES

The Division is the most active state agency on local government financial and management functions. New Jersey has long had a system of state supervision of local government finance under the control of the Division of Local Government Services (DLGS).

#### 1. INTERNAL ORGANIZATION OF DIVISION OF LOCAL GOVERNMENT SERVICES

There is a three-bureau organization of the Division of Local Government Services. The following are the major responsibilities of the bureaus:

- a. Bureau of Financial Regulation and Assistance - provides fiscal oversight and essential services in designated areas affecting the responsiveness and accountability of local governments. These are as follows:
  - (1) Financial Regulation: enforces the Local Bond Law, Local Budget Law, and Local Fiscal Affairs Law; spot checks performance of local audits.
  - (2) Budget Assistance: assists in the preparation, development, and control of local governments' budgets; develops standardized budget procedures for federal and state grant programs.
  - (3) Financial investigation and inspection: conducts audits of urban aid funds; investigates confidential reports for director.

- (4) Administers the urban aid program, financial assistance to fiscally stressed cities.
- (5) Quality Assurance (Single Audit Section) Municipalities are required to file a single audit with the Division of Local Government Services if the total of federal grants and/or state grants is twenty-five thousand dollars (\$25,000) or more according to NJ 87-11.
- b. Bureau of Local Management Services - provides local government units with advisory and technical assistance on a variety of subjects, and financial aid through several state budgeted programs. The advisory services provided by the bureau include data processing support and review of installations as well as public purchasing guidelines.
- c. Bureau of Authority Regulation - this bureau has responsibility for regulating local public authorities and special districts on matters relating to budgeting, accounting and financial reporting, as well as review of authority contracts for privatization of water supply, resource recovery, and waste treatment facilities to insure that an undue financial burden is not placed on taxpayers.

## 2. LOCAL FINANCE BOARD

Currently, the Local Finance Board is comprised of seven (7) members that serve for five (5) year staggered terms.

The Local Finance Board is empowered to study the entire field of local government, and to promulgate rules and regulations for the interpretation and administration of state laws within the jurisdiction of the Division of Local Government Services. The board also advises the Director concerning the administration of the division, the exercise of his powers, and the problems of local government. Perhaps its most recognized responsibility is the conduct of hearings with respect to extensions of credit for municipalities who want to exceed their debt limit. These hearings serve to protect the public interest by assuring that the proposed indebtedness does not exceed the capacity of the local government to pay. The hearing is also intended to assure that the proposed facility is relevant to the public's interest. Similarly, the board holds hearings with respect to extensions of credit for Type I school districts that have utilized their total debt authorization and want to exceed the debt limit of the municipality.

Possibly the strongest power of the Local Finance Board is the supervision of the financial affairs of municipalities which fall under the Fiscal Supervision Act. This takes effect under any of the following conditions:

- a. A default exists in the payment of bond obligations or notes;
- b. Payments are due and owing the state, county, school districts, or special districts for more than two (2) years;
- c. The cash deficit of the preceding year amounts to more than four (4%) percent of the total tax levy;

- d. The percentage of current tax collections for two (2) successive years falls below seventy (70%) percent;
- e. The required budget appropriation for debt service on bonds and notes exceeds twenty-five (25%) percent of the total appropriations for operating purposes for the year just ended;
- f. A judicial determination of gross failure to comply with provisions of the Local Bond Law, Local Budget Law or the Local Fiscal Affairs Law which substantially jeopardizes the fiscal integrity of the municipality.

The Local Finance Board must also approve the creation of local authorities, review financing of proposed projects of such authorities, and make recommendations in respect to such project financing following public hearing. The board may issue orders to authorities to correct deficits or to alleviate any financial difficulties, including increasing rates or charges, or to dissolve an authority.

The Local Finance Board regularly issues Local Finance Notices concerning the work of the Division of Local Government Services and the problems of local government, requirements of law and regulations, along with recommendations for improvements. Previous reports have dealt with such subjects as post-audit corrective action plans, local bond law, installment payments ("pay as you go financing"), the investment of local unit funds, surplus policy, capital budgets, the Flexible Chart of Accounts, electronic data processing, and procurement practices (P.L. 1999, c. 440).

**B. REGULATORY AND SERVICE RESPONSIBILITIES OF THE DIVISION OF LOCAL GOVERNMENT SERVICES (DLGS) (9/15/17)**

- 1. The Division of Local Government Services has four (4) principal responsibilities, as follows:
  - a. Regulation of municipal, county and authority finances.
  - b. Providing technical assistance to local governments and authorities in developing and strengthening managerial planning and financial competence.
  - c. Research in local government finance and operations, including the distribution of data.
  - d. Administration of various state grant and aid programs.
- 2. Regulatory functions of the division include:
  - a. Annual audit performed by a registered municipal accountant. 9/14/07
  - b. Review, registration and approval of cooperative purchasing systems together with the enforcement of the Local Public Contracts Law.
  - c. Examination and certification of municipal, special district and authority budgets and amendments thereto; preparation of the budget of any local unit whose budget has not been adopted within the time limits prescribed

by the local budget law; and preparation and supply of forms. 9/14/07, 9/15/10

- d. Annual promulgation of maximum percentage increase allowed under municipal "cap" law and enforcement of the law in relation to annual budgets. 9/14/07
  - e. Review of the annual financial statements. 9/14/07
  - f. Review of the annual debt statement. 9/14/07
  - g. Issuance of regulations and forms for the preparation of local capital improvement program and capital budget. 9/14/07
  - h. Review and approval (or disapproval) of emergency appropriation resolutions exceeding three (3%) percent of the total current and utility operating appropriations in the budget adopted for that year. 9/14/07
  - i. Approval of applications for establishment of petty cash funds. 9/14/07
  - j. Review and determination of eligibility for certain municipalities which want to offer tax abatement or exemption for commercial/industrial projects. 9/14/07
  - k. Approve municipal deferred compensation programs. 9/14/07
  - l. Approve by-laws for a joint insurance fund with another local government unit(s) and the plan of risk management. 9/14/07
  - m. Determine amount of grants or loans to municipalities eligible for financial assistance Special Municipal Aid [N.J.S.A. 52:27BB-118-24 — N.J.S.A. 52:27D-43] 9/14/07; 9/15/10
3. Service Functions of the division include technical and managerial assistance as follows: 9/14/07
- a. Auditing, budgeting, accounting, purchasing, and numerous other areas of financial management.
  - b. Debt management.
  - c. Computer systems and financial software packages.
  - d. Interlocal Services Act.
  - e. Publication of a Local Finance Notice.
  - f. Joint and cooperative purchasing under the Local Public Contracts Law.
  - g. Assistance with municipal and county charter study commissions.
  - h. Deferred Compensation and Self-insurance programs.
  - i. Training programs for local officials.



- j. Certification of Municipal Tax Collectors, Municipal Clerks and Finance Officers.
4. The division also administers several direct financial aid programs. The following is a summary of these aid programs for which the director has the responsibility for distribution, contingent on the availability of annual budget appropriations.
- a. Extraordinary Municipal Aid formerly the Discretionary Aid Program): This aid program is designed to minimize property tax increases in those municipalities that demonstrate a clear need for additional state funds despite their efforts to provide property tax savings for current and future budget years. Generally, the municipality has experienced unique circumstances to warrant this aid (N.J.S.A. 52:27D-118.35).
  - b. Municipal (Urban) Aid: to maintain and improve municipal services and to offset local property taxes. Eligibility and aid allocations are based on various indicators of fiscal distress, including population and population density, effective tax rate, equalized valuation per capita, incidence of welfare recipients and public housing. (N.J.S.A. 52:27D-178 to 181)
  - c. Special Municipal Aid: provides loans, loan guarantees and grants to help fiscally distressed cities regain their financial stability. An eligible municipality is one qualified under the Urban Aid Law of 1978, or under supervision of the Local Finance Board, or one that has issued qualified bonds. The Director of the division "is provided" broad discretion in establishing the various factors relating to fiscal distress and determining the amount of grants or loans within available appropriations, subject to concurrence of the Local Finance Board.

As a condition of receiving such assistance, an eligible municipality must implement any fiscal recovery measures recommended by the Director with approval by the board, and the municipality must agree to management and fiscal audit by the Director. (N.J.S.A. 52:27D-118.24 to 118.31) 9/14/07; 9/15/10

While the general laws governing the above aid programs set forth eligibility based on various formula factors, the legislature and the governor, by language in the annual state appropriations law, often modify the formulas or freeze the aid allocations to municipalities to avoid changing payments. On the other hand, the legislature has delegated extremely broad discretion to the director of DLGS in allocating funds under programs such as aid to distressed cities. In 1995 the State legislature is considering combining the numerous State revenue programs into four (4) or five (5) block grants. Known as the Consolidated Municipal Property Tax Relief Aid, this will eliminate the necessity of budgeting State revenues in literally dozens of categories.

#### C. DIVISION OF TAXATION, DEPARTMENT OF TREASURY

It is also responsible for the supervision of property tax assessment at the municipal, county, and state levels. 9/14/07; 9/15/13



1. The division is structured according to its three (3) principal activities:
  - a. Processing and tax administration
  - b. Special procedures and investigations
  - c. Audit
2. The principal property tax administrative responsibilities for the supervision of property tax assessment are: 9/14/07; 9/15/13
  - a. Direct assistance to local assessors on such matters as property appraisal and methods of assessing unusual, complex properties. Plan training of new assessors to deal with their responsibilities under the law.
  - b. Coordination of efforts of Assessors, County Tax Administrators and County Boards of Taxation with those of the division, and promulgation of uniform rules governing county tax board hearings and procedures.
  - c. Operation of the state equalization program and preparation of the annual table of equalized valuations used in the distribution of state school aid; apportionment of county taxes among local taxing districts; apportionment of current and/or capital costs of regional and consolidated school districts; and apportionment of certain state aid health grants.
  - d. Certifies Municipal Tax Assessor. 9/14/07
  - e. Review of municipal contracts for professional revaluations and approves same where warranted. Review includes inquiry into the financial status of revaluation companies, as well as their competence and ability to perform in accordance with the contract. 9/14/07
  - f. Insure that all municipalities have a tax map. Examination of all local tax maps and suggest revisions when needed. Approval of tax maps when completed and in compliance with all requirements. ("Tax Map Specifications" is a guide issued for municipalities in preparing a tax map.) 9/14/07
  - g. Development of data processing systems and programs for use by local Tax Assessors and County Tax Administrators. 9/14/07
  - h. Administration of law providing for payments-in-lieu of taxes to municipalities for certain State owned tax-exempt property. 9/14/07
  - i. Administration of homestead rebate law. 9/14/07

## **Chapter 3**

### **SECRETARY TO THE GOVERNING BODY**

§ 3-1. OPEN PUBLIC MEETINGS ACT	§ 3-3.1. EXHIBIT - ORDINANCE ACTIVITY CHART
§ 3-1.1. EXHIBIT - SAMPLE FORMS & STATEMENTS	§ 3-4. RESOLUTIONS
§ 3-1.2. ANNUAL NOTICE STATEMENT	§ 3-5. CODIFICATION - A SYSTEMATIC ARRANGEMENT OF A MUNICIPALITY'S ORDINANCES
§ 3-1.3. SPECIAL MEETING NOTICE STATEMENT	§ 3-6. MINUTES
§ 3-1.4. EXECUTIVE SESSION	§ 3-7. PARLIAMENTARY PROCEDURES
§ 3-1.5. EMERGENCY MEETING	§ 3-7.1. MOTION ACTIVITY CHART EXHIBIT
§ 3-1.6. RICE NOTICE	§ 3-8. USE OF TAPE RECORDING/ ELECTRONIC EQUIPMENT
§ 3-2. MEETINGS	
§ 3-3. ORDINANCES, GENERALLY	

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#### **§ 3-1. OPEN PUBLIC MEETINGS ACT**

##### **A. INTRODUCTION/POLICY BEHIND THE ACT**

Introductory Statement - Assembly No. 1030 - L. 1975 c. 231 "This bill requires that the public and the press have advance notice of and the opportunity to attend most meetings, including executive sessions of public bodies, except where the public interest or individual rights would be jeopardized. The public's right to know the process by which governmental decisions are made and to witness that process in full detail may be obstructed by needlessly barring members of the public and the press from certain policy making meetings of public bodies. If the public and the press cannot attend, they cannot learn of many positions that are considered or taken at such meetings by individual officials serving the public. Lack of information can lessen public confidence in governmental decisions and impair the public's function of holding officials accountable in a democracy."

This Act shall be known and may be cited as the "Senator Byron M. Baer Open Public Meetings Act." [N.J.S.A. 10:4-6] 9/15/06

##### **B. PURPOSE [N.J.S.A. 10:4-7]**

LEGISLATIVE FINDINGS AND DECLARATION — "To insure the right of citizens to have adequate advance notice of and the right to attend meetings of public bodies at which any business affecting the public is discussed or acted upon in any way except in those circumstances where the public interest would be endangered or the personal privacy or rights of individuals would be endangered."

##### **C. DEFINITIONS [N.J.S.A. 10:4-8]**

1. "PUBLIC BODY" means a commission, authority, board, council, committee or any other group of two or more persons organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or legal relations of any person, or collectively authorized to spend public funds including the Legislature. - (Exclusions as cited in N.J.S.A. 10:4-8 (a).)
2. "MEETING" means and includes any gathering whether corporeal or by means of communications equipment, which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. Meeting does not mean or include any such gathering (1) attended by less than an effective majority of the members of a 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.

Except as provided in § 3-1H of this Chapter regarding Closed Sessions, all meetings of public bodies shall be open to the public at all times. Nothing in the statutes shall be construed to limit the discretion of a public body to permit, prohibit or regulate the active participation of the public at any meeting, except that a municipal governing body shall be required to set aside a portion of every meeting of the municipal governing body, the length of the portion to be determined by the municipal governing body, for public comment on any governmental issue that a member of the public feels may be of concern to the residents of the municipality. 12/02

Note - A meeting must be open to all the public body's members, and the members present must intend to discuss or act on the public body's business. Therefore, typical partisan caucus meetings and chance encounters of members of public bodies are not covered. Specific exemptions are provided for public bodies meeting as a part of a convention and meetings where an effective majority fails to attend. Gatherings of enough members to constitute a quorum of a governing body or any other public board or commission are prohibited when no public notice has been given. Exceptions are allowed for events that clearly constitute purely social gatherings and for political meetings.

3. "PUBLIC BUSINESS" means and includes all matters which relate in any way, directly or indirectly to the performance of the public body's functions or the conduct of its business.
4. "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, which notice shall accurately state whether formal action may or may not be taken and which shall be etc. as noted in N.J.S.A. 10:4-8 (d) Amended 1981, by including *Section 10:4-18* which addresses Regular Meetings of a Public Body which is addressed under "Annual Notice."

In addition, a public body may provide electronic notice of any meeting of the public body through the Internet. "Electronic Notice" means advance notice available to the public via electronic transmission of at least forty eight (48) hours, giving the time, date, location and, to the extent, known the agenda of any

Regular, Special or Rescheduled Meeting, which notice shall accurately state whether formal action may or may not be taken at such meeting. 10/31/04

5. "OFFICIAL NEWSPAPERS" means paid, published and circulated in the municipality, and if there be no such newspaper, then in at least one published in the county in which the municipality is located and said newspaper is circulated.

Notices to Official Newspapers must be transmitted to two (2) news-papers, being mindful of the fact that one of the official newspapers may be a "Weekly" and the 48 hour notice requirement must be fulfilled so that the weekly newspaper can potentially publish prior to the meeting. Therefore, at the Reorganization or Organization Meeting more than two official newspapers should be designated if necessary. The newspapers selected should be those most likely to inform the people within the public body's jurisdiction of the meeting. 12/97

D. NOTICES [N.J.S.A. 10:4-18]

9/15/2021

1. "ANNUAL NOTICE" means at least once each year, within seven (7) days following the annual organization or reorganization meeting of a public body, or if there be no such organization or reorganization meeting in the year, then by not later than January 10th of such year, every public body shall adopt, post and distribute a schedule of its regular meetings for the coming year. The schedule must contain the date, time and location of the meeting. In addition, it shall be mailed, telephoned, telegraphed, emailed or hand delivered to at least two (2) newspapers which newspapers shall be designated by the public body to receive such notices.

NOTE - (ANNUAL NOTICE) - In the event that such schedule is thereafter revised, the public body, within seven (7) days following such revision, shall post, mail and submit such revision in the manner described above. Annual Notice should also include the language that "Official Action may be taken".

2. "48 HOUR NOTICE" means notice of meeting (commonly known as special meeting) shall be mailed, telephoned, telegraphed, emailed or hand delivered to at least two (2) newspapers, posted where notices are generally and prominently posted and said notice shall contain, date, time, place of meeting and the purpose(s) for which the meeting was called.

NOTE - (48 HOUR NOTICE) - Purpose of Special Meeting when transmitted to newspapers shall include whether official action will be taken.

3. Notices are not required to be published in order to comply with the "Open Public Meetings Act", but merely must be transmitted to the newspapers.
4. Notices for special meetings must be provided to the publications at a time that provides the newspapers with the opportunity to actually publish notice at least 48 hours in advance of the meeting. Otherwise, there is no compliance with the Open Public Meetings Act. Actual publication is not required. 9/15/18
5. If the local public body expects to conduct remote public meetings for a series of regularly scheduled meetings advertised in its Annual Notice, and the annual



notice lists those meetings in-person, the annual notice shall be revised to contain clear and concise instructions for accessing those remote public meetings, the means for making public comment, and where relevant documents, if any, will be made available. 9/15/2021

6. The revised annual notice shall be mailed as soon as practicable to those individuals that request notice by mail, but do not have an email. 9/15/2021
7. Similar to the 48-hour electronic notice discussed in Item G8 below, the revised Annual Notice must also be posted on the Internet website and on the door(s) of the main public entrance to the building where the local public body's regular public meetings are held along with the door for any designated and clearly delineated handicap-accessible entrance.

If a municipality does not have a website, the revised Annual Notice shall be posted on an official social media platform of the municipality, unless it does not have an internet presence. The revised notice should also be distributed by mass email or other digital messaging platform if the entity has the capability. 9/15/2021

E. REQUESTS FOR NOTICES OF MEETINGS: ANNUAL RENEWAL [N.J.S.A.10:4-19]

Any person may request that a public body mail to him copies of any meeting notices, whether they be regular, special or revised notice. The individual, upon prepayment of a reasonable sum, if fixed by resolution of the public body to cover the costs providing such notice, shall receive such notices. All requests for notices shall terminate at midnight on December 31 of each year, but shall be subject to renewal upon a new request to the public body.

F. EXCEPTIONS - MEETING OF PUBLIC BODY: EMERGENCY MEETING [N.J.S.A. 10:4-9] (WAIVER OF NOTICE REQUIREMENT)

9/15/2021

Upon the affirmative vote of three quarters of the members present, a public body may hold an in-person or remote meeting notwithstanding the failure to provide adequate notice if:

1. Such meeting is required in order to deal with matters 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; and
2. The meeting is limited to discussion of and acting with respect to such matters of urgency and importance, and
3. Notice of such meeting is provided as soon as possible following the calling of such meeting by posting written notice of the same in the public place, delivering to two newspapers as described in N.J.S.A. 10:4-8 (d) - "Adequate Notice"; and
4. Either:

- a. The public body could not reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided; or
- b. Although the public body could reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided, it nevertheless failed to do so.

G. CONDUCT OF PUBLIC MEETINGS DURING PERIODS OF EMERGENCY 9/15/2021

1. Notwithstanding any other provision of law, rule, or regulation to the contrary, during a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, a public body shall be permitted to perform any of the following by means of communication or other electronic equipment:
  - a. Conduct a meeting and any public business to be conducted thereat;
  - b. Cause a meeting to be open to the public;
  - c. Vote; or
  - d. Receive public comment.
2. Notwithstanding any other provisions of law, rule or regulation to the contrary, during such periods of emergency, a public body may elect to provide electronic notice pursuant to section 1 of P.L. 2002, c. 91 in lieu of the adequate notice required under P.L. 1975, c. 231, and shall not be deemed to have violated any provision of law thereunder in providing such electronic notice. To the extent practicable, a public body providing only electronic notice of a meeting pursuant to this subsection shall limit public business discussed or effectuated thereat to matters necessary for the continuing operation of government and which relate to the applicable emergency declared.

(See LFN 2020-21 for further information)
3. Even during a declared emergency, public meetings held exclusively by remote means are meant to be held under limited circumstances when the declared emergency prevents a public meeting from safely being held in a physical location. The declared emergency must be a public health emergency pursuant to the "emergency Health Powers Act," or a state of emergency pursuant to the "Disaster Control Act," or a state of local disaster emergency that has been declared by the Governor and is in effect.
4. If a declared emergency requires a local public body to hold a remote public meeting to conduct public business, an electronic communications technology shall be used that is routinely used in academic, business and professional settings, and is widely accessible to the public at no cost.
5. If a local public body is holding an in-person meeting in a location where, pursuant to State and/or Federal guidelines meant to mitigate the risk of contagious infection, the declared emergency necessitates capacity restrictions reducing the number of individuals that can be present in the meeting room to an



amount below that reasonably expected for the public meeting by the governing body, the local public body must either hold the in-person meeting at another location with adequate socially-distanced capacity for the reasonably expected public attendance, or hold the public meeting both in-person and as a remote public meeting pursuant to N.J.A.C. 5:39-1.1 through 1.7.

6. Technological and Procedural Matters.

- a. The local public body shall adopt, by resolution, standard procedures and requirements for public comment made during the meeting along those written comments submitted in advance of the meeting.
- b. Remote public meetings may be held by means including, but not limited to:
  - (1) Audio-only teleconferencing,
  - (2) Electronic communications platforms with video and audio,
  - (3) Internet-accessible technology such as livestreaming.
- c. When utilizing an electronic communications platform or Internet-accessible technology to hold a remote public meeting, the local public body shall also provide a telephonic conference line allowing members of public with limited or no internet access to listen and provide public comment.
- d. To ensure adequate public access, participant capacity on the selected technology should be consistent with the reasonable expectation of the public body for public meetings of the type being held and shall not be limited to fewer than 50 public participants.
- e. Communications technology used for a remote public meeting must allow the local public body to mute the audio or all members of the public and members of the public to mute themselves.
- f. A local public body holding a remote public meeting shall allow members of the public to make public comment by audio or by audio and video.
- g. In advance of the remote public meeting, the local public body shall allow public comments to be submitted by electronic mail and in written letter form to the official responsible for creating the meeting agenda by a reasonable deadline as determined by the official.
- h. If a member of the public becomes disruptive during a remote public meeting, including during any period for public comment, the member of the local public body charged with running the remote public meeting shall mute or keep on mute, or direct appropriate staff to must or keep on mute, the disruptive member of the public and warn that continued disruption may result in their being prevented from speaking or removed from the remote public meeting.

- (1) If time permits, the disruptive individual shall be allowed to speak after all other members of the public have been given the opportunity to make comment.
  - i. Any presentations or documents that could be viewed by or made available to members of the public during an in-person public meeting shall either be made visible on a video broadcast of the remote public meeting or made available on the Internet website of the local public body.
    - (1) The link for the public to access documents should, at minimum, be either posted on the meeting notice, or in close proximity to where the meeting notice is posted both on the website and at the building where the meeting would otherwise be held.
    - (2) If a document would be made available to the public in hard copy while physically attending the meeting, the document shall generally be made available for download in advance of the meeting through an internet link at or near the posting of the meeting notice.
  - j. A local public body entering an executive or closed session shall ensure that audio or video of the session cannot be accessed except by those individuals that are participating in the session.
    - (1) For closed session during remote public meeting held through video conferencing, audio recording should be muted and video recording blocked by a graphic labeled "Executive Session."
7. Proper Notice of a Remote Public Meeting.
- a. Proper notice in the context of a remote public meeting must include the time, date, location and, to the extent known, the agenda of the meeting, which notice shall accurately state whether formal action may or may not be taken.
  - b. If a previously scheduled local public body meeting was to allow public attendance without a public health-related capacity restriction, but the local public body intends to hold the same meeting as a remote public meeting due to a declared emergency and the change is not reflected in a revised annual notice, the local public body shall transmit notice of the remote public meeting at least 48 hours in advance to the newspapers and provide electronic notice to the public in the manner discussed below.
  - c. With respect to the meeting location, the notice shall state the platform or method by which the remote public meeting is being held.
  - d. And include the teleconference number along with the web address or means of accessing any remote meeting platform.
  - e. Must also include clear and concise instructions for accessing the remote public meeting, how to make public comment, and where relevant documents, if any, will be made available for the public to view.

- f. Notice of a remote public meeting shall be transmitted to at least two newspapers.
  - (1) If the declared emergency prevents the local public body from transmitting a public meeting notice to the newspapers by mail, telephone, or hand delivery, emailing the public meeting notice to the newspapers shall be sufficient.
  - (2) In addition to transmitting notice to the newspapers, notice must also be posted on:
    - (a) On the door of the main public entrance to the building where the public would routinely attend in-person meeting of the local public body, as well as the door for any designated and clearly delineated handicap accessible entrance to said building, such that the notice is viewable from the outside;
    - (b) The Internet website or webpage of the local public body. If a municipality does not have a website, electronic notice shall be provided on an official social media platform of the municipality; however, electronic notice is not required if the municipality does not have an internet presence.

8. Using Solely Electronic Notice for Remote Public Meetings.

- a. During a declared emergency, a local public body may issue electronic notice at least 48 hours ahead of a remote public meeting in lieu of, rather than in addition to, publishing notice in the newspaper; however, in such instances the local public body shall limit public business discussed or acted upon to matters:
  - (1) Necessary for the continuing operation of government and which relate to the emergency declaration connected with the declared emergency; or
  - (2) Requiring decision by the local public body due to imminent time constraints.

H. STATEMENT IN MINUTES OF MEETING - ADEQUATE NOTICE [N.J.S.A. 10:4-10]

9/15/2021

- 1. At the commencement of every in-person and remote meeting of a public body, the person presiding shall announce publicly, and shall cause to be entered in the minutes, an accurate statement to the effect:
  - a. That adequate notice of the meeting has been provided, specifying the time, place and manner in which such notice was provided.
- 2. Emergency Meetings – that adequate notice was not provided, in which case such announcement shall state:

- a. If the local public body solely provided notice through electronic means without transmittal to the newspapers, the announcement shall also state that discussion of and action on any public business will be limited to only those matters necessary for the continuing operation of government and which relate to the applicable emergency declaration.
- b. In the event advance 48-hour notice of the remote public meeting was neither transmitted to the newspapers nor provided electronically, a statement compliant with N.J.S.A. 10:4-10 shall be read concerning why the unforeseen need for the meeting and explaining why the local public body could not provide such notice without causing a delay resulting in substantial harm to public interest.

As with in-person meetings, when advance 48-hour notice is not provided the remote public meeting must be limited to addressing the urgent matter or matters.

I. **CLOSED MEETING** (Commonly known as Closed Session, Executive Session or Closed Executive Session) [N.J.S.A. 10:4-12]

If a public body wishes to hold a portion of a public meeting in closed session, it must (1) adopt a RESOLUTION at an open meeting; and (2) read a statement that adequate notice of the Open Meeting was provided. The resolution must provide reasons for going into a closed session, and state as precisely as possible, the time when and the circumstances under which the matter(s) discussed in private may be publicly revealed. The resolution should specifically identify which of the subject matters below are applicable. The circumstances which trigger authorization to enter closed session are limited by statute, and the discussion in closed session should only cover those topics identified in the resolution.

Upon returning from a closed session, the public body must take public action to indicate that the meeting is again open to the public. No official action should be taken in a closed session. 12/99; 9/15/18

Note — The public body must give 48 Hour Notice if knowledge of the closed session is known in advance. The notice should contain the time, place and purpose of the closed session, identifying the relevant subject matters.

J. **SUBJECT MATTERS WHICH MAY BE COVERED IN CLOSED SESSION**

1. Any matter which, by express provision of Federal Law or State Statute, or rule of court shall be rendered confidential;
2. Any matter in which the release of information would impair a right to receive funds from the Government of the United States;
3. Any material the disclosure of which constitutes an unwarranted invasion of individual privacy such as any records, data, reports, recommendations, or other personal material of any educational training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance and similar program or institution operated by a public body pertaining to any specific individual admitted to or served by such institution or



program, including but not limited to information relative to the individual's personal and family circumstances, and any material pertaining to admission, discharge, treatment, progress or condition of any individual, unless the individual concerned (or, in the case of a minor or incompetent, his guardian) shall request in writing that the same be disclosed publicly.

4. Any collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body;
  5. Any matter involving the purchase, lease or acquisition of real property with public funds, the setting of banking rates or investment of public funds, where it could adversely affect the public interest if discussion of such matters were disclosed;
  6. Any tactics and techniques utilized in protecting the safety and property of the public, provided that their disclosure could impair such protection. Any investigations of violations or possible violations of the law;
  7. Any pending or anticipated litigation or contract negotiation other than in section (4) herein which the public body is, or may become a party. 9/15/18
  8. Any matter falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer. 9/15/18
  9. Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting; 9/15/18
  10. Any deliberations of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act or omission for which the responding party bears responsibility. 9/15/18
- K. PERSONNEL EXCEPTION - "RICE NOTICE" - DERIVED FROM "RICE V. UNION cm. REG. H.S.BD. OF ED., 155 N.J. SUPER 64 (APP.DIV. 1977); (9/15/17); (9/15/18)
- N.J.S.A. 10:4-12 (b) 8 provides that all personnel matters, which includes any matter involving employment, appointment, termination, terms and conditions of employment, evaluation of performance, promotion or discipline of any specific prospective or current public officer or employee **may** be discussed in closed session.

Pursuant to N.J.S.A. 10:4 — 12(b)(8), employees whose employment interests could be adversely affected have the right to waive the protection of having their matter discussed in closed session. The subsection provides for such individuals to choose that the public body have the discussion in public.

The ability to make that request is of little import, however, if affected employees are not aware that their employment may be discussed at a future meeting — an issue addressed soon after the OPMA's adoption by the Appellate Division in *Rice*. In that case, the Appellate Division considered whether a school board violated N.J.S.A. 10:4 — 12(b)(8) by entering into closed session and discussing whether to reduce staff by terminating seventeen school employees at the end of the school year for budgetary purposes. The employees were not given advance notice that their termination would be discussed in a closed session. In finding the board's failure of notice violative of the OPMA, the *Rice* appellate panel noted that the OPMA provides affected employees with the right "to have a **public discussion** of his or her personnel matter." Tying the personnel exception of N.J.S.A. 10:4 — 12(b)(8) to the employees' privacy interests, the panel stated that the right to compel public action on the personnel topic would be rendered "useless and inoperative" if affected personnel are not given some form of notice that action affecting their employment status is on the agenda. Continuing, the panel stated:

"The plain implication of the personnel exception to the [OPMA] is that if all employees whose rights could be adversely affected decide to request a public hearing, they can only exercise that statutory right and request a public hearing if they have reasonable advance notice so as to enable them to (1) make a decision on whether they desire a public discussion and (2) prepare and present an appropriate request in writing."

The panel held that employees must be given "reasonable notice" when a public entity intends to consider taking adverse employment action related to them. The details of that notice have become commonly known as a *Rice* notice.

If the discussion takes place in closed session, the employee or official does not have the right to be present in closed session. The *Rice* case only supports the statutory intent of providing the affected employee with the right "to have a public discussion," not a right to participate in a private discussion lawfully taking place in closed session.

If the Clerk is being discussed, the Clerk does not elect to have the discussion at an open meeting, the Clerk has the right to exercise the duties of a Clerk and be present during the closed session.

L. MINUTES OF MEETINGS; AVAILABILITY TO PUBLIC [N.J.S.A. 10:4-14] 9/15/18

See § 3-6 of this Chapter.

M. VIOLATION OF THE OPEN PUBLIC MEETINGS ACT [N.J.S.A. 10:4-15]

1. Any action taken by a public body at a meeting which does not conform with the provisions of this act shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court, which proceeding may be brought by any person within forty-five (45) days after the action sought to be voided has been made public; provided, however that a public body may take corrective or remedial action by acting de novo at a public meeting held in conformity with this act and other applicable law regarding any action which may otherwise be voidable pursuant to this section; and provided further that any action for which advance published notice of at least 48 hours is provided as required by law shall not be voidable solely for failure to conform with any notice required in this act.



2. Any party, including any member of the public, may institute a proceeding in lieu of prerogative writ in the Superior Court to challenge any action taken by a public body on the grounds that such action is void for the reasons stated above, and if the court shall find that the action was taken at a meeting which does not conform to the provisions of this act, the court shall declare such action void.

Note - If after forty-five (45) days from the knowledge of the matter or the matter becoming public, no one has instituted a prerogative writ action, then the meeting (and actions therefrom) become valid. Even if previously they had been voidable, the meeting is now valid.

N.J.S.A. 10:4-16 addresses Injunctive orders or other remedies to insure compliance;  
N.J.S.A. 10:4-17 addresses Violations; penalty; statement at meeting of nonconformance; inclusion in minutes;

N. SUMMARY 9/15/18

Public bodies should always be cognizant of their obligations under their business in view of the public, absent specific circumstances. Clerks and members of the public body should always contact their municipal counsel if they are uncertain about the application of the law. The provisions of the "Open Public Meetings Act" require strict compliance and Clerks have the responsibility to ensure compliance with these provisions on a day-to-day basis. When circumstances arise which warrant research or direction from the Municipal Attorney. Also, clerks should consult Guides on the "Open Public Meetings Act" (many available) and should refer to N.J.S.A. 10:4-6.

O. SOURCES FOR CONTENTS OF THIS CHAPTER

NEW JERSEY STATUTES ANNOTATED, TITLE 10  
NEW JERSEY DEPT. OF LAW & PUBLIC SAFETY "VISION OF LAW"  
CHAPTER XV AS PREVIOUSLY WRITTEN BY ERIC MARTIN BERNSTEIN,  
ESQ.  
NEW JERSEY PRACTICE, LOCAL GOVERNMENT LAW BY MICHAEL A.  
PANE, ESQ.

(The writer as well as Rutgers University and the Municipal Clerks' Association of NJ wish to acknowledge and thank Eric Martin Bernstein, Esq. for this chapter as previously written by him in 1992 which serves as an excellent reference and understanding of the "Act.")

**§ 3-1.1. EXHIBIT - SAMPLE FORMS & STATEMENTS**

Statements required to be read and included in the minutes.

**§ 3-1.2. ANNUAL NOTICE STATEMENT**

If transmitted and advertised in newspapers.

This meeting is called pursuant to the provisions of the Open Public Meetings Law. This meeting of (Date) was included in a list of meetings notice sent to the (Newspaper) and the (Newspaper) on (Date) and advertised in said newspapers on (Date), posted on the bulletin board in the Municipal Building on (Date) and has remained continuously posted as the required notices under the Statute. In addition, a copy of this notice is and has been available to the public and is on file in the office of the Municipal Clerk.

Proper notice having been given, the Municipal Clerk is directed to include this statement in the minutes of this meeting.

Same statement to be used eliminating "advertised in said newspapers" if notice was just transmitted to newspapers.

### **§ 3-1.3. SPECIAL MEETING NOTICE STATEMENT**

This Special Meeting was called pursuant to the provisions of the Open Public Meetings Law. Notices of this meeting were sent to (or faxed to) the (Newspaper) and the (Newspaper) on (Date). In addition, copies of notices were posted on the bulletin board in the Municipal Building and filed in the office of the Municipal Clerk on aforementioned date. Notices on the bulletin board have remained continuously posted.

Proper notice having been given, the Municipal Clerk is directed to include this statement in the minutes of this meeting.

Minutes of this meeting should also reflect the purpose for which the meeting was called.

### **§ 3-1.4. EXECUTIVE SESSION**

#### **RESOLUTION**

WHEREAS, the Open Public Meetings Act, P. L. 1975, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist; and

WHEREAS, the Governing Body wishes to discuss:

(One of Nine Reasons a Closed Executive Session is permitted)

Minutes will be kept and once the matter involving the confidentiality of the above no longer requires that confidentiality, then the minutes can be made public.

NOW THEREFORE BE IT RESOLVED that the public be excluded from this meeting.

### **§ 3-1.5. EMERGENCY MEETING**

#### **RESOLUTION**

WHEREAS, this emergency meeting has been called for the following purpose:

(Purpose) and;

WHEREAS, the normal requirements of the law regarding 48 hours notice have not been met due to lack of time and subject matter, however notices of this Emergency Meeting were (hand delivered) or (faxed) to the (Newspaper) and the (Newspaper); and (Specify time, place and manner in which notice was provided)

INCLUDE:

- 1) Nature of urgency and importance;
- 2) Nature of substantial harm to public interest likely to result from a delay in holding meeting;

## 3) Either:

- (a) That the need for such adequate notice could not reasonably have been foreseen at a time when adequate notice could have been provided or
- (b) That such notice could have been foreseen at a time when adequate notice could have been provided, in which event the resolution shall specify the reason why adequate notice was not provided.

NOW THEREFORE BE IT RESOLVED that there should be a vote on this Emergency Meeting of 3/4ths of the members of the Governing Body.

**§ 3-1.6. RICE NOTICE**

9/15/18

**PERSONNEL EXCEPTION**

Date:

To:

Re:

Dear [Employee]:

A matter concerning your employment is scheduled to be discussed in closed session at a meeting of the Governing Body on (Date) (Time) or shortly thereafter. The Governing Body intends to discuss [very brief explanation of matter to be discussed].

If you wish to have this matter discussed in open session, please sign this statements and return to me prior to (Date).

Thank you.

Municipal Clerk

REQUEST FOR OPEN PUBLIC DISCUSSION - I, \_\_\_\_\_ hereby request that the matter involving [very brief explanation of matter to be discussed] be discussed openly at the meeting of the Governing Body on (Date).

Signature

**§ 3-2. MEETINGS****A. QUORUM**

1. The number representing the majority of members of a body that when duly assembled is legally competent to transact business.
2. A quorum of the full authorized membership of a Governing Body must be present in order for the Governing Body to meet and conduct business.

**B. AGENDAS**

9/15/18

1. PREPARATION/DISTRIBUTION/USE

- a. Preparation:
  - (1) By Municipal Clerk (core statutory responsibility);
  - (2) By Municipal Clerk in consultation with one or more officials (i.e. Mayor, Manager, Administrator), depending upon form of government and practical issues;
  - (3) By Municipal Manager;
  - (4) By Governing Body in Agenda-preparation meeting:
    - (a) Should be scheduled several working days before business meeting;
    - (b) May, by showing the Governing Body's intent, make orderly action possible;
    - (c) Provide, in the interval before the business meeting, time for staff to prepare appropriate resolutions and/or ordinances for action.
- b. The Open Public Meetings Act requires that, to the extent known, an agenda should be available to the public 48 hours in advance of a public meeting;
- c. Should serve as a concise, well-organized blueprint for Governing Body to follow on matters to be addressed at the meeting;
- d. If prepared properly, an agenda will:
  - (1) Reduce meeting time;
  - (2) Inform the public;
  - (3) Avoid deviation from business at hand; and
  - (4) Promote orderly process within the meeting.
- e. If poorly done, the agenda may:
  - (1) Include items that do not require action;
  - (2) Confuse members of the public and the Governing Body;
  - (3) Promote time-consuming, profitless discussion among Governing Body members that reflects poorly on the municipality.
- f. One recommended Order of Business is as follows:
  - (1) Pledge of Allegiance;
  - (2) Statement of public notice of meeting (required by Open Public Meetings Act);
  - (3) Roll Call;

- (4) Approval of previous meeting minutes;
  - (5) Presentation of petitions and communications;
  - (6) Reports from officials;
  - (7) Reports of special committees;
  - (8) Reports of standing committees;
  - (9) Unfinished business;
  - (10) New business;
  - (11) Approval of bills for payment;
  - (12) Privilege of the floor;
  - (13) Adjournment.
- g. The standard order of business may at any time be suspended for such items of business as:
- (1) Receipt of bids (if done at a full meeting);
  - (2) Public hearings on proposed assessments or pending ordinances;
  - (3) Matters of immediate general concern on which members of the public have made it clear they wish to speak;
  - (4) Presence of a public figure the Governing Body wishes to welcome and/or hear.
- h. Matters not requiring action should not appear on the Regular Agenda (although they may have a place on the Consent Agenda), for example:
- (1) Matters needing in-house administrative work (research or inspection and report, for example) before becoming ripe for Governing Body action;
  - (2) Items needing only acknowledgement of receipt;
  - (3) Routine matters requiring no discussion.
- i. Agenda distribution to Governing Body:
- (1) Should be done well before meeting;
  - (2) Should allow time for Governing Body members to familiarize themselves with agenda items.
- j. Supplements to Agenda:
- (1) Explanatory memorandums from relevant departments attached to agendas circulated pre-meeting to Governing Body can be helpful if:
    - (a) A new or unexpected item requires action;



- (b) New Governing Body members have not been briefed on an old item resurfacing for action.
- (2) Procedural outlines are sometimes attached to Governing Body packet agendas; these can:
  - (a) Help Governing Body members fulfill legal procedural requirements on:
    - i) Introducing and adopting ordinances;
    - ii) Opening/closing public hearings.
  - (b) Help governing bodies that rotate moving and seconding to know whose turn it is to act;
  - (c) Ensure that minutes will reflect proper procedure by setting forth prescribed forms for action.
- k. Agendas are permanent records and must be permanently filed.

#### C. CONSENT AGENDAS

9/15/18

1. Consent Agendas provide rapid, effective action on matters needing no discussion.
2. Consent Agendas include routine items of business which do not require individual discussion. Examples are:
  - a. Approval of routine licenses: bingo, raffle, business;
  - b. Approval of previously circulated meeting minutes;
  - c. Approval of routine financial matters requiring individual authorization (i.e. release of guarantees, fee payments from escrow accounts);
  - d. Receipt and filing of routine monthly reports;
  - e. Routine resolutions of congratulations and commendation; support/opposition on legislation (if so previously directed by the Governing Body);
  - f. Awards of contracts.
3. Consent Agenda items are not individually discussed. A resolution approving the Consent Agenda, which may or may not include the reading of the list of items appearing on the Consent Agenda, is moved, seconded and voted upon as one item by the Governing Body.
4. If any discussion is requested on a Consent Agenda item, it is removed from the Consent Agenda to the Regular Agenda.
5. Consent Agenda items are fully recorded in the minutes to the extent dictated by local practice: Reports and resolutions are spread in full in the minutes if so recorded in the Regular Agenda minutes.

## D. AUTHORIZATION TO PAY BILLS 10/31/04; 9/15/18

1. Law requires listing of all bills approved for payment, regardless of municipality size or size of bill list.
  - a. Some municipalities list bill numbers, payee and amount;
  - b. Some also show the appropriation account charged.
2. Some municipal auditors permit this alternative:
  - a. Listing of all claims by department on separate "appropriation sheets" identified by a budget appropriation number:
    - (1) Each sheet itemizes the list of charges, usually showing payee, amount and the grand total; 10/31/04
    - (2) Each such departmental or appropriation total is separately listed in the authorization resolution, showing the account charged and the total expended.
  - b. This method shortens minutes and bill payment resolutions.
  - c. If used, such authorizations to pay bills should clearly specify what is paid, including for example:

"Itemized claims listed on the following schedules, which are made a part of the minutes of this meeting as a supplemental record."
  - d. The appropriation sheets containing payment details should be bound and kept immediately available.
3. A Certification of Available Funds from the Chief Municipal Finance Officer is required by many governing bodies before approving a bill list since overexpenditures of a municipal appropriation is by law an indictable offense.
4. If a member of the governing body has a conflict on one particular bill that must be paid, and cannot participate in that vote, the authorization to pay that bill must be separated from the other bills paid so that the conflicted member can recuse himself from the vote. 9/15/18

## E. REORGANIZATION MEETING

9/15/18

1. Reorganization Meetings are held annually at the beginning of the Governing Body's operational year.
  - a. For Governing Bodies elected for terms of office commencing January 1, the Governing Body may, by ordinance, fix the date and time of its annual organization or reorganization meeting at 12:00 Noon on January 1, or at some other hour on any day during the first week in January. [N.J.S.A. 40:45A-1] 10/31/04

- b. Terms of office for Governing Body members elected under the Uniform Non-Partisan Election Law commence on July 1, and annual organization or reorganization meeting must be held on July 1 of each year. [N.J.S.A. 40:45-17]
- 2. In forms of government where the Mayor/Presiding Officer is selected annually by the members of the Governing Body or when the Mayor has been elected the preceding November, the Municipal Clerk convenes the Reorganization Meeting, presides over the meeting until the person elected or selected to serve as Mayor is sworn into office, and then relinquishes the Chair to the Mayor. This role is based on the Municipal Clerk's statutory position as Secretary to the Municipal Corporation. 9/15/18
- 3. The following items of business are conducted during the Reorganization Meeting:
  - a. Appointment of Mayor (if applicable), Council President (if applicable), Municipal Attorney and other Municipal Officials whose terms of office have expired.
  - b. Appointments to expired or vacated terms on all municipal boards, commissions and committees;
  - c. Adoption of rules for the conduct of meetings, including such as Roberts or Cushings Rules of Order.
  - d. Annual meeting calendar;
  - e. Establishment of depositories for municipal funds.

### § 3-3. ORDINANCES, GENERALLY

9/15/18

An ordinance adopted by a municipal Governing Body are essentially permanent laws of the municipality, unless they expire pursuant to the terms of the ordinance. Ordinances will continue in effect until they expire, are repealed by subsequent ordinance, or obviated by State or federal law. Ordinances are required by statute in a number of circumstances. The procedural requirements for the adoption of ordinances are established by statute. An ordinance may never be amended or repealed by resolution. Generally, ordinances of a municipal Governing Body may be adopted by an affirmative vote of the majority of the membership of the Governing Body participating at a meeting for which a quorum is present. Bond ordinances, for example, may only be adopted with the affirmative vote of 2/3 of the authorized membership of a Governing Body. 9/15/18; 9/15/19

The term "ordinance" when used in this subtitle means and includes any act or regulation of the governing body of any municipality required to be reduced to writing and read at more than one meeting thereof and published. [N.J.S.A. 40:49-1] 9/15/19

**Ordinances dealing with Zoning/Development are covered under Chapter 7;**

**Ordinances dealing with Bond Ordinances are covered under Chapter 9.****A. FIRST READING/INTRODUCTION 9/15/13**

1. Written document;
2. Read by title only;

**B. LEGAL ADVERTISING**

1. Publish in the legal newspaper of the municipality at least one (1) week prior to the scheduled public hearing date.
2. The following ordinances are exceptions and must be published in the legal newspaper of the municipality at least ten (10) days prior to the scheduled public hearing date:
  - a. Local Improvements contemplating assessments;
  - b. The establishment or change of grades of any street, highway, lane, alley or portion thereof;
  - c. Vacation of any street, highway, lane, alley or portion thereof;
  - d. Vacation of any public place that has not been accepted or opened;
  - e. Zoning ordinances and their amendments.
3. When calculating advertising date, the date of publication is not counted/date of hearing is counted.
4. Ordinances may be published by title, with a clear and concise statement prepared by the Municipal Clerk setting forth the purpose of the ordinance, the time and place a copy of the ordinance can be obtained (without cost) by any member of the general public, and the date, time and place for further consideration or final passage. N.J.S.A. 40:49-2.

**C. ORDINANCE POSTING**

1. Post in a prominent place in the Municipal Building.
2. Copies are made available to the public upon request; fee for copies may be charged pursuant to municipal policy unless ordinance was published by title only.

**D. PUBLIC HEARING 9/15/13**

1. Public Hearing must be at least ten (10) days after first reading.
2. At the time and place stated in the legal advertisement a public hearing shall be held where all persons interested shall be given an opportunity to be heard concerning the ordinance.

**E. FINAL PASSAGE 9/15/13**

1. Final adoption must be at least ten (10) days after first reading by a roll call vote.

2. Affirmative vote of majority of the Governing Body present in most municipalities; affirmative vote of majority of the full authorized membership of the Governing Body in Faulkner Act municipalities.
3. Notice of Adoption of Ordinance must be published in the municipality's official newspaper.
4. Ordinance must be spread in full in minutes of the Governing Body.

### § 3-3.1. EXHIBIT - ORDINANCE ACTIVITY CHART

Ordinance Type	Vacate Street/ Public Place	State Code by Reference	Capital Improvement
INTRODUCTION	In Writing - Read by Title - Introduced by Motion Affirmative Vote of a Majority of the Members Present Required		
SUPPLEMENTS TO INTRO	Reserve Rights Public Utilities	State Code Annexed; three copies on file	Refer to Planning Board
LEGAL ADVER	10 days before hearing	7 days before hearing	7 days before hearing
OTHER NOTICES & POSTING	Post, Copies for public at fee unless published by title only	Post, Copies for public at fee unless published by title only	Post, Refer to Planning Board Copies for public at fee unless published by title only <sup>12/99</sup>
AFFIDAVITS	2 Affidavits	1 Affidavit	1 Affidavit
AMEND PRIOR TO HEARING	Read by Title - Amended by Resolution - Consideration at least one week later - publish two days prior to hearing		
SUPPLEMENTS / HEARING	None	None	Planning Board Report Required
FINAL ADOPTION	At least 10 days after introduction Affirmative vote of majority of members present EXCEPT AS NOTED BELOW OR (if Faulkner community, affirmative vote of majority of full membership)		Special Procedures for lack of Planning Board Approval
NOTICE OF FINAL ADOPTION	Publish Notice <sup>12/99</sup>	Publish Notice 10/31/04	Publish Notice 10/31/04
AFFIDAVITS	2 Affidavits	1 Affidavit	1 Affidavit
EFFECTIVE DATE	Upon publication of Notice of Final Adoption (If Faulkner community, 20 days after final adoption unless emergency declared) (Upon signature of Mayor if required by form of government)		
AFTER ADOPTION	File with County Clerk within 60 days with Affidavits	Maintain three copies on file. File Health Ordinances with State	File with County Planning Board within 30 days

Traffic Ordinances may require NJDOT approval; Alcoholic Beverage Ordinances may require ABC approval; Health Ordinances require approval of the State Commissioner of Health; Towing/Storage Charge Ordinances require filing with the State Division of Consumer Affairs. <sup>12/98</sup>

The Clerk is required to have a grasp of these requirements and should consult with the Municipal Attorney whenever necessary to make certain that requirements are met. 9/15/18



**§ 3-4. RESOLUTIONS**

- A. A resolution is any act or regulation of the Governing Body that is required to be reduced to writing but which may be finally passed at the meeting at which it is introduced. (N.J.S.A. 40:49-1)

Helpful tip: The procedural requirements to amend or repeal a resolution are accomplished by the same means by which they were enacted. A resolution may not amend or repeal an ordinance. 9/15/14

**§ 3-5. CODIFICATION - A SYSTEMATIC ARRANGEMENT OF A MUNICIPALITY'S ORDINANCES**

- A. Under the direction of municipal attorney or other attorney employed for and compensated for this purpose.
- B. When completed, codification must be reviewed and adopted by all agencies having ordinance adoption powers and must be adopted by ordinance.
- C. Procedures for ordinance adoption apply to codification ordinance.
- D. Entire codification need not be advertised provided such codification clearly describes the ordinances included and a copy of the codification is filed in the office of the Municipal Clerk for public inspection.
- E. Codification shall be published in book form, certified by the seal of the municipality and shall be received in all courts of the State as evidence of the contents.

**§ 3-6. MINUTES**

9/15/18

- A. Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with the purposes of the Open Public Meetings Act. Minutes as outlined above pertain to all meetings: Regular, Special, Emergency and Closed Sessions.

**NOTE - "Reasonably comprehensible" does not mean "comprehensive." Minutes are not transcripts. The minutes should reflect the actions taken and the discussion at a meeting so that a member of the public could understand what occurred. The minutes are not intended to be a verbatim recitation of a public meeting.**

- B. Minutes of every meeting must be prepared in writing as soon as possible after the conclusion of the meeting. Executive session minutes must also be prepared in writing. The Supreme Court has addressed the issue of releasing open and closed session minutes in unequivocal terms: "Finally, we add what should be obvious: minutes should be released within days of their approval, unless truly extraordinary circumstances

prevent their availability to the public." Kean Federation of Teachers v. Morell, N.J. Supreme Court, 2018. (Official citation not available at time of publication)

- C. All minutes must be listed on the next agenda for approval by the Governing Body. Approval of the minutes, and any corrections to the minutes, must be recorded in the minutes of the meeting at which they are considered for approval. The minutes of the public meeting should be approved and made available to the public as soon as practicable.
- D. Closed session minutes should be confidentially circulated, listed separately for approval and maintained in a separate binder from the open session minutes, and approved in the same manner as open session minutes. They should be reviewed periodically with the Municipal Attorney for release to the public.
- E. Resolutions must be spread in full in the minutes, including the motion and roll call vote.
- F. Some municipalities maintain resolutions, ordinances and bill lists (vouchers and warrants) in separate volumes and refer to them by title or number in the minutes. (Consult with your Auditor before deviating from the process of spreading these in full in the minutes.)
- G. The Municipal Clerk must sign minutes in all municipalities. In Faulkner municipalities, the minutes must be signed by the Municipal Clerk and the Mayor or Presiding Officer.
- H. Minutes, except closed session minutes which have not been authorized for release to the public by the Governing Body, must be accessible to the public.  
  
**Draft copies of minutes should never be provided to the public. Minutes are not official until reviewed and approved by the Governing Body. Until approved, minutes are subject to change. Distributing draft minutes is not legally required and could result in confusion.**
- I. Fee may be charged for copies of minutes. See Chapter 4, § 4-13D for information on fees.

### § 3-7. PARLIAMENTARY PROCEDURES

Parliamentary procedures may be adopted by a municipal Governing Body. It is good practice to encourage the Governing Body to adopt and adhere to these rules and regulations. Such procedures are needed to efficiently conduct the business of the Governing Body. Robert's Rules of Order or Cushing's Manual are samples of different books on rules which can be used as a basis for procedures adopted by the municipal Governing Body. It is not recommended to simply rely on these samples without adopting procedures designed specifically for a particular Governing Body. Each municipality is different and have varying

needs. Below are some considerations and underlying principles to consider when assisting the Governing Body in crafting and understanding procedural rules. 9/15/18

A. MOTIONS

It is through motions that the business of an organization is transacted. A motion of a higher rank takes precedence over a motion of lower rank. Incidental motions and questions on rights and privileges take precedence over anything and can come up at any time regardless of the precedence of the subsidiary motions.

Motions are defined and ranked as follows:

**PRIVILEGED MOTIONS** - Do not relate to pending business but to special matters of immediate and overriding importance which, without debate, should be allowed to interrupt the consideration of anything else.

- Fix time to which to adjourn (Set time for next meeting)

- Adjourn

- Recess

- Question of Privilege

- Orders of the day

**MAIN MOTIONS** - Proposals to commit the organization to action. It is a motion that stands alone and does not apply to another motion. There can be only one main motion on the floor at a time.

**SUBSIDIARY MOTIONS** - Change the wording, controls the discussion or disposes of a main motion without accepting or rejecting it.

- Lay on the table

- End debate

- Limit or extend debate

- Postpone to a definite time

- Refer to committee

- Amend

- Postpone indefinitely

B. INCIDENTAL MOTIONS - Questions of procedure arising out of another pending motion or another motion or item of business.

- Division of Question

- Division of the assembly

- Withdraw or modify a motion

- Object to consideration

- Point of order

- Parliamentary inquiry

- Point of information

- Appeal from decision of the Chair

## Suspend a rule

## C. SPECIAL MOTIONS - Motions to reopen matters previously voted upon.

1. Take from the table
2. Rescind, repeal or annul/amend something previously adopted
3. Reconsider - Can only be offered by a member who voted on the prevailing side. A second is required and may be made by any member.

## D. NOMINATIONS AND ELECTIONS - Procedures are detailed in an organization's bylaws or constitution.

## E. VOTING ON MOTIONS

1. Methods of voting:
  - a. Voice vote
  - b. Roll call vote\*
  - c. Standing vote/show of hands
  - d. Ballot vote
  - e. Rule of Consent

\* The roll is called in alphabetical order except the presiding officer's name is called last. Each member responds with:

"Aye" or "Yes";

"Nay" or "No";

**"Abstain" or "Present" (both terms mean not voting);**

"Pass" (not ready to vote and this member is called again at the end of the call of the roll).

- f. The results of the vote is determined by the number of "Ayes" and "Nays" only. **An "Abstention" is the same as "not voting". It is not counted in tallying the vote, but it must be recorded in the minutes.** 12/99
  - g. The results must be announced before the action is official.
2. A tie vote defeats a motion except to confirm action already taken by an officer (sustain the Chair).
3. A member may change his/her vote at any time until the result is announced. A member may never change his/her vote if vote is by ballot.
4. A member does not have the right to explain his/her vote during voting (this would represent "debate" which is not permitted).

## F. DETERMINATION OF VOTE RESULT

1. Majority Vote - more than half of the votes cast, excluding blanks or abstentions. The majority vote is the basic requirement for approval of an action except where a rule or law provides otherwise.
2. Two-thirds vote - two-thirds of the votes cast, excluding blanks or abstentions.
3. Plurality vote - largest number of votes given to any candidate or proposition where three or more choices are possible.
4. Unanimous vote or general consent - without the formality of a motion or vote when no one objects to the proposal.

### § 3-7.1. MOTION ACTIVITY CHART EXHIBIT

P - Privileged Motion  
 S - Subsidiary Motion  
 M - Main Motion  
 SP - Special Motion  
 I - Incidental Motion

Type	Motion	Second	Debate	Amend	Vote	Special Conditions
P	Set time to adjourn (set time for next meeting)	Yes	No	Yes	Majority	May be reconsidered
P	Adjourn	Yes	No	No	Majority	
P	Recess	Yes	No	Yes	Majority	
S	Lay on the table	Yes	No	No	Majority	
S	End debate - Call the question	Yes	No	No	Two-thirds	May be reconsidered
S	Limit or Extend limits of debate	Yes	Yes	Yes	Two thirds	May be reconsidered
S	Postpone to definite time	Yes	Yes	Yes	Majority	May be reconsidered
S	Refer to Committee	Yes	Yes	Yes	Majority	May be reconsidered
S	Amend	Yes	Yes	Yes	Majority	May be reconsidered
S	Postpone Indefinitely	Yes	Yes	No	Majority	May be reconsidered
M	Main motions	Yes	Yes	Yes	Majority	May be reconsidered
SP	Remove from Table	Yes	No	No	Majority	
SP	Reconsider	Yes	*	No	Majority	Motion by member who voted with prevailing action
		*debatable if motion is debatable				
SP	Rescind, Repeal, Annul	Yes	Yes	Yes	Two-thirds	Without previous notice given



Type	Motion	Second	Debate	Amend	Vote	Special Conditions
					Majority	If previous notice given
I	Appeal decision of the Chair	Yes	Yes	No	Majority	May be reconsidered
I	Division of Question	Yes	No	Yes	Majority	
I	Division of Assembly	No	No	No	None	
I	Object to Consideration	No	No	No	Two-thirds	Negative vote may be reconsidered
I	Withdraw or Modify	No	No	No	Majority	Negative vote may be reconsidered
I	Suspend Rules	Yes	No	No	Two-thirds	

### § 3-8. USE OF TAPE RECORDING/ELECTRONIC EQUIPMENT

9/15/18

Electronic sound-recording systems are designed to provide complete and accurate documentation of public proceedings. In New Jersey, sound recording has become an integral part of the recordkeeping of courts, governing bodies and various other agencies which conduct open public meetings. The sound recordings of any agencies or organizations that receive a substantial contribution of tax dollars are considered public records. The minutes or transcripts generated from such recordings are also public records. However, there is no requirement that municipalities tape record meetings in any way.

The following basic guidelines are provided for the transcription, handling, storage and disposition of audio tape recordings.

#### A. TAPE TRANSCRIPTION

1. To assist in preparing transcripts of minutes of public proceedings, participants in a public proceeding should be asked to identify themselves and to speak loudly and clearly. Proceedings should be conducted according to commonly accepted rules of order to avoid overlapping conversations.
2. Requirements for generating transcriptions or minutes from tapes, and records retention requirements for maintaining taped sound recordings vary according to the type of public proceedings, such as:
  - a. Judicial proceedings - trials and hearings.
  - b. Meeting of public officials - School Boards, Governing Bodies, state and local agencies and commissions.
  - c. Meetings of public officials pursuant to the Municipal Land Use Law - Planning and Zoning Boards of Adjustment.
3. Once a sound recording of a public proceeding has been created, whether voluntarily or in compliance with a statutory requirement, it becomes subject to

the State record retention laws and the Open Public Records Act. Consult your municipal attorney on matters involving records destruction and requests for public records. 9/15/18

#### B. SECURITY ISSUES

1. Transcription of taped proceedings is frequently handled through an outside service bureau.
2. Security duplicates - labeled security copies should be reproduced before delivering a tape to a transcription service.
3. Documentation - a written record should be kept listing each proceeding and its date, the date the recording was shipped to the transcription service, and the date of return with the transcript.

#### C. CONTRACTING FOR TRANSCRIPTION SERVICES

However frequent or infrequent a public agency's need for transcribing tape proceedings, it is important to solicit competitive bids for contracted transcription services.

#### D. TAPE STORAGE

Audio tape is highly sensitive to environmental changes. Exposure to fluctuations in temperature and relative humidity, excessive light, and polluted air accelerate the deterioration of magnetic tape. Preservation of tape recordings therefore depends on protecting them from:

1. Cycling of temperature and humidity - temperature and humidity fluctuations cause tape to swell and contract in cycles. Over time, these cycles can break down the bond between the tapes' magnetic recording surface and the plastic backing, causing loss or distortion of recorded information.

Avoid keeping tapes in or on top of an operating recording/playback deck due to high heat generated by the motor.

2. Accidental erasure - exposure to magnetic fields can distort or erase tape recordings. Avoid storing near electrical motors.
3. Contamination - the accumulation of dust and debris in a storage area or a playback deck affects the long-term preservation of audio tapes. Exposure of tapes to dust, liquids, chemicals or airborne pollutants can cause loss of information.

Tapes should be stored in individual containers, stored on shelves and vacuumed regularly.

4. Excessive or improper handling - magnetic tapes should be handled carefully:
  - a. Contact with hands and fingers exposes tape surfaces to oil and dirt which can obliterate or destroy information.

- b. Tapes are more likely to break at the beginning and end of a reel or cassette.
- c. When breaks occur at a recorded portion of a tape, careful repair is necessary to avoid loss of information. To splice tapes, overlap the broken ends and align their edges, making certain the glossy side of both ends face up. Cut the overlapped ends at an angle and butt them together. Connect the ends with professional splicing tape. Tapes of judicial proceedings must be sent to the AOC for repair.
- d. If a tape is used too soon after a change in temperature, poor recording and playback can result.

#### E. TAPE DISPOSITION

Audio tapes from which accurate transcripts or approved summaries have been generated in accordance with statutory or other requirements may be disposed of in one of three ways:

1. Recycling - audio tape can be reused after bulk erasure.
2. Physical destruction - discard after bulk erasure.
3. Transfer of possession - through awarding custody to an archives.

NOTE: In order to dispose of audio tapes, officials must submit a "Request and Authorization for Records Disposal" form to the Division of Archives and Records Management, following appropriate records retention schedules.

#### F. PRESERVING SOUND RECORDINGS

A select number of sound recordings generated by public agencies document significant events worthy of long-time preservation. If stored under optimal conditions, audio tapes have a shelf life of ten (10) years. The longevity can be further extended by duplicating the old tape to a new tape.

Cassette tapes are not appropriate for long term storage.

- G. Encourage your Governing Body or administrator to authorize a modernization of recording and storage techniques. 9/15/18

## **Chapter 4**

### **RECORDS MANAGEMENT & OPEN PUBLIC RECORDS ACT (OPRA)**

§ 4-1. INTRODUCTION	§ 4-8. ELECTRONIC RECORDS
§ 4-2. YOUR RECORDS MANAGEMENT PROGRAM	§ 4-9. ELECTRONIC MAIL (E-MAIL)
§ 4-3. OPEN PUBLIC RECORDS ACT (OPRA)	§ 4-10. ENTERPRISE CONTENT MANAGEMENT SYSTEMS
§ 4-4. RECORDS RETENTION & DISPOSITION	§ 4-11. AWARENESS OF OTHER KEY TECHNOLOGIES AND APPROACHES
§ 4-5. STORAGE AND MAINTENANCE OF RECORDS	§ 4-12. FILE MANAGEMENT
§ 4-6. ESSENTIAL RECORDS	§ 4-13. RECORDS RETENTION SCHEDULES
§ 4-7. DISASTER PREPAREDNESS AND DISASTER RECOVERY	

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#### **§ 4-1. INTRODUCTION**

Governments are entrusted with safeguarding citizen's rights, protecting people and property; and performing public works. The work of government is documented through the proper creation, receipt, maintenance, legal disposition and appropriate preservation of public records.

##### **A. Chapter Objective**

The purpose of this chapter is to introduce municipal clerks to the methods available for properly managing public records entrusted to their care, with emphasis on the tools needed to solve record-keeping problems, increase efficiency, improve services and save taxpayer money.

##### **B. Records Management Definitions**

###### **1. Public Record**

A public record is any paper, written or printed book, document or drawing, map or plan, photograph, microfilm, data processed or image processed document, sound-recording or similar device, or any copy thereof which has been made or is required by law to be received for filing, indexing, or reproducing by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received by any such officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, in connection with the transaction of public business and has been retained by such recipient or its successor as evidence of its activities or because of the information contained

therein. Basically, any information that a public agency generates or receives in the transaction of its official duties is a public record.

A record should correctly reflect what was communicated or decided, or what action was taken and should be able to support the business needs and the accountability of the municipality. Records can include such items as:

- Financial transactions
- Significant working papers, drafts, and versions
- General correspondence and administrative records
- Personnel and employment documentation
- Web sites
- Electronic media, tapes, disks, hard drives, and portable storage devices
- Electronic messages, including electronic mail, voicemail, texting and social media
- Metadata associated with records

## 2. Non-Records

Non-records are defined as extra copies of documents preserved only for convenience of reference, and stocks of publications and of blank forms shall not be deemed to constitute records. Items that are not records include:

- Stocks of publications or printed brochures
- Preliminary drafts, worksheets, memoranda, and informal notes that do not represent significant steps in the preparation of record documents
- Routing slips or memos that contain no pertinent information or approvals
- Duplicate or convenience copies held for ease of reference and accessibility that are not included on a State record retention schedule (see Retention Schedule below)
- Blank forms, files, and office supplies
- Unofficial notices, unsolicited announcements, invitations, or other materials that are not filed as evidence of official municipality business

Other terms and definitions related to records management include:

## 3. Archival Records

Records that governments must keep permanently to meet fiscal, legal, or administrative needs of the government (primary value) or that the government retains because they contain historically significant information (secondary value).

## 4. Archives

The non-current records of the municipality preserved due to their continuing value or a place in which archival records or other important historical documentation are maintained.



## 5. Destruction Authorization

The formal documentation that a record has been destroyed. (See Record Disposition)

## 6. E-mail Systems

E-mail systems are software systems that transport messages from one computer user to another.

## 7. E-mail Messages

E-mail messages are electronic documents created and sent or received by a computer system. This definition applies equally to the contents of the communication, the transactional information, and any attachments associated with such communication.

## 8. Essential / Vital Records

Records that are fundamental to the functioning of the municipality. Certain essential records contain information critical to the continued operation or survival of an organization during or immediately following a crisis. Such records are necessary to continue operations without delay under abnormal conditions. They contain information necessary to recreate the municipality's legal and financial status and to preserve the rights and obligations of stakeholders.

## 9. Official Record

A record or document that is placed on file as the official, often original or approved, version and therefore provides evidence of the municipality's function, policies, decisions, procedures, operations and other activities.

## 10. Permanent

A record that has been determined to have sufficient historical, administrative, legal, fiscal, or other value to warrant continuing preservation.

## 11. Records Disposition

A final administrative action taken with regards to records, including destruction (shredding, burning, recycling), transfer to another entity (library, museum, or State Archive), or permanent preservation.

## 12. Records Group

See Record Series

## 13. Records Inventory

In records management, an inventory is a descriptive listing of each record series or group, together with an indication of location and other pertinent data. It is not a list of each document or each folder but rather of each series or group. When completed, the inventory should include all offices, all records, and all non-record materials.

#### 14. Records Life Cycle

The records life cycle is built on the idea that records have a life similar to biological organisms: they are born (creation), life (maintenance and use), and die (disposition). Most records will go through four life cycle stages:

- Creation - Records begin the life cycle when they are created, received, or captured. Examples include correspondence, reports, forms, etc.  
Active Records — Active records are referred to frequently, at least once a month, and required for current use by the department to conduct its business. These records are managed by each individual department for decision making, classifying and filing. During this stage, records are stored in readily accessible office spaces near personnel using the information.
- Inactive Records - Inactive records are not needed for day-to-day operations. Their retention periods vary. The key to controlling inactive records is a good indexing system to aid in accessing and retrieving needed information. They should be indexed and moved to an Inactive Records Storage Room.

#### 15. Records Management

The field of management responsible for planning, controlling, directing, organizing, training, promoting, and other managerial activities involving the life cycle of information, including creation, maintenance, and disposal, regardless of media.

#### 16. Retention Period

A specified period of time that records are kept in a medium or location or successive media or locations to meet operations, legal, regulatory, fiscal and historical or other requirements.

#### 17. Records Retention Schedule

The records retention schedule is listing of records series titles or categories, indicating the length of time each record series is to be maintained. The purpose of records retention schedules is to protect information while it has operational, administrative, legal, fiscal, regulatory and/or historical value.

#### 18. Records Processes

The process of controlling records starts at creation, receipt, or capture by classifying the records for easy access and retrieval.

#### 19. Records Series

A group of related records filed/used together as a unit and evaluated as a unit for retention purposes, e.g., a personnel file consisting of an application, reference letters, benefit forms, etc.

C. Value of Public Records

Public records are resources. They document transactions and decisions of public agencies, safeguard property, register rights and obligations of citizens and their governments, and contain our state's historical heritage. Governments cannot function without public records.

D. Benefits of Records Management

By using appropriate records management techniques on a consistent basis, municipalities realize demonstrable benefits including, but not limited to, avoiding the costs of unnecessary space, equipment, supplies and labor for record-keeping and processing operations. Sound records management practices will also set the stage for significant service improvements for your municipality and its constituents.

E. Ownership and Custody of Records

Records your municipal staff create, receive and use in their daily work belong to the municipality and are maintained by municipal personnel for the benefit of the public and government.

All records of your municipality are considered to be owned by the municipality regardless of which department originally created or has physical custody of them. While the municipal clerk is deemed the Custodian of Records within a municipality, the department creating or receiving the material (i.e. from outside sources) assumes day-to-day departmental custodian responsibilities for the municipality (i.e. deputy custodian — See § 4-3, OPRA), unless a documented transfer of custody to another municipal department is performed. Departmental deputy record custodians maintain, secure, and care for records under the guidance of the municipal clerk and in accordance with the municipality's policies and state laws.

**TIP BOX** - Since records are owned by the municipality, it is considered a best practice to not allow municipal staff to use home computers or personal accounts to *store* municipality records. If use of a home computer or personal account proves necessary, the employee must understand that municipality-related records are subject to disclosure under the Open Public Records Act (see § 4-3), a court action, or an audit.

F. Life Cycle of Records

Records must be managed throughout their life cycle, from creation, active use, inactive storage, through to final disposition (i.e. permanent storage or authorized destruction after following approved record retention and disposition schedules).

Using the life cycle model is a helpful way to look at records' progressive stages and demonstrates the dynamic nature of records as they pass from one stage to another. This dynamic nature requires records to be managed. Taking a static view of records diminishes their value, hinders their management, and may increase risk to the municipality.

G. Legal Framework for Records

Public records are public property and are held in trust for citizens. Accordingly, public officials must ensure that records are protected from unauthorized alteration,

defacement, transfer or destruction. This is accomplished through compliance with New Jersey's general public records law (N.J.S.A. 47), the State's records management statute (N.J.S.A. 47:3-15 et seq.), and administrative rules under N.J.A.C. Title 15:3 et seq., which enact the standards and procedures mandated by the law.

#### H. NJ State Records Management Oversight Structure

There are three state government entities providing guidance to municipalities in managing their records within the State of New Jersey:

##### 1. State Records Committee (SRC)

The State Records Committee regulates the retention and disposal of all state and local public records and promulgates related standards. Created by the Public Records Act of 1953, the committee consists of representatives of (unless otherwise designated):

- State Treasurer
- Attorney-General
- State Auditor
- Director of Local Government Services
- Chief of Archives

##### 2. Division of Revenue & Enterprise Services (DORES)

Operating as an integral unit of the Division of Revenue and Enterprise Services (DORES) of the Department of the Treasury, the State's records management program consists of three distinct areas of responsibility. All program operations are located within the State Records Center, 2300 Stuyvesant Avenue, Trenton.

###### a) Records and Forms Analysis

- Appraises records of state, county and municipal governments, and schedules the records for retention, transfer and disposition through the auspices of the State Records Committees
- Offers advices in records management, files management, office automation, essential/vital records programs, and disaster prevention
- Processes records disposal requests
- Coordinates with the State Archives, assisting in efforts aimed at preserving the State's documentary heritage

###### b) Records Storage

- Provides centralized storage of semi-active records for state agencies and authorities and advises all public sector agencies on semi-active records storage options

###### c) Image Processing

- Provides systems consultations for image processing projects (microfilm and digital imaging)

- Monitors for image processing standards compliance

### 3. State Archives

The State Archives is New Jersey's official research center for public records of enduring historical value. Many vital records, land documents, probate records and military service papers were filed centrally by the Colony and State of New Jersey.

Effective July 1, 2012, oversight of the records management, records storage, imaging and micrographic functions of the Division of Archives and Records Management was transferred to the Division of Revenue and Enterprise Services in the Department of the Treasury.

## § 4-2. YOUR RECORDS MANAGEMENT PROGRAM

The foundation for successfully managing municipal records is your Records Management Program, which is the structure enabling your municipality to adequately create, manage, and preserve records regardless of the medium (media neutral) of all transactions of the municipality. There are three pillars of a municipality's Records Management Program: 1) roles and responsibilities, 2) policies and the procedures supporting the established policies, and 3) education and training.

### A. Roles and Responsibilities

Each municipal employee must manage the records they create/maintain in accordance with the municipality's policies and state laws. Managers and supervisors are responsible for ensuring that their staff comply with established municipality policies.

The following outlines the responsibilities for roles that can be charged with managing a municipality's records: Municipal Clerk/Records Management Officer, department Records Management Coordinators, and a (optional) Records Management Oversight Committee.

#### 1. Municipal Clerk

The municipal clerk is the Records Officer and manager responsible for implementing local archives and records retention programs as mandated by the state.

The municipal clerk maintains custody of all minutes, books, deeds, bonds, contracts and archival records of the municipality and provides guidance in proper records management practices to all department and those in custody of or are managing any records of the municipality.

#### 2. Department Records Management Coordinators

Each municipal department should designate an existing staff member to the role of Records Management Coordinator. This person will act as the department's liaison to the municipal clerk to oversee the day-to-day records management activities within their respective departments or functional areas.



Each Records Management Coordinator is responsible for assisting the municipal clerk in implementing an effective records management program within their department/functional area following established municipal policies and procedures.

**TIP BOX - Records Management Oversight Committee (*optional role*)**

As an option, a municipality may decide to create a Records Management Oversight Committee to provide guidance and support ensuring the proper policies are established, supported and updated as needed to comply with all applicable state and federal records management laws and guidelines.

The municipal clerk typically is the chair of the Committee. Committee members can include elected officials and department heads, an individual charged with overseeing information technology, and the legal counsel, among others. Duties of the Committee can include:

- Provide advice to the municipal clerk on the development of the records management program

- Work with the municipal clerk to periodically develop a plan that outlines goals of the records management program's operations

- Periodically review the performance of the records management program and propose improvements

- Periodically review suggested revisions to the records management policy manual as needed

- Actively support and promote the records management program among the departments of municipality

**B. Records Management Policy and Procedure Manuals**

Each municipality should have two distinct manuals: 1) a Records Management Policy manual; and 2) a Records Management Procedure manual.

While sometimes both policies and procedure may be contained within the same document, best practices dictate that two separate documents be kept since policies are updated at a much less frequency than procedures.

**1. Records Management Policy Manual**

A Records Management Policy manual outlines general records management policies for a municipality, its records management program, and the records management responsibilities of each department/employee with regards to records. The policy manual should be formally adopted by the municipality.

Policy manuals must be tailored for each municipality. Clerks can leverage DORES, other municipalities and outside records management consultants when developing their policy manuals.

**2. Records Management Procedure Manual**

A Records Management Procedure manual provides the instruction on to how to carry out the steps to support the established policies. Since procedures are more detailed than policies, they tend to change more frequently than policies manuals.

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§ 4-3

A critical component of a well-run Records Management Program is to perform periodic reviews to ensure established policies and procedure are being followed. The municipal clerk will work with municipality's Records Management Coordinators and department heads to conduct reviews of current records retention and disposition schedules, practices and procedures to ensure compliance with established municipal policies and state and federal laws.

C. Education and Training

Records management is a shared responsibility between municipal staff, department Records Management Coordinators, the municipal clerk, and senior management. All creators of records should be equipped with the necessary skills to capture and manage reliable and authentic records. Programs for training should encompass all users creating and using records while performing their functions.

The municipal clerk shall ensure that Records Management Coordinators and department staff have adequate records management training.

**§ 4-3. OPEN PUBLIC RECORDS ACT (OPRA)**

**TIP BOX**

It is difficult to advise on how to deal with issues on OPRA because the different vicinages can, and will, render different rulings in similar cases. Always consult with your municipal attorney. 9/15/17

A. OPRA History.

The Open Public Records Act (OPRA) is a State statute that replaces the old "Right to Know Law" which governs the public's access to government records in New Jersey. OPRA was enacted to give the public greater access to records maintained by public agencies in New Jersey by balancing the public's interest in government records, respect for personal privacy, and the efficient process of government. The law is compiled in the statutes as N.J.S.A. 47:1A-1 et seq.

OPRA requires that records custodians respond to and fulfill OPRA records request in accordance with the law.

B. Legislative Findings

Per N.J.S.A. 47:1a-1, the legislature finds and declares it to be the public policy of this state that: Government records shall be readily accessible for inspection, copying, or examination by the citizens of this state, with certain exceptions, for the protection of the public interest.

All government records shall be subject to public access unless exempt from such access by:

- P.L. 1963, c 73 (C.47:1A-1 et seq.) as amended and supplemented
- Any other statute
- Resolution of either or both houses of the Legislature

- Regulation promulgated under the authority of any state or Executive Order of the Governor
- Rules of Court
- Any Federal Law
- Federal regulation
- Federal order

A public agency has a responsibility and obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy; and nothing contained in p.l. 1963, c. 73 (c.47:1a-1 et seq.), as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

#### C. Definitions

Custodian of a government record - In the case of a municipality it is the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body.

**TIP BOX** - While OPRA provides that the custodian of government records in a municipality is the municipal clerk, OPRA does not preclude a municipality from developing reasonable and practical measures for responding to OPRA requests, which may include the designation of deputy custodians for particular types of records, such as those within departments.

**TIP BOX** - Although the formal establishment of deputy records custodians by resolution is not a required process, for those municipalities where personnel from other offices routinely answer OPRA requested for their respective office; i.e. Tax Office, Construction Office, Police Department, etc., it is recommended by the GRC that such individuals should be held out to the public as such. This could be as simple as listing their names on the municipality's OPRA form as a deputy records custodian.

Public agency - Any of the principal departments in the executive branch of state government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the legislature of the state and any office, board, bureau or commission within or created by the legislative branch; and any independent state authority, commission, instrumentality or agency.

The term also means any political subdivision of the state or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the state or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

#### D. Records Exempt from Disclosure by Statute:

1. By Statute:
  - a) Inter-agency or intra-agency advisory, consultative or deliberative material.

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- b) Legislative Records — Information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form, or contained in any e-mail, computer database or telephone record, unless it is information the constituent is required by law to transmit. Any memorandum, correspondence, notes, reports or other communication prepared by or for, the specific use of the member's official duties, except that this provision shall not apply to a publicly-accessible report which is required by law to be submitted to the Legislature or its members.
- c) Law enforcement records:
- Medical examiner photos
  - Victim's records, except that a victim of a crime shall have access to the victim's own records.
  - Criminal investigatory records, except:
    - Where a crime has been reported but no arrest yet made,
      - o information as to the type of crime, time, location and type of weapon
    - Where a crime has been reported and an arrest has been made, information as to the name, address and age of any victims unless there has not been sufficient opportunity for notification of next of kin of any victims of injury and/or death to any such
      - o victim or where the release of the names of any victim would be contrary to existing law or court rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered;
    - When an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar
      - o background information and, the identity of the complaining party unless the release of such information is contrary to existing law or court rule;
    - Information as to the text of any charges such as the complaint, accusation and indictment unless sealed by the court or unless the
      - o release of such information is contrary to existing law or court rule;
    - Information as to the identity of the investigating and arresting
      - o personnel and agency and the length of the investigation;
    - Information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the
      - o arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police; and
    - Information as to circumstances surrounding bail, whether it was
      - o posted and the amount thereof.

Where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release, such information may be withheld. This exception shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety. Whenever a law enforcement official determines that it is necessary to withhold information, the official shall issue a brief statement explaining the decision.

- d) Trade secrets and proprietary commercial or financial information.
- e) Any record within the attorney-client privilege.
- f) Administrative or technical information regarding computer hardware, software and networks, which, if disclosed would jeopardize computer security.
- g) Emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or person therein.
- h) Security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software.
- i) Information which, if disclosed, would give an advantage to competitors or bidders.
- j) Information generated by or on behalf of public employers or public employees in connection with:
  - Any sexual harassment complaint filed with a public employer
  - Any grievance filed by or against an employee
  - Collective negotiations documents and statements of strategy or negotiating
- k) Information that is a communication between a public agency and its insurance carrier, administrative service organization or risk management office.
- l) Information that is to be kept confidential pursuant to court order.
- m) Certificate of honorable discharge issued by the United States government (Form DD-214) filed with a public agency.
- n) Social security numbers.
- o) Credit card numbers.
- p) Unlisted telephone numbers.
- q) Drivers' license numbers.
- r) Certain records of higher education institutions:



- Research records
  - Questions or scores for exam for employment or academics
  - Charitable contribution information
  - Rare book collections gifted for limited access
  - Admission applications
  - Student records, grievances or disciplinary proceedings revealing a student's identification
- s) Biotechnology trade secrets.
- t) Convicts requesting their victims' record.
- u) Ongoing investigations of non-law enforcement agencies (must prove disclosure is inimical to the public interest)
- v) Public defender records.
- w) Upholds exemption contained in other State or federal statutes and regulations, Executive Order, Rules of Courts, and privileges created by State Constitution, statute, court rule or judicial case law.
- x) Personnel and pension records, except specific information identified as follows:
- An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason for such separation and the amount and type of any pension received.
  - When authorized by an individual in interest.
  - Data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information.

2. By Executive Order:

- a) Records where inspection, examination or copying would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.
- b) Records exempted from disclosure by State agencies' rules.
- c) Certain records maintained by the Office of the Governor.
- d) Resumes, applicants for employment or other information concerning job applicants while a recruitment search is ongoing.
- e) Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments.

- f) Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.
- g) Information in a personal income or other tax return.
- h) Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness, except as otherwise required by law to be disclosed.
- i) Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing.
- j) Records in the possession of another department (including New Jersey Office of Information Technology and State Archives) when those records are made confidential by regulation.

#### E. Access Availability

Per [N.J.S.A. 47:1A-5], the custodian of a government record shall permit the record to be inspected, examined and copied by any person during regular business hours; or in the case of a municipality having a population of five thousand (5,000) or less according to the most recent federal decennial census, during not less than six (6) regular business hours over not less than three (3) business days per week or the entity's regularly-scheduled business hours, whichever is less.

#### F. Request for Public Records

All requests for public records pursuant to OPRA must be in writing.

##### 1. The Requestors Must:

- Name specific identifiable government records
- Be as specific as possible identifying type of records, dates, parties to correspondences, subject matter, etc.

OPRA request shall utilize the forms provided by the record's custodian; however, no custodian shall withhold such records if the written request, not provided on the official form, contains the requisite information as required by law.

##### 2. Broad and/or Unclear Request.

- If a request does not name specifically identifiable records or is overly broad, a custodian may deny access.
- A custodian may also seek clarification.

**TIP BOX** — Examples of broad and/or unclear OPRA requests:

Overly broad — "Any and all records related to the construction of the new municipal swimming pool facility."

Valid request — "Any and all letters between John Doe and Jane Jones regarding the construction of the new municipal swimming pool facility from January 1, 2008 to December 15, 2008."

## 3. Search vs. Research

The records custodian is obligated to search their files to find the identifiable government records listed in the OPRA request. However, the custodian is not required to research their files to figure out which records, if any, might be responsive to a broad and unclear OPRA request.

## G. Responding to an OPRA Request

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A custodian shall grant or deny access as soon as possible, but no later than seven (7) business days after the request is received. A custodian unable to comply with a request must indicate in writing specific reasons. A custodian must provide a response to each item requested by granting or denying access, seeking clarification or requesting additional time.

## 1. Seven (7) business days.

Records custodian has seven (7) business days to grant or deny an OPRA request, unless a shorter time period is otherwise provided by statute, regulation, or executive order.

Day one (1) is the day following the custodian's receipt of the request.

## 2. During a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, the deadlines by which to respond to a request for, or grant or deny access to, a governmental record under OPRA shall not apply, provided, however, that the custodian of a government record shall make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven (7) business days, or as soon as possible thereafter.

## 3. Immediate Access

A records custodian must grant immediate access to:

- Budgets
- Bills
- Vouchers
- Contracts
- Government employee salary information

Immediate access means immediately as soon as possible, on the spot. Exceptions to immediate access:

- Records are in storage
- Records are in use
- Records require a medium conversion

If a custodian cannot provide immediate access to records, the custodian must provide a written explanation and request a time extension from the requestor.

4. Extension of Time to comply with a request
  - Custodian can request an extension of the seven (7) business day deadline
  - Such a request shall be in writing and provide an anticipated date when the records will be provided
  - Failure to grant or deny access by the extended deadline date results in the request being deemed denied.
5. Denying an OPRA Request
  - Must be in writing to the requestor.
  - Must identify the specific legal basis for a denial of access.

#### H. Medium Conversion

A custodian must permit access to government records in the medium requested.

If the custodian does not maintain the record in the medium requested the custodian must:

- Convert the record to the medium requested; or
- Provide a copy in some other "meaningful" medium. (meaningful to the requestor)

**Conversion Cost:** The custodian may impose a special charge related to the conversion for extensive use of technology and labor for programming, clerical and supervisory assistance that may be required. But if the conversion is completed in-house, there is generally no charge. If an outside vendor is required, seek estimates and provide requestor with estimates for approval or rejection. The charge for conversion must be actual cost.

#### I. Copying Cost

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1. Basic per page copy fees, actual cost not to exceed:

8 1/2 x 11	\$0.05 per page
8 1/2 x 14 or larger	\$0.07 per page

Any public agency whose actual costs to produce paper copies exceed the \$0.05 and \$0.07 rates may charge the actual cost of duplication. Electronic records must be provided free of charge (i.e. records sent via e-mail and fax). Every public agency must charge the actual cost to provide records in another medium (i.e. computer disc, CD-ROM, DVD).

If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record. The actual cost of duplicating the record, upon which all copy fees are based, shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy

except as provided for in section I. below. Access to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs. (N.J.S.A. 47:1A-5)

2. How to Calculate Actual Costs

Municipalities should contact their supplies vendor (where you obtain your supplies) to determine the cost of paper and toner.

Calculate or contact copying company to determine the agency's annual copying volume (calendar or fiscal year, however the agency operates). This does not only include copies pertaining to OPRA requests - This is all copying on all copy machines in the agency for all purposes.

Contact copying company to determine the average paper life of one toner/ink cartridge (i.e. how many pieces of paper the ink or toner should be able to copy).

Custodian must maintain documentation of all information provided by copying company or office supplier (i.e. contracts or correspondence from purchasing agent or copying company) regarding this calculation.

Actual calculation is the total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume.

This calculation can be averaged for all copy machines in an agency that produce letter and legal copies. Special copiers, such as for color printing or blueprints copied in house, should be calculated separately.

3. Exceptions – per N.J.S.A. 47:1A-5(b) there are instances where another law or regulation may address the costs associated with obtaining a particular record.

Additionally, no fee shall be charged to a victim of a crime for a copy or copies of a record to which the crime victim is entitled to access.

J. Special Service Charge

Special Service Charge - Whenever the nature, format, manner of collation, or volume cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies; provided, however, that in the case of a municipality, rates for the duplication of particular records when the actual cost of copying exceeds the foregoing rates shall be established in advance by ordinance. The requestor shall have the opportunity to review and object to the charge prior to it being incurred. (N.J.S.A. 47:1A-5)

Actual direct cost means the hourly rate of the lowest level employee capable of fulfilling the request and does not include fringe benefits.

Only warranted when:



- Copies cannot be reproduced by ordinary copying equipment in ordinary business size.
- Accommodating request involves an extraordinary expenditure of time and effort, including inspection of records.

K. Redactions to Public Records

Redaction means the editing of a record to prevent public viewing of material that should not be disclosed. Words, sentences, paragraphs or whole pages may be subject to redaction.

Custodians must identify the legal basis for each redaction. If full pages are to be redacted, the custodian should give the requestor a visible indication that a particular page was redacted, such as blank sheet bearing the words "paper redacted."

L. Denial of Record Appeal Notice

The custodian shall prominently post in public view in their office the Denial of Record Appeal Notice. The Notice indicates the right to appeal a denial of, or failure to provide access to a government record and the procedures by which an appeal may be filed.

M. Appeal Process

Per N.J.S.A. 47:1A-6, a person who is denied access to a government record by the custodian may:

- Institute a proceeding to challenge the custodian's decision by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to government records; or
- In lieu of filing an action in Superior Court, file a complaint with the Government Records Council.

The public agency shall have the burden of proving that the denial of the access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fees.

N. Government Records Council (GRC)

There is established within the Department of Community Affairs a Government Records Council, consisting of the Commissioner of Community Affairs or his designee, the Commissioner of Education or his designee, and three public members appointed by the Governor, with the advice and consent of the senate, not more than two of whom shall be from the same political party. The public members shall not hold any other state or local elected or appointed office or employment while serving. Per N.J.S.A. 47:1A-7, they are responsible for:

- Establishment of an informal mediation program regarding disputes of access to government records

- Receive, hear, review and adjudicate a complaint concerning denial of access to a record
- Issue advisory opinions as to whether a particular type of record is a government record accessible to the public
- Prepare guidelines and informational pamphlet for use by records custodians
- Prepare an informational pamphlet explaining the public's right of access to government records and the methods for resolving disputes regarding access
- Prepare lists for use by records custodians of types of records in the possession of public agencies which are government records
- Make training opportunities available for records custodians, public officers and employees regarding access to public records
- Operate an informational website and a toll-free helpline during regular business hours for use by custodians or the public

O. Violations, Penalties, Disciplinary Proceeding

A public official, officer, employee or custodian who knowingly and willfully violates p.l. 1963, c. 73 (c.47:1a-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty of \$1,000 for an initial violation, \$2,500 for a second violation that occurs within ten (10) years of an initial violation, and \$5,000 for a third violation that occurs within ten (10) years of an initial violation [N.J.S.A. 47:1A-11].

Remember

- Read the law and follow it.
- When confused, call the GRC, your municipal attorney, your State and County Associations for direction.
- Stay within the OPRA time constraints, and stay in contact with the requestor. These are two of the easiest things you can do to meet compliance!
- Document EVERYTHING and keep it filed appropriately.
- Maintain a "Request Log" and keep it updated.
- Keep your reference material on hand at all times, and be sure it's current. Check your sources.

References:

- MICHAEL A. PANE, ESQ., "SUMMARY OF CHANGES IN ACCESS TO PUBLIC RECORDS AS FOUND IN CHAPTER 404 LAWS OF 2001," P.5, PAR.3.
- GOVERNMENT RECORDS COUNCIL, TRENTON, NJ, "THE NEW JERSEY OPEN PUBLIC RECORDS ACT (OPRA): HANDBOOK FOR RECORDS CUSTODIANS," SECOND EDITION, AUGUST 2002.
- THE OPEN PUBLIC RECORDS ACT, P.L. 2001, C. 404.

**§ 4-4. RECORDS RETENTION & DISPOSITION**

As stated earlier in this chapter, records must be managed throughout their life cycle, from creation, active use, inactive storage, through to final disposition (i.e. permanent storage or authorized destruction after following approved record retention and disposition schedules).

In order to properly manage records, one has to first know what records exist. This is done by conducting an inventory of all municipal records held by the departments as well as any third-party (e.g. vendor contracted to stored inactive records, attorney contracted for legal services, etc.).

A. A Records Inventory

A records inventory is a complete listing of records by record series, together with necessary descriptions and supporting information.

Remember - any information that a municipality generates or receives in the transaction of its official duties is a public record - Regardless of the medium used to store the information (e.g. paper, microfilm, magnetic disk, etc.) and includes duplicates or

copies. While the majority of the information provided within this section applies to both paper and electronic records, more information regarding inventorying electronic records will be discussed later within this chapter.

#### B. Conducting an Inventory

With the guidance of the municipal clerk, each department Records Coordinator, who in turn works with their department head and key supervisors, must examine each functional group within their respective areas to identify the records they receive, create and/or store.

**TIP BOX** - A key to an effective and efficient inventorying process is the application of the records series concept. For example, consider a common record series like "correspondence." For records inventorying purposes, there is no need to know who generated or received a particular letter or memorandum, nor what subject matter was discussed. This is equally true for any other examples of record series held by municipal offices, such as purchase orders, travel vouchers, cancelled checks, personnel records, etc. In all cases, the records inventory is not concerned with the particular details of content.

The following is some of the basic steps to begin the typical physical record inventory process:

- For each department, pick one functional area/process performed by the department at a time (although all have to be addressed)
- Focus on the general function and overall content of records
- Identify format (e.g. paper, electronic, microfilm/microfiche)
- Identify the filing location and filing organization method used
- Ask how often the records series is referenced a day/week/month
- Indicate the current volume (e.g. # of drawers, boxes, shelf space)
- Annual accumulation

Information to be collected can be found on a sample record series inventory form, located on the DORES' web site at:

<http://www.state.nj.us/treasury/revenue/rms/pdf-fillin/RecordSeriesInventoryForm.pdf>

#### C. Analyze the Inventory

The information you collect as a part of the inventory process has many benefits and is not used exclusively for retention scheduling. Such information becomes crucial to other aspects of managing records:

- Accumulation rates are a factor in deciding whether to convert a record series to another medium such as digital images
- Filing organization methods may illustrate problems with retrieval
- Frequency of use, i.e., reference rates, will determine when to place records in inactive storage

Possible questions to ask are:

- Which records can be disposed of?

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- Which records can be moved to an inactive record storage area?
- Which records may be microfilmed or digitally scanned?
- How much money you can save in instituting new practices?
- Are any identified records unnecessary copies?
- Is there a need for future equipment and/or additional space?
- Which records may be essential to operations or are historical?

D. Compare Inventories to Records Retention Schedules

Take the completed inventory forms and compare each record series title with the retention schedules appropriate for that department. Inventoried record series will correspond, with varying degrees of precision, to the State approved schedules. Note:

- Record series common to most offices, such as "correspondence," are listed on a General Schedule
- Records series that result from an activity or transaction that is unique to a given department are listed on a specific schedule or schedules

See the DORES's web site for the latest revision of the Municipal Clerk Record Retention Schedule at:

<http://www.nj.gov/treasury/revenue/rms/pdf/m200000.pdf>

When titles and descriptions on the inventory match exactly or sufficiently with titles and descriptions on Record Retention Schedules, proceed with the disposition process. "Sufficient" matching involves situations in which the title or the description matches, rather than both the title and description matches.

When titles and descriptions cannot be reconciled between the inventory results and the Records Retention Schedule, contact DORES for direction in identifying the proper Record Retention Schedule for the record.

E. Coordinating Electronic and Paper Files

Municipalities must realize that records can exist in both paper and various electronic formats. Records Management Coordinators and department heads, while working with the municipal clerk, must determine which rendition of a record is the official copy and ensure that the record is properly managed and maintained following approved policies.

F. Destruction of Public Records

Public Records may be disposed of after their administrative, fiscal and legal value has expired, provided that the statutory procedures are followed. Records scheduled for permanent retention may be transferred to archives after they have become inactive in the department of origin.

1. Records Destruction Authorization

Authorization requirements for records destruction are contained in Chapter 410, Laws of 1953 (Destruction of Public Records Act, [N.J.S.A. 47:3-15 et seq.]) and are implemented through Chapter 15 of the New Jersey Administrative Code [N.J.A.C. 15:3-17 et seq.]



DORES is the statutory authority for public records and approves the destruction of records which have outlived their value to the public.

## 2. Options for Disposition

Records can be disposed of in one of two ways:

- Physical destruction - through shredding, burning, discarding or deletion/recycling; or
- Transfer of ownership - through awarding custody to a facility or program other than the originating agency, i.e., a county archives, library or museum or the State Archives.

## 3. Request for Records Destruction: ARTEMIS

As inactive records are identified, place them in standard storage boxes. When ready, with the appropriate Records Retention Schedules in hand, fill in a Request and Authorization for Records Disposal Form through the online ARTEMIS system.

ARTEMIS is the Records Retention and Disposition Management System of DORES. The purpose of ARTEMIS is to provide efficiencies across State, County, Municipal and Educational agencies in addressing many of the Records Management functions, processes, and services offered by DORES in accordance with the Destruction of Public Records Act, Chapter 410, PL 1953.

Artemis is designed to offer the following functions:

- Lookup and download agency specific retention schedules
- Electronic submission of Disposition Request
- Ability to check status of Disposition Request
- Management Reports

The ARTEMIS form is legally required to document an official request for destruction by all state, county and municipal agencies. This process ensures that records earmarked for destruction have outlived their value to the public.

Check the DORES web site for scheduled instructor led training sessions and online video training for ARTEMIS.

## 4. Benefits of using the Disposition Process

- Increases efficiency and safety by removing unnecessary files
- Avoids liabilities and associated costs created by premature, unauthorized disposal of records
- Avoids disruption of efficiency due to gaps in information
- Avoids Irretrievable loss of historical legacy
- Avoids unnecessary expenditures for space, equipment and supplies

**G. How to Destroy Records Once Approval is Received**

There is no required way to physically destroy records. You can destroy them yourself or hire a contract vendor.

**1. Methods of destroying approved inactive records:**

- Shred (paper)
- Controlled, enclosed burning (paper)
- Erase (magnetic media)
- Recycle (magnetic media or paper)
- Archives (transfer to Archives for permanent storage)
- Deletion of electronic media (E-mail)

When required, dispose of storage media that housed electronic records so that the media are destroyed in such a way as to obliterate any traces of the content they had contained. In this regard, municipalities can use the policies, standards, and procedures set forth by the Office of Information Technology - Information Disposal and Media Sanitization (09-10-NJOIT).

**2. Privacy considerations:**

Any potentially confidential or sensitive paper and microfilm records must be shredded so that all information is obliterated. Recycle audio tapes and bulk erase them before discarding. Refer to the above section for magnetic media. For routine records, avoid the embarrassment of having discarded records discovered in inappropriate places. If using a vendor, require the vendor to document that destruction or recycling has taken place. Have the vendor sign a Records Removal and Destruction Order (see DORES web site).

**H. Litigation Support and Legal Holds**

At times a municipality may be party to potential litigation or an investigation and as a result may have to produce specific records relating to the request for records or information. While a detailed discussion of litigation holds and electronic discovery (e-discovery) for legal proceedings is beyond the scope of this manual, a mention of the topic is warranted.

Litigation holds and discovery processes may parallel those employed to respond to Open Public Records Act (OPRA) requests, audits and internal investigations — All key concerns for New Jersey's public sector as well. Be aware that OPRA entails program specific formats. In all cases, consult with your legal advisors when dealing with litigation holds and e-discovery.

Put broadly, when a municipality has a reasonable expectation that litigation exists or is imminent, it has an obligation to identify and preserve electronic records (e.g., e-mail, digital images, documents, spreadsheets, etc.) as well as hard copy records, which are relevant to the case. The requirements for identification, preservation, and ultimately, production and presentation of relevant records are likely to be broad. They may span multiple storage platforms such as shared drives, database stores, e-mail systems,

microfilm and file cabinets. They may involve multiple individual, and/or cross multiple departments and locations.

1. Responding to Legal Discovery

Legal discovery is the action of the opposing party in a lawsuit legally demanding copies of all records related to the issue at hand. Staff should contact the municipal clerk, legal counsel and other appropriate municipal officials according to municipal policies before responding to any legal discovery, or are potentially expected to be subjected to legal discovery.

2. Outline of Litigation Hold Process

The following outlines suggested steps to prepare for a litigation hold process.

a) Create and maintain a support team

The support team responsible for handling litigation holds typically includes members representing records management, information technology, legal, human resources and line management offices.

b) Development and use of a legal hold notice

Work with your municipality's legal advisors and senior management to develop a notice format and distribution method to alert all affected parties within your municipality. An example of a legal hold notice is provided on the DORES web site. You may wish to use the same notice format, with basic modifications, for audits and investigations.

c) Identify/notify records custodians

Identification of record custodians is part of a normal records inventory and retention scheduling programs. Use this to help identify custodians holding records relating to the legal hold. Make sure any notice to custodians includes basic elements such as clear title indicating the purpose of the notice, name and authority of the issuing office, the basic subject of the notice (e.g., pending litigation), the target individuals, offices, systems and/or hardcopy sources, and the names/types of records, date ranges and response time requirements if applicable.

d) Identify records

Use available manual and automated tools to identify the targeted records, including but not limited to: results of your records inventory, records retention schedules, available electronic search tools, and by working with your Record Coordinators and IT support staff among other methods.

e) Preserve and present records

Your ability to copy and/or preserve targeted content will depend upon the media and systems you use to capture and store records. Also consider placing segregated/copied records in off-line systems and/or dedicated paper and electronic folders for preservation.

f) Monitor and manage the hold process

This involves monitoring the litigation hold through its lifecycle, including tracking of custodian compliance, communicating status and changes in the scope of the records requests, and ultimately closing out and terminating the hold order. Legal and/or human resources staff members are likely to take the lead in this area. However, records management staff and their expertise may be required to assist these staff members.

Municipalities with a solid records management foundation using techniques described within this chapter will be in a good position to address litigation holds and legal discovery, as well as being positioned for OPRA responses and producing materials for audits and investigations.

#### § 4-5. STORAGE AND MAINTENANCE OF RECORDS

Municipalities must utilize storage methods that will ensure access to records regardless of their format for their full retention period while providing appropriate security and protection measures. Senior municipal officials must recognize that the long-term storage and maintenance of electronic records in particular has many challenges and requires an ongoing commitment of staff and other resources.

[NOTE: Although much of this section applies to all records no matter the format, some content will apply primarily to paper records. See § 4-8 for additional information regarding electronic records.]

##### A. Managing Active, Semi-Active and Inactive Records

It is neither prudent nor possible to keep every physical paper record created or received within the confines of most offices. Office space should contain only those records necessary for conducting daily business effectively. Alternative methods of storage are needed for the maintenance of records that are not referred to regularly, but must be kept for administrative, legal or fiscal reasons. Alternative formats will be discussed later in this chapter.

The frequency of record use by a department determines its activity, and consequently its storage and retrieval requirements. For records management purposes there are three categories of records activity: active records, semi-active records and inactive records.

##### 1. Active Records

Also called current files, these are records needed to conduct current business matters and should be only those records necessary for conducting daily business. Reference rates for active records are generally greater than once per month, per file drawer.

Active records are typically maintained within the office area of the respective departments due to the need for frequent retrieval and accessibility.

## 2. Semi-active Records

These records must be kept for administrative, legal or fiscal reasons, but are not referenced regularly. Reference rates are typically less than once per month, per file drawer. Available space within departments and in other potential record storage locations will determine the most approximate area to house semi-active records.

## 3. Inactive Records

Inactive records are documents which are no longer referenced on a regular basis and tend to be stored in a less accessible place since they are not used frequently.

Inactive records should be housed when practical in appropriate alternative storage space better suited and more cost effective for inactive records. A department's primary work space within an office should not be used for inactive record storage.

If an inactive record is scheduled for permanent retention, it may be transferred to an archives to be preserved for its aesthetic, historical or research value.

Determining when a particular record series is active, semi-active or becomes inactive is dependent on the particular record and the department(s) needing to access them. Records Management Coordinators, along with the municipal clerk, must determine which records should be transferred to designated inactive record storage areas. Departmental records should be reviewed on an annual basis to identify records eligible for transfer to designated inactive records storage areas.

**TIP BOX** - As you identify semi-active or inactive records, place each records series in its own storage box. For example, budget work papers and other fiscal year documents could all be filed together, once the fiscal year ends, and be transferred to storage. Mixing different records series in the same storage box is not advisable since it complicates the disposal authorization and removes the benefits of timely disposition if the retention periods of the mixed series are different.

Any inactive record storage space must be approved for use by the municipal clerk to ensure that the space is adequate for the storage of records and has the proper environmental conditions.

## B. Use of Commercial and Third Party Record Storage Facilities

A municipality may decide to utilize a commercial or other third party vendor (both private and government operated) to store records if there is not an appropriate space to house records within the municipal facilities.

Third-party storage vendors charge extra for trucking, receiving, handling, referencing and destruction of records. However, contracted record storage may be less expensive per square foot, and is sometimes the only option available for a municipality with storage space limitations on site.



C. Record Security

It is the responsibility of all staff to ensure records are properly maintained and secured by following approved municipal policies and applicable state and federal laws. Staff must be familiar with and adhere to the requirements, responsibilities and accepted behaviors set forth in any municipal policies established to protect the confidentiality, integrity and availability of records in any format (e.g. electronic or hardcopy).

1. Stored within Departments

Any departments holding records within their office areas that require extra security, including records containing personal information should be stored in locking filing cabinets or other secure storage area with controlled access.

2. Stored in Inactive Storage Areas

Any designated inactive record storage rooms should have access limited to Records Management Coordinators, those designated by Records Management Coordinators, the municipal clerk and those approved by the clerk. Records stored in any designated inactive records storage area remain in the department's custody and control. Records Management Coordinators must track and coordinate record movement to and from inactive storage areas.

Confidential inactive records stored outside of a department's general work area should be stored in a separate secure area from other inactive records and must be maintained with restricted access in accordance with statutory and regulatory requirements.

Designated inactive records storage areas should be locked whenever there is no ongoing need to enter these areas during the day and locked at the end of each day.

D. Environmental Controls

Municipalities must strive to ensure that storage conditions for physical records will remain at relatively consistent, moderate temperature and humidity levels throughout the year. The municipal clerk should work with the person responsible for facilities to ensure proper environmental conditions for stored records following DORES guidelines, including:

- Control excessive fluctuations of temperature and humidity
- Control infestation by insects or vermin
- Prevent contamination by dust or other pollutants
- Prevent excessive or improper handling
- Fire detection and protection

Periodic inspections of the storage facility include monitoring for plumbing leaks, standing water and excess humidity. Records storage boxes should be examined randomly for mold, infestation, or other signs of deterioration.

E. Preparing Records for Transfer to Inactive Storage

For inactive records to be transferred to a designated inactive record storage room, each Records Management Coordinator is responsible for preparing records from their respective department or functional group following approved procedures. Records not housed in approved storage containers nor properly labeled must not be moved to any designated inactive storage area unless approved by the municipal clerk.

1. Labeling and Identification

Each record container (i.e. file cabinet, storage box, etc.) must include appropriate labeling to properly identify the record series and record dates within the container.

2. Records Transfer Form

Department Record Coordinators must document (on designated form or records inventory management system) those inactive records transferred to inactive storage. This Transfer Form is to be provided to the clerk and identifies the contents of the box, in addition to:

- Physical location of the box
- Unique box identification number
- Record series title and number
- Disposition - dates when the box can be destroyed

F. Removal of a Box or File from Inactive Storage

Whenever a file is removed from a box held in inactive storage, an "out card" should be put in its place to mark the record which was removed, to record the date of removal, and identify the person to whom the records have been delivered. When a file is returned to a box in the storage area, remove the "out card" and make a notation of the returned date.

G. Records Management Inventory Tools

To assist staff in the management of records throughout their life cycle, municipalities may utilize software applications and other tools for tracking both paper and electronic records, as approved by the municipal clerk and person responsible for information technology.

H. Alternatives to Paper: Imaging Processing Systems

As an alternative to retaining paper records, municipalities can use digital and/or photographic images of the paper records. DORES uses the term Image Processing Systems to refer to both digital (i.e. scanned) renditions of a record as well as photographic (e.g. microfilm/microfiche) rendition. Implementing an Image Processing System can offer reliable and cost effective means for managing information resources.

Most categories of paper records can be destroyed after they have been converted to image formats once an Image Processing System has been approved. Compliance with State standards set forth in New Jersey's Administrative Code assures the acceptance of

imaged records. Rules and procedures that apply to this area: N.J.A.C. 15:3-1 et seq., 3-2 et seq., 3-3 et seq., 3-4 et seq. and 3-5 et seq.

1. General Objectives of Image Processing Systems

Image Processing Systems are designed to provide for effective, economical management of records through achieving one or a combination of the following general benefits:

- Public Service improvements
- Space savings
- File integrity
- Security
- Faster and more effective retrieval
- Preservation

**TIP BOX** — When considering the use of Image Processing Systems, refer to the Association for Image and Information Management's Recommended Practice Report (AIIM ARP1-2009), which provides an overview of analysis, selection and implementation of systems employing electronic image technologies.

2. Considerations and Choice of Records

From a technical perspective, be aware that such factors as document size, texture, color and condition determine appropriate formats for Image Processing Systems. From an economic viewpoint, note that conversion of paper records to image format can be expensive, especially without proper analysis and planning.

From a strategic perspective, critical transaction flows such as permits, tax returns, legal documents, regulatory filings and associated payments offer the greatest opportunities for service enhancements and innovations.

For more information on electronic alternatives to paper records, see § 4-8, Electronic Records and § 4-10, Enterprise Content Management System (ECMS) later in this chapter.

## § 4-6. ESSENTIAL RECORDS

Essential records (also referred to as vital records) are those records that are critical to the operation of a municipality and that document the assets of the municipality and the state. Loss of a municipality's essential records would seriously impair or prevent the municipality from fulfilling its mandated mission.

Traditionally, essential/vital records have been discussed separately from disaster prevention/recovery efforts. But given the critical need to properly protect and access essential records,

these two topics should be incorporated into the same discussions and project within your municipality.

#### A. Essential Records Defined

While the backup and protection of all records is a critical part of a municipality's Records Management Program, records defined as essential/vital need a higher level of availability than other records — Especially in the event of a disaster. Essential records are identified as part of a standard records inventorying process and is a form of self-insurance that supports the continuity of government operations and helps to preserve the legal viability of the public sector. Essential records can be divided into two categories:

##### 1. Emergency Operating Records

These are records vital to the essential functions of municipal for the duration of an emergency and comprise records necessary for the mobilization and protection of material and manpower resources, services, and systems; the maintenance of public health, safety, and order; and the conduct of essential municipal activities.

##### 2. Rights and Interests Records

These are records that are essential for the preservation of legal rights and interests of individual citizens, municipal staff and the state government. Examples of these records are personnel security files, Official Personnel Files, and valuable research records. Each Records Management Coordinator should work with the Records Management Officer and designated municipal emergency response personnel to ensure that these records are adequately protected and available in an emergency situation.

Only a very small fraction of a municipality's records are typically deemed essential. Still, without these records, the daily operations of a municipality would cease, and the public interest would be endangered because of problems such as:

- Vulnerability to litigation
- Exposure to financial settlements or loss of revenues
- Disruption of vital services (health and safety)
- Failure to protect citizen rights (e.g., loss of property records)
- Loss of regulatory records and audit trails

#### B. Identification

Each department head is responsible for identifying those records deemed essential to the municipality. Department heads will work with their respective Records Management Coordinator, legal advisors, the municipal clerk, the person responsible for information technology and other senior management to identify essential records.

Published records retention schedules are good sources for identifying essential records. In the context of records classification for essential records, there are four general categories:

- Nonessential Records

This type of record is listed on a records retention schedule for routine destruction in accordance with statewide guidelines. Loss of these records presents no obstacle whatsoever to restoring daily business.

- Useful Records

These are records that, if lost, might cause some inconvenience but could be easily replaced. Loss of these records does not present any real obstacle to restoring daily business.

- Important Records

This category of records, although replaceable, is reproduced only at considerable expense of funds, time and labor. Loss presents aggravating but surmountable obstacles to resumption of operations.

- Essential Records

These records are absolutely essential to the continuity of municipal operations and/or protection of the legal rights and obligations of the agency and the citizens it services. These records cannot be lost under any circumstance.

Examples of essential government records include regularly updated information needed for daily activities such as accounts receivable, tax files (e.g., general tax records, property tax records, property ownership records, etc.), minutes of governing boards, authorities, and commissions, and standing executive orders of mayors or county executives.

#### C. Methods of Protection

Estimating the severity of a calamity that could destroy a municipality's records is a basic step in determining appropriate protection measures for essential records. The three most commonly used ways to secure essential records are duplication, on-site storage and off-site storage.

Records identified as essential generally need to be available on demand such as through a backup data center with instant accessibility. In some cases, even a delay of a few hours or days may prove to be too long for essential records. In these cases, the municipal clerk along with department heads, Records Coordinators and the person overseeing Information Technology will develop the methodology for providing the access to essential records in the time deemed necessary. This could include the use of a variety of technologies and methodologies.

### § 4-7. DISASTER PREPAREDNESS AND DISASTER RECOVERY

From a records management perspective, disaster preparedness and recovery involves the ongoing protection of all records (inclusive of essential records) and recovery of these records following a catastrophic event such as a computer system crash, security breach or terrorist attack, or following massive damage to municipal facilities due to a disaster such as a flood, fire or earthquake.

As stated earlier, be sure to integrate disaster preparedness/recovery with essential records management and continuity of operations plans. It is imperative for the municipal clerk, department Record Coordinators, department heads and operational managers to work with



their information technology support staff to ensure that a holistic view of these interrelated programs guides decisions about how to institute essential records management.

This section supplements and amplifies information found in the State's administrative rules. Rules and procedures that apply to this area: N.J.A.C. 15:3-1 et seq. 3-2 et seq., 3-3 et seq., 3-4 et seq., 3-4.11, and 3-6 et seq.

A. General Considerations

Effective disaster preparedness requires proper on-site and off-site storage facilities. Align the scope of disaster plans, and the specific coverage techniques adopted, with risks relative to the loss of records stored in essential records systems. This includes consideration of likely threats to the systems and the impacts of lost records in areas such as revenue intake, the rights/obligations of the government and its citizenry, confidentiality, and continuity of essential services for public health and safety. Assess whether the records can be reconstructed via other sources and determine the costs associated with guarding against records loss. Determine the maximum time frame that can be tolerated for recovery (recovery point objective) and how current restored vital records must be — E.g., up to the minute, from last back-up, from last meeting cycle, etc. (recovery point).

Balance the costs of disaster preparedness/recovery programs with the likelihood and impacts of records losses. Risk assessments help municipalities determine the period of time within which systems, applications or functions must be recovered after an outage, and the economic feasibility of various recovery options.

B. Responsibilities

The municipal clerk will work with the municipality's information technology department and senior management to develop and maintain an up-to-date disaster plan that outlines preventive measures currently in place, how to respond to various disasters affecting municipal records, and how to resume business operations as quickly as possible after a disaster occurs.

The municipality's information technology staff will be responsible to ensure all electronic records, information systems, and software applications are properly protected to enable restoration in the event of a disaster. Staff and contractors must store records on the municipal's network rather than on their personal computers or other portable devices.

C. Disaster Preparedness

Disaster prevention efforts are restricted to essential records protection because records salvage techniques are expensive and time consuming, and therefore, are not feasible for non-essential records holdings.

There are two basic methods to protect essential records from disasters:

1. Proper Storage Facilities for Essential Records

Ensure all essential records are stored in proper facilities providing protection against fire, flood, water leaks, fluctuations of temperature and humidity, infestation by pests and vermin, and pollution. Typically, municipalities may not

be able to provide this level of record protection for all records (due to cost and available proper storage space), thus the focus is on only those that are deemed essential.

## 2. Backup and Off-Site Storage of Essential Records

Through the use of alternative records formats such as digitally scanning records or microfilm, creation of a backup copy of essential records and storing the backup copy off-site is a proper method to help further protect essential records. Off-site storage locations should be outside of the immediate vicinity of the primary storage site to ensure they are far enough away from a disaster affecting the immediate area.

For computerized records and database systems, work with your information technology team to obtain off-site back-up and/or replication of essential records that are stored in digital format.

Although there can never be an absolute guarantee against destruction from a disaster, essential records protection can provide a cost-justifiable strategy to minimize the effects of a calamity. Time and money spent to prevent a records disaster will always be less than the cost of a salvage operation.

## D. Recovery Operations

Despite the steps taken to prevent disaster, systems may fail and records will occasionally be damaged. Plan to recover essential hard copy and electronic records that have been impacted by a disaster.

### 1. Hard Copy Records Recovery

Once conditions become favorable for records deterioration, reversing damage becomes more difficult as time goes on. For example, mold will grow on wet paper within 48 hours. Be aware of the following if you must conduct a salvage operation:

#### a) Building inspection

As soon as possible after fire, flood, explosion or other calamity, have officials with expertise in electrical, building and fire safety examine affected facilities for potential hazards and certify their safety.

#### b) Communications Center

In some cases, it may become necessary to set up temporary location in the immediate vicinity of the salvage operation with telephones, walkie-talkies and/or wireless communications devices

#### c) Recovery Coordination

Establish lines of authority and responsibility in a clear fashion. Designate the following:

- o Recovery Coordinator — Assign an appropriate official to oversee recovery efforts.

- o Departmental Record Coordinators — Assemble those Record Coordinators and appropriate department heads with custody of records damaged in the disaster to aid in identification of records.

d) Logistical Support

Be aware that staff and equipment will be needed to conduct a records salvage operation successfully. Logistical elements include:

- o Employees — Various support personnel may be required to assist in the salvage operation, including truck drivers, sanitation workers, local police and fire officers, and building maintenance workers.
- o Equipment and supplies — The nature of these items will depend upon the type of records disaster and can include temporary lighting, communications, transportation, tables, containers, and chemicals.
- o Consultants — Contract professionals may be needed to assist in salvage operations. These may include records analysts to identify retention requirements and authorize legal disposition, and an archivist to treat salvageable records or identify future conservation needs. In some instances, a contract vendor may be required to execute one or more of the salvage methods highlighted in the next section.

2. Salvage Methods

The municipal clerk, records coordinators, designated staff and consultants begin to salvage records by:

- a) Determining if a list of the records involved in the disaster exists, and where the list is kept.
- b) Determining if there is an off-site storage location with duplicate records (e.g., electronic back-up files, dispersed paper duplicates, microfilm copies in a records storage center, etc.).
- c) Examining salvageable records to determine:
  - o What can be saved.
  - o What can be destroyed through the Request and Authorization for Destruction process. State agencies submit Request and Authorization for Records Disposal forms. Municipalities may submit requests on-line.
  - o In either of these cases, the identification of record series and their corresponding retention and disposition requirements forms the basis for decisions to save or destroy.
- d) Packing and labeling of salvageable records to ensure continuing identification of the records.

After these steps have been taken, identify appropriate methods for salvaging vital records. Recommendations depend upon the nature of the

records disaster. In either of these cases, the identification of record series and their corresponding retention and disposition requirements forms the basis for decisions to save or destroy.

#### § 4-8. ELECTRONIC RECORDS

Each municipality should be dedicated to leveraging information management technologies as appropriate for their respective operations. Electronic technologies provide reliable, cost effective avenues for processing, storing, accessing and managing records. These technologies pave the way for increased productivity, and cost savings associated with reduced staffing, space and equipment requirements, as well as enhanced accountability and greatly improved responsiveness to the public.

At the same time, municipalities must recognize that records and information created, transmitted, received, and maintained electronically have the same legal requirements as all other records. Sound records management practices need to be instituted to ensure with the increased efficiency, your municipality does not put itself at risk. Rules and procedures that apply to this area: N.J.A.C. 15:3-1 et seq. and 3-2 et seq.

##### A. Section Objectives

This section provides guidance on how to apply basic records management principles in the context of commonly-used electronic records technologies. The guidelines apply to those systems administered directly by your municipality, as well as to systems administered by third parties on behalf of your municipality, including hosted software applications and electronic mail systems.

The intent is not to address all aspects of electronic records and the technologies, but to provide practical foundation to: 1) Understand the challenges, and 2) Demystify electronic records management.

##### 1. Understanding the Challenges to Managing Electronic Records

Municipalities must recognize the challenges of maintaining access to electronic records and be dedicated to allocating appropriate staff and other resources for this purpose. Unlike paper or microfilm, electronic records must not only be stored in the proper file format, but the technology and systems must be present to render an accurate and readable rendition of the records throughout their records retention periods.

##### 2. Demystifying Electronic Records Management

As stated above, information technology is constantly evolving and thus easily becomes overwhelming for those not working with technology on a daily basis (and often even for technology professionals too). With the goal to help demystify electronic records management, there are four aspects to keep in mind:

##### a) Electronic records follow the same life cycle as paper records

Managing electronic records follows the same lifecycle as paper records: creation/receipt, active life & inactive life management, retention, and



through to final disposition (i.e. permanent storage or authorized destruction after following approved record retention and disposition schedules).

It thus becomes important to know what records are coming into the municipality already in electronic format and which ones are created within departments that match the definition of a record. This leads us to the next aspect:

b) Conduct an electronic record inventory

Just like paper records, you have to know what you have in order to properly manage it. Identifying which electronic information your municipality possesses that fits the description of a record (plus its location and format) must be done.

Unlike physical paper, electronic records are not as visible and thus appear more challenging to identify on the surface. The focus for inventorying electronic records is more on the software application that generates the record (e.g. financial software) and the device/area where the record is stored (e.g. server, network directory, etc.).

Department heads and Records Management Coordinators, working with your information technology support staff, must know and document which applications create and/or house electronic records within their respective areas.

c) Trustworthy Repositories

In addition to identifying the electronic records and their location, municipalities must ensure that the electronic repository housing the electronic record is trustworthy and has the reliability to maintain the records throughout the records retention period requirements. More information on this is included in the Storage Management and Maintenance section below.

d) Coordinating Electronic and Paper Files

Records can exist in both paper and electronic formats. Once you have identified the electronic information that fits the description of a record and its location, then the next step is to determine which format (paper, microfilm/microfiche or electronic) is the official copy of the record.

Working with the municipal clerk, each department head and Records Coordinator must document which rendition of a record is the official copy and ensure that the record is properly managed and maintained following approved policies and procedures.

B. Structured vs Unstructured Records

Electronic records formats generally fall into one of two categories: structured records and unstructured records, as described below:



1. Structured

As implied by the name, structured records follow a rigid layout and are often described as data stored in fields and rows in tables of a relational database. Financial applications, payroll applications, Geographic Information Systems (GIS) applications and other database applications used within a municipality are examples of structured records.

A key determination is whether the records stored in a particular database contains original, official versions or record copies. If a database contains only support information such as abstracts of underlying, complete records stored in image or other formats, the information need only be retained for the length of time it has active administrative value. If the database contains record copies of transactions or other events, plan to apply the following records management principles and practices.

If a database contains a mix of different record series, use the longest retention period to guide your disposition actions. If you store long term (retention greater than 10 years), permanent or archival records on an electronic system, be sure to address technical obsolescence (see the section on Safeguards Against Technical Obsolescence and System Sustainability later in this chapter).

2. Unstructured

Unstructured electronic records consist of electronic information created or obtained by staff where the information is not stored in a database. Unstructured records in a typical municipality would include: office documents (e.g. word processing, spreadsheets, presentations, etc.), e-mail, audiovisual records, websites, photos and drawings, scanned document images, among others.

Typically, unstructured records require more attention by those tasked with managing records than structure records. This is due to having lesser controls as they are created and where they are stored. Think of how you write, name and file a letter created by word processing software. Whereas a database driven application is controlled by the software itself and limits what can be placed within a database field and where it is stored.

Similar to paper records, unstructured records need to be identified and filed into a proper records management filing system for ease of locating, accessing, retrieving, and proper disposition. See the File and Organization Methods section later within this chapter.

C. Metadata - Labels for Electronic Records

Often when discussing electronic records, the term metadata is heard. Metadata is defined as 'data about data', providing context or additional information about other data. In practical terms, metadata is similar to labeling a box of paper records. Whereas a box label describes the contents of the box (e.g. records series name, dates, departments, etc.), metadata provides similar information about electronic records. Although what is included as a part of electronic metadata will vary by the system that created the electronic record, metadata can include:

- Names of record creators and editors (those who modify database records)
- Dates/times of entries, modifications and deletions
- Department or functional attribution (organization or function responsible for the records)
- Time and date of database creation and update
- System level metadata
- Data element descriptions (via data description language and/or data dictionaries)
- Entity relationship diagrams
- Database management system name and version(s)
- Operating system name and version(s)

Thus it is imperative that metadata is retained with all electronic record filing systems. Not retaining metadata would be akin to throwing all paper records into large, unmarked boxes with no organizational methods used.

#### D. Electronic Storage Locations

As a part of the inventorying process, determining the location of electronic records is paramount. Electronic records can be stored internally on devices owned by the municipality (e.g. servers and other media-storage devices) or externally from the physical buildings housing departments and staff as described below.

##### 1. Internally Stored Records

Electronic records stored inside a municipality can be located on a variety of devices and media, including:

###### a) Personal computers

Although PCs are what are commonly used to create electronic records, it is not considered a good practice to store records on them since local hard drives may not be routinely backed up and can be out of the control of a centralized IT operation. Information created on a personal computer should be stored on the proper network storage devices. Your IT support organization should review every PC to ensure users are storing their work where it is backed up.

###### b) Network drives

Municipalities use shared and private networked drives to store electronic records and other content such as reference and working materials (e.g., drafts and publications), which are used to produce documents and other formal communications. Although varying by systems used, you may be told to store your files on the "H" drive, "P" drive, "S" drive or some other drive letter. Check with your IT support staff for more information on what drive letters you should use to store files.

**TIP BOX** - Typically, shared drives contain content in a variety of formats including word processing documents, text files, scanned documents, photographic images, audio and video recordings, spreadsheets, presentations and structured databases. This content can be stored in organized file folders that are arranged in various ways (e.g., by projects, cases, institutional functions, individual employees, discussion groups, etc.).

c) Mobile devices

The use of mobile devices (e.g. laptops, tablets, smart phones, etc.) is common in today's fast paced world. Generally, municipal records should not be stored on mobile devices (except for reference purposes only) due to a greater chance of the device being damaged, lost, or stolen.

If a mobile device must be used as a part of daily operations of a department, then daily backup or transfer of record data must be performed to ensure the integrity and retention of all records.

d) Removable media

Removable media include items such as USB drives (aka thumb drives), CD/DVDs, external or removable hard drive, etc.). Generally, it is not recommended to store records on removable media since the media can be lost or stolen due to their relatively small sizes.

Removable storage media should only be used for backups, transfer of data, and temporary storage. Records should not be maintained on removable media unless approved by the clerk and information technology staff.

2. Externally Stored Records

Electronic records (as well as physical hard copy records) may be stored outside of the municipal facilities at a location not owned or maintained by your municipality. Typically, when records are stored off-site, they are at other government operated locations (e.g. State Archives), or a third-party vendor's facilities.

a) Commercial and Third Party Storage Locations

In the exploration for more efficient ways to manage electronic information, municipalities must be aware of potential issues involved in handing over custody and control of data to a vendor or to some other government agency.

Cloud computing, hosting, and data vaulting are a few of the technical terminology used in discussing the management of electronic records systems and their data stored outside of a municipality. Implicit in each of these concepts is the outsourcing of data storage to someone other than the owner of the data.

Although the term Cloud Computing is a relatively new term, the concept has been in use for decades. Cloud Computing is when remote servers that

are accessed thought the Internet are used to store, manage, and process data, rather than a local server or a personal computer housed within your municipality. When you are using Gmail, AOL, Office 365 or other service, you are using Cloud Computing.

b) Responsibility is still with the Municipality

Even though your municipality's data may be hosted elsewhere, if the remote system contains records, it is still the responsibility of your municipality to ensure they are protected and accessible. The municipal clerk along with the person(s) responsible for information technology must work together to ensure your municipality follows all applicable state laws for the storage and maintenance of records outside of a municipal facility.

E. File Formats for Electronic Record Creation and Storage

1. Open System Standards

With electronic records and modern technologies, the use of non-proprietary electronic file formats and systems following open system standards (i.e. independent of a particular vendor or supplier) is paramount. Municipal clerks must work with their information technology staff to ensure all systems housing records do not use proprietary formats or systems inhibiting access and portability to other open systems throughout their record retention periods.

Municipalities must adhere to NJ and federal laws and regulations regarding the creation and maintenance of electronic records, including the following general principle guidelines:

- Municipalities must ensure that records retention requirements are incorporated into any plan and process for design, redesign, or substantial enhancement of an information system that stores electronic records.
- Municipalities must not enter into or renew a contract for the creation or maintenance of records if a contract would impair public inspection or copying.
- When designing your information retrieval methods, whenever practicable and reasonable, municipalities must do so allowing the segregation and retrieval of available items to provide maximum public access.
- Municipalities should consult with DORES as needed when designing its electronic records systems to ensure compliance with the above, other applicable laws and regulations, and professional standards

2. Native File Formats

When an electronic system or software application is used to create a record (e.g. a word processing application is used to generate letter or a spreadsheet application is used to create an expense report), the resulting electronic document is considered to be created in a native file format. This means the file was created in a format that is native (i.e. the normal format) to the application in which it was created.

By and large, the guidelines discussed here stress the use of open systems formats. However, it is important to highlight that use of native (product specific) formats within sustainable automated systems is of vital importance as well. For example, the .docx file format used by newer versions of Microsoft Word is technically considered a proprietary format (i.e. not an open standard format), but is generally safe for short term use and retention (assuming stored in a trustworthy repository as discussed later). Certain file formats are better suited for long term retention as discussed below.

As long as municipalities provide for controlled and sustained access to and preservation of electronic records within native operational systems, the foundations for long term retention remain in place.

The following are examples of documents/systems for which storage formats should be reviewed with regards to short term and long term retention needs (each is discussed later within this chapter):

- Electronic mail and attachments
- Scanned images
- Digital photographic records
- Digital drawings (engineering plans and maps)
- Structured databases
- Web sites
- Geospatial Records (GIS)
- Audiovisual records (recordings and transcripts)

### 3. Scanned Images of Textual Records

Digital (scanned) images of public records may be stored on electronic media, and such electronic records may replace paper originals or micrographic copies of these records. In order to ensure accessibility and intelligibility for the life of records that are scanned (aka imaged), municipalities must follow the imaging guidelines of DORES and the State Records Committee as applicable to ensure long term readability of scanned records.

If document scanning services are outsourced, municipalities must have a contract in place to ensure the scanning vendor follows the appropriate guidelines for quality digital images. Municipalities must verify the accuracy and quality of digital images against the original paper documents.

To facilitate effective and efficient preservation, processing and access to scanned images of textual records stored in electronic image processing systems, there are three key elements: Image file format, image quality and having a trusted repository.

#### a) File Format:

To ensure that images can be migrated to new or upgraded systems in the future, store them in at least one of the following formats:



- Single-page Tagged Image File Format (TIFF) with CCITT Group III and/or IV compression
- Portable Network Format (PNG) for grayscale or color images
- PDF/A (most especially for long term retention of 10 years or more)
- Open Document Architecture/Open Document Interchange Format (ODA/ODIF) for text

**TIP BOX** - Recent changes to Title 15 of the New Jersey Administrative Code per subchapter 15:3-4.5, contains updated requirements for standard file formats and compression algorithms, with emphasis on formats and algorithms that are actively supported by the information technology industry, and that allow for the interchange of documents with other systems.

The amendments stated above require imaging systems to store at least one unaltered version of the public records they contain, as scanned, except for standard computer-enhancement routines used to improve the legibility of scanned documents.

b) Image Quality

Any scanned records must comply with acceptable image quality specifications and standards (Image Processing for Public Records, N.J.A.C. 15:3-4 et seq.). Any image processing must follow these guidelines including a separate review process to ensure the captured images meet the stated requirements.

c) Trustworthy Storage Repository

In addition to creating a scanned document in the appropriate format and quality, the resulting file must be stored in a reliable and trustworthy repository. For more information on a trustworthy repository, see the Storage and Maintenance section later in this chapter.

**TIP BOX** - If the scanned records are classified as archival or designated for archival review, contact Records Management Services for further guidance on how to ensure you will be able to transfer the images to an archival facility.

4. Audiovisual Records and Transcripts

Municipalities use tape-based and electronic sound and video recording systems to document public proceedings. Such recordings are integral parts of the record keeping practices of courts, governing bodies, and various other agencies that conduct open public meetings. The minutes or transcripts generated from such recordings are public records.

Officials may prefer to transcribe recorded audio portions of proceedings onto written documents, which, in turn, can be scanned and stored on electronic systems and/or stored on long term microfilm or high-quality, acid-free paper. Verbatim transcriptions or approved summaries of the audio recordings of public proceedings are considered the official or "record copies" of the proceedings.

In all cases, once a recording of a public proceeding has been created, whether voluntarily or in compliance with statutory requirements, it becomes subject to retention and destruction provisions of State law. Accordingly, identify the records series to which recordings/transcriptions correspond, and retain record copies for the length of their designated retention periods. For digital content, at a minimum, provide for deletion of the records following the receipt of approval for the disposition action.

5. Required Formats for Records Filed/received from outside sources

Municipal staff, working with the municipal clerk and your technology support staff, must determine when records received from outside sources (e.g. vendors, contractors, other government entities, etc.) should be filed/received in a certain file format, if legally permitted. The reasons for such requirements would be to ensure that the records are filed in the most usable form and to help save the municipality money caused by converting the records to more useful formats in the future.

6. File Formats for Long Term Retention of Electronic Records

Any electronic record with a retention period of equal to or greater than 10 years should be stored in either a PDF/A or Tiff file format per guidelines published by DORES. Records with a retention period of less than 10 years can reside in the native file format that created or maintains the records as long as that residing system is properly maintained to ensure the records' accessibility and readability throughout its retention period.

F. Storage Management and Maintenance

Once you know what records you have, their location and their format, it is important to determine the viability of the storage repository. Just as you should not store paper records in a room with a leaking roof or other structural or environmental issues that could damage stored records, you should ensure your electronic records are housed in a proper repository.

Note: Do not rely on system and file backup processes and media to cover electronic recordkeeping functions.

1. Trustworthiness of Electronic Records

No matter which electronic technologies a municipality employs for managing public records, municipalities must ensure all records are stored in a trustworthy repository with the following characteristics:

a) Reliability

A reliable record is one whose content can be trusted as a full and accurate representation of the transactions, activities, or facts to which it attests and can be depended upon in the course of subsequent transactions or activities.

## b) Authenticity

An authentic record is one that is proven to be what it purports to be and to have been created or sent by the person who purports to have created and sent it. A record should be created at the point in time of the transaction or incident to which it relates, or soon afterwards, by individuals who have direct knowledge of the facts or by instruments routinely used within the business to conduct the transaction.

To demonstrate the authenticity of records, implement and document policies and procedures that control the creation, transmission, receipt, and maintenance of records to ensure that records creators are authorized and identified, and that records are protected against unauthorized addition, deletion, and alteration. Institute controls to protect against unauthorized addition, deletion, alteration, use, and concealment - For example, role-based user access controls.

## c) Integrity

The integrity of a record refers to it being complete and unaltered. It is necessary that a record be protected against alteration without appropriate permission. Specify what, if any, additions or annotations may be made to a record after it is created, under what circumstances additions or annotations may be authorized, and who is authorized to make them. Note and document any authorized annotation or addition to a record made after it is complete.

Also maintain the structural integrity of electronic records. The structure of a record is comprised of its physical and logical format and the relationships among the data elements of the record. These should remain physically or logically intact. Failure to maintain the record's structural integrity may impair its reliability and authenticity.

Implement controls, such as audit trails, to ensure records are complete and unaltered. Key considerations here include preserving:

- The original informational contents of the records as produced by the author or process that created the record
- The organizational, functional and transactional context of the record, including links to related records that reflect the business, legal and regulatory circumstances in which the record was produced. In this area, maintenance of the metadata listed above is a key
- The original physical and logical structure of the records and the relationships between the data elements they contain

## d) Usability

A usable record is one which can be located, retrieved, presented, and interpreted. In any subsequent retrieval and use, the record should be capable of being directly connected to the business activity or transaction which produced it. It should be possible to identify a record within the

context of broader business activities and functions. The links between records which document a sequence of activities should be maintained. These contextual linkages of records should carry the information needed for an understanding of the transaction that created and used them.

Employ mechanisms to ensure records can be located, retrieved, presented, and interpreted. Ensure you develop and maintain consistent classification schemes for records — for example, classify by responsible office, function, and/or informational content. Also, maintain indexes that allow authorized users to locate stored records. — e.g., unique document ID's and meta-data fields such as author/submitter name, data sent/received, topic keywords, etc.

The degree of effort a municipality expends on ensuring that these characteristics are present depends on the municipality's business needs or perception of risk. Transactions critical to the municipality's business needs and/or the rights of the citizenry may need a greater assurance level. For guidance on whether records are trustworthy for legal purposes, consult your attorney or legal counsel.

## 2. When Creating a New Storage Location

When a new storage location is being considered for electronic records (e.g. network drive, system storage device configuration, collaboration site, etc.), make records management and preservation integral parts of the configuration planning process and design specification by ensuring that:

- Retention and disposition scheduling are parts of the drive/site design
- All records will be retrievable and usable for as long as needed to conduct municipal business (i.e., for the length of their approved retention periods)
- Where records must be retained beyond the anticipated life of the system, plan and budget for the migration of records and their associated metadata (index and related data) to new storage media or formats in order to avoid loss due to media decay or technology obsolescence
- If records are classified as archival or designated for archival review, contact DORES' Records Management Services for further guidance on how to ensure you will be able to transfer the content to an archival facility

## 3. Storage Media Environment

Maintain media containing permanent, archival and unscheduled records in a facility that ensures continual temperature and relative humidity ranges: temperature at 62° to 68° F; and relative humidity at 35% to 45%. Also, maintain media containing permanent, archival and unscheduled records in smoke-free environments.

Before media are 10 years old, copy permanent or unscheduled data on magnetic records storage media onto tested and verified new electronic media.

## G. System Sustainability and Safeguards Against Technical Obsolescence

As with all forms of automated records technologies, municipalities need to guard against technological obsolescence and take appropriate actions to maintain electronic information systems.

On an annual basis, for each system housing municipal records, address the following factors and considerations, and when appropriate, develop a migration/conversion strategy to assure that the public records involved are preserved in accordance with State of New Jersey retention and disposition policies set forth in approved records retention schedules.

## 1. Sustainability Factors

## a) Technical

Indicate the extent to which the core technology (e.g., operating system, database management system, network, file formats, etc.) is used/supported in the broader marketplace.

- Is the technology widely used/supported?
- Is it based on proprietary (vendor specific) or open technology?
- Are the underlying application system software and file formats documented?
- Is the business application involved based on Cloud Computing? How will the stored records be eventually transferred back to the municipality (since most likely the service provider will change at some point in the future)?
- Is there an imminent risk of technical obsolescence (within three years)?

## b) Support

Is there availability of contractor and/or knowledgeable in-house maintenance support for the core system components in the next three years?

## c) Budget

Will there be sufficient funding for support and necessary system upgrades in the three-year time frame?

## 2. Sustainability Risk Matrix

Indicate the risk levels associated with severe degradation or failure in each of the three areas above — From low to high for each area, in a three-year period.

Factor/Likelihood of Severe Degradation or Failure	Low	Medium	High
Technical			
Support			



Factor/Likelihood of Severe Degradation or Failure	Likelihood of Severe Degradation or Failure		
	Low	Medium	High
Budget			

Once the matrix is complete for each system, set priorities in addressing with the systems with the highest risks assigned. Budgets and staffing may limit how quickly each item can be addressed, but it is important to address the systems holding records at the highest risk level first.

### 3. Migration Strategy

If any of the factors on the matrix above registers as high, determine how your municipality will ensure that the informational and records contents of the system survive from one technological generation to the next. Your strategy may include a combination of the following:

- Preserve the original technology used to create or store the records through an in-house support arrangement
- Emulate the original technology on a new technology platform(s)
- Migrate the software necessary to retrieve, deliver, and use the records to another platform
- Migrate the records to a new system and up-to-date format
- Convert the records to another open format

Design and implement migration and/or back-up strategies to counteract hardware and software dependencies, especially if the electronic records must be maintained beyond the anticipated life of the system used to create and/or capture them originally (risk of technological obsolescence).

To successfully protect records against technological obsolescence, carry out upgrades of hardware and software with the goal of retaining the functionality and integrity of the electronic records stored within the system.

To maintain record functionality and integrity:

- Retain the records in sustainable formats (by following previously stated guidelines) until their authorized disposition date.
- Ensure new storage media are compatible with the underlying hardware and software platforms.
- Maintain a link between records and their metadata through conversion or migration process.
- If applicable, ensure that migration strategies address non-active electronic records that are stored off-line.

**TIP BOX - DORES Records Management Services** can provide a written review of your migration strategy for use in planning and supporting your migration process, by sending your sustainability assessments, migration strategy and supporting material to DORES RMS.

## H. Filing and Organization Methods

Municipalities use shared (networked) drives, including collaboration sites, to store electronic records and other content such as reference and working (transient) materials (e.g., drafts and publications), which are used to produce documents and other formal communications.

A key determination that centers all planning and records management actions relative to shared drives is whether the records stored on the drives contain original, official versions or record copies. It is possible that shared drives contain only draft or working materials, which need not be retained beyond their immediate administrative uses.

More likely, however, shared drives will contain both working materials and record copies of documents, publications and other official communications. In these cases, plan to apply the following records management principles and practices.

### 1. Organization

When possible, arrange folders, sub-folders, and files so that they are associated with their corresponding records retention schedule/record series. Also consider using a file plan for organizing content on drives. You may find traditional file management techniques (classification plans) to be useful conceptual models for this purpose.

#### a) A File Plan

A File Plan provides a standardized records classification scheme and determines how to organize records and where to place them. The goals of a File Plan include:

- Provides a "roadmap" to locate the records created and where they are stored/maintained
- Applies to both paper & electronic records (but may be two distinct plans)
- Establishes proper naming conventions
- Separates records from non-records

#### b) Use of Folders

The challenge faced by most municipalities when it comes to network folders is the uncontrolled growth and limited oversight of the top level folders on the network. For example, generally a municipality should have the top level network folders be departments' names (e.g. Finance, Building, etc.) or primary items that apply to the overall organization (e.g. polices,).

Although developing a folder organization structure for your network drives is beyond the scope of this manual, the use of standard naming conventions (as discussed below) and folder organization must be managed to include:

- Limit the ability to create top level folders to a select few with the municipality

- Top levels can be limited to department only and cross departmental functions or work processes. There should not be any individual's file folder in among the top level.

**TIP BOX** - The following are only offered as examples of different folder organizational methods. Each municipality and department must design their own folder structure that best suits their individual business requirements and organization structure. (Note: the following nomenclature is used for the examples provided: N: [for network drive letter] \Department [department name] \Year [the year the record was created] \Record Series Name).

Treasurer/Finance department folder example:

*N:\Finance\2015\Reports*  
*\General Ledger*  
*\Supporting documents*  
*\Drafts*

Planning department folder example:

*N:\Planning\2015*  
*\Proposed Projects*  
*\Correspondence*  
*\Applications*  
*\Plans*  
*\Approved Projects*  
*\Correspondence*  
*\Applications*  
*\Plans*  
*\Rejected Projects*  
*\Correspondence*  
*\Applications*  
*\Plans*

## 2. Use Proper Naming Conventions

Any file, especially electronic files (e.g. word processing, spreadsheets, images, etc.) should be identified using an easy to understand naming convention to facilitate the general identification of the contents of the file without requiring someone to open the file.

**TIP BOX** - File and folder names should also include identifiers to assist in determining the retention requirements of records such as date, record series name or other methods. Use of proper file and folder naming conventions will facilitate the proper retention and disposition of records and non-records according to approved record retention and disposition schedules.

A file name should provide enough information to any person other than the file creator an idea of what the file contains without opening the file. Similar to having a box label offering enough information so someone will not have to open the box to determine it has invoices from 2010.

Examples of improper file naming conventions:

Files and folders should not contain names of municipal staff (e.g. 'Joe's files'). As a result of staff change and extended time periods, current personnel may not know who 'Joe' is and have no idea what is contained within 'Joe's Files'. Other examples of inappropriate file naming conventions include (Would you know what the following files are about?):

- Meeting Notes.docx
- Letter091214.docx
- Updated Info.docx
- Purchases.xlsx

Examples of better file naming conventions:

- Board\_Minutes\_2016-01.docx
- Letter-ABC\_Contract\_0312016.docx
- Project\_X\_Contract\_Mod\_Info.docx
- Capital\_Purchases\_FY2015.xlsx

### 3. Records Scheduling/Disposition

Identify the records series that correspond to the records content of drives. Record series relate directly to department-specific or general records retention schedules. Retain record copies of public records for the length of their designated retention periods and, at a minimum, provide for deletion of the records following the receipt of approval for the disposition action.

If you maintain a mix of different record series within individual folders and files, use the longest retention period to guide your disposition actions. If you store long term (retention greater than 10 years), permanent or archival records on an electronic system, be sure to address and guard against technical obsolescence (see the sections on System Sustainability and File Formats for more information).

## § 4-9. ELECTRONIC MAIL (E-MAIL)

Electronic Mail systems are used for sharing information quickly with anyone using the systems. They are not authorized recordkeeping systems. However, municipal records may be created or received on these systems.

When this occurs, it is the responsibility of the creator or the municipal office receiving the material from an organization or entity other than the municipality, to properly maintain the record. This section applies to records communicated via e-mail and applies to electronic mail messages and attachments.

### A. Electronic Mail Record Identification

New Jersey Statutes Annotated (N.J.S.A.) do not include a specific definition for electronic mail; however, the same definition for a record included at the beginning of this chapter and per OPRA remains in effect.

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For the purposes of OPRA compliance then, determine if e-mail messages serve to document your organization's functions, policies, decisions, procedures, operations or other official activities. All such e-mail messages meet the definition of a government record per N.J.S.A. 47:1A-1.1 and must be available to the public during their required retention periods, unless the contents of any messages fall under one of the exceptions contained in the law. Examples of messages sent by electronic mail that typically are records include:

- Policies and directives
- Correspondence or memoranda related to official business
- Work schedules and assignments
- Agendas and minutes of meetings
- Any document that initiates, authorizes, or completes a business transaction; and
- Final reports or recommendations

Some examples of messages that typically do not constitute records are:

- Personal messages and announcements
- Copies or extracts of documents distributed for convenience or reference; and
- Announcements of social events

As a general rule, most of the messages created or received on an electronic mail system will be for informational purposes and are not records. This information should be eliminated from the system as quickly as possible in order for the system to operate at maximum performance levels. However, if the electronic mail message created or received meets the definition of a record, that electronic mail and any attachment must be moved to an approved record keeping file system.

**TIP BOX** - The material presented here builds on Circular Letter 14-12-DORES/OIT and guidelines produced by the National Archives and Records Administration (NARA). The Circular Letter 14-12 can be found at:  
<http://www.state.nj.us/infobank/circular/cir1412.pdf>

**B. Electronic Mail Retention**

An e-mail system is not a records management system, but exists to facilitate communications, much as a phone system or a fax system. A backup of the system exists to facilitate disaster recovery and is not intended to be a records retention system.

Records communicated using electronic mail need to be identified, managed, protected, and retained as long as they are needed to meet operational, legal, audit, research, or other requirements. Records needed to support municipal operations shall be retained, managed, and accessible in a filing system outside the electronic mail system in accordance with current municipal policies and procedure and state laws.

For the purposes of this section, there are non-record e-mail messages and official record e-mail message retention:



### 1. Non-Record E-mail Messages

Delete e-mail messages that do not meet the criteria of N.J.S.A. 47:3-16 at any time, unless they become part of some official record as a result of special circumstances. These types of messages may include:

- Personal Correspondence -- Any e-mail not received or created in the course of municipal business, may be deleted immediately, since it is not an official record. Examples include unsolicited e-mail advertisements, commonly called "SPAM," personal messages, or the "Let's do lunch" (not a government-business meeting over lunch), or "Can I catch a ride?" type of note.
- Non-Governmental Publications — Publications, promotional material from vendors, and similar materials that are publicly available to anyone, are not official records unless specifically incorporated into other official records. This includes listserv messages (other than those you post in your official capacity), unsolicited promotional material, files copied or downloaded from Internet sites, etc.

### 2. Official Record E-Mail Messages

E-mail messages that meet the definition of a record in N.J.S.A. 47:3-16 are official records and should be managed as such. Most e-mail messages will fall under one of the record series listed on an approved general retention schedule. At a general level, official records fall into the following categories:

#### a) Transient Records

Much of the communication via e-mail has a very limited administrative value. Such messages do not set policy, establish guidelines or procedures certify a transaction or become a receipt.

Transient records include telephone messages (such as "While You Were Out" notes), drafts, and other documents that serve to convey information of temporary importance in lieu of oral communication. These should be retained until no longer of administrative value and then delete.

#### b) Temporary Records

E-mail messages that have more significant administrative, legal and/or fiscal value but are not scheduled as transient or permanent fall under the temporary category (see retention schedules for more information on specific retention periods). These may include (but are not limited to):

- General Correspondence
- Internal Correspondence
- Operational and Project Related Records
- Executive Correspondence

## c) Permanent Records (Including Archival Records)

E-mail messages that have significant administrative, legal and/or fiscal value and are scheduled as permanent should also be categorized under the appropriate record series. Certain permanent records may possess enduring historical value. Permanent records include, but are not limited to:

- Departmental Policies and Procedures -- Includes published reports, unpublished substantive reports and policy studies.
- Minutes of Boards, Commissions, etc.

## C. Managing Electronic Mail

## 1. Determine the Record Copy E-mail

E-mail messages are often widely distributed to a number of various recipients. Determining which individual maintains the record copy of the message (i.e., the original, official message that must be retained for the length of the official retention period) is vital to e-mail management. In many cases, the record copy responsibility rests with the creator of the policy document.

## 2. Filing

File temporary, permanent and archival e-mail messages in a way that enhances their accessibility, and facilitates records management tasks.

The more each staff member can separate e-mails that contain records from those non e-mail records, the better. Using a series of subfolders under each person's e-mail inbox is a good first step towards managing the flood of e-mail typically seen. This will generally allow an email user to divide the important from the non-important items and thus have less that may need further categorization or action to properly manage throughout their life cycle. Using a subfolder structure will help identify transient, temporary and permanent records within an e-mail system.

In all cases, ensure e-mail contains searchable metadata and content, including:

- Names and e-mail addresses of recipients and senders, including names and addresses of all members of distribution lists
- Time and date that the e-mail was sent and delivered
- If your agency employs request acknowledgments or receipts showing that a message reached the mailbox or inbox of each addressee, or that an addressee opened the message, issue instructions to e-mail users specifying when to request such receipts or acknowledgments for record-keeping purposes and how to preserve them.
- Subject line that describes the content of the e-mail

**TIP BOX** - Consider directing employees to transfer e-mail messages from their in and out boxes to folders that list the subject matter involved, such as "Budget and Planning", "Human Resources", "Project XYZ", etc., and that parallel the associated retention requirements (3 years, 4 years, delete after superseded, etc.). The drawback to this approach is that by allowing employees to classify their own messages, the municipality almost inevitably assures inconsistency, because each staff member will follow his/her own views of how best to classify items. To deal with this issue, consider adopting mandatory filing schemes that specify the folder/file names and filings rules. Bear in mind, however, that this approach may also have limitations; it will likely be a substantial undertaking, and difficult to enforce and sustain over time.

**D. Documenting Exceptions to Public Access**

Where and when appropriate, it may be advisable for e-mail users to label their e-mail (in the subject line) as containing confidential or inter-agency or intra-agency advisory, consultative, or deliberative material or other information which falls under the exceptions to public access under the Open Public Records Act (OPRA).

**E. Storage and Archiving of E-mail**

Explore several options for retaining e-mail records: on-line storage; Enterprise Content Management Systems (discussed later in this chapter); journaling/archiving solution; and off-line storage. For practical reasons, plan on employing more than one storage option.

For those without an ECMS or other e-mail archiving technology solution, incorporating a departmental file plan for subfolders within every staff member's e-mail Inbox and Sent folder must be performed. At the very least, providing a folder structure that separates records from non-records (including personal messages, reference material, non-record notices, etc.) must be done. The more a person can separate emails consistently into different 'buckets', the less time will be needed to clean up, purge, reorganize or migrate e-mail following an improved methodology or new system in the future following state requirements.

It is important to remember that messages only have to be retained and stored for as long as the retention period requires. Very few messages must be maintained for a long period of time or permanently.

- **ON-LINE STORAGE** - On-line storage is defined as storage of e-mail messages, metadata, and attachments directly in the agency's e-mail system.
- **ELECTRONIC RECORDS SYSTEMS** - Electronic records systems accommodate storage of e-mail messages, metadata, and attachments on computer platforms that are separate from, but linked to, the e-mail system.
- **EMAIL JOURNALING/ARCHIVING (or Vaulting)** - This approach involves the transfer of all e-mail sent to/received by an agency, from the online system to a dedicated computing platform - for preservation, access and ultimately, disposal.
- **OFF-LINE STORAGE** -- Off-line storage is defined as the storage of e-mail messages, metadata, and attachments outside of an electronic record-keeping environment.

## 1. Long Term Retention of E-mail

Plan to schedule the transfer of e-mail messages that must be retained permanently from the on-line e-mail system to an electronic records management system, e-mail archive and/or off-line facility.

Off-line storage of records must be in compliance with State records storage standards set forth in N.J.A.C. 15:3-6.

## F. E-mail Messages and the Rules of Evidence

In connection with rules of evidence and admissibility, at a minimum, ensure the following:

- E-mail systems used to create, receive and maintain e-mail messages have up-to-date systems documentation
- E-mail systems follow all recommendations for system security and have backup programs that run regularly and consistently
- E-mail system retains all data and audit trails necessary to prove its reliability — that is, that it was created, received and retained in the normal course of agency business, and that the record copies of messages are identified and maintained in accordance with approved records retention schedules
- Backup procedures are coordinated with disposition actions so that no copies of destroyed records are maintained after their retention periods have expired

## G. Access

Maintain e-mail in a format that preserves contextual information (metadata described previously), and that facilitates retrieval and access. In the same connection, to prevent inappropriate disclosure, set up procedures and processes that provide for deletion of messages after their retention periods expire. If your municipality is considering implementing an Electronic Content Management System (as discussed later in this chapter) a carefully crafted requirements document as a part of the initial design and selection process should include details on managing e-mail.

## H. Responsibility

Define roles and responsibilities of municipal personnel involved with e-mail. It is especially important for municipal records management personnel to work with their senior managers, legal counselors and information technology staff to establish policies and procedures for e-mail management. Make sure employees understand that most e-mail messages are public records and cannot be deleted or destroyed on a discretionary basis.

Municipal administrators, individual municipal employees, records managers, information technology (IT) managers and server administrators share responsibility for managing electronic records. Work with system administrators to ensure that unauthorized users are not able to access, modify, destroy or distribute records.

When an employee leaves a municipality, whether it is due to resignation, retirement, or termination, have a knowledgeable staff member(s) review the employee's email



account to determine which e-mails should be retained, their appropriate retention periods, and then act accordingly.

I. Electronic Mail Record Disposition

Records communicated via electronic mail will be disposed of within the record keeping system in which they have been filed in accordance with municipality's Records Retention and Disposition Schedule.

Users should dispose of copies of records in e-mail after they have been filed in an approved record keeping system and delete records of transitory or little value that are not normally retained in record keeping systems as evidence of municipal activity.

J. Deletion of Content and Disposal of Storage Media

Be aware that normal deletion processes do not assure the full destruction of e-mail records. In most cases, deletion only removes the index information that points to the records. Contact your system administrator to determine whether it would be appropriate to employ a form of secure deletion (on both online storage and back-up media), which effectively obliterates the targeted contents.

**TIP BOX**

Effective December 21, 2017 the State Records Committee approved changes to the preface language contained in the Management of Electronic Records sections of the Municipal General Schedule (M100000) and added a new e-mail record series to the schedule, which are designed to provide local agencies with options to retain and dispose of electronic mail (e-mail) records.

Changes to the Preface Language:

"Regarding e-mail-based records, in the normal course of business the agency will take necessary actions to design, maintain, and train employees in the use of e-mail application features that ensures that the content, metadata, and any attachments are retained for the length of time required by the Record Series an email represents. The agency will also act to ensure that e-mail management practices include appropriate e-mail use policies, "litigation hold" techniques, and provide employee training related to their application. The agency may use traditional general and agency-specific retention schedules when requesting authorization to dispose of e-mail-based records, provided the requester can attest that only the records series cited in the agency request (and no other types of records) are included. Alternately, the agency may use the general e-mail record schedule item (0800-0001), to request disposition of e-mail."

New Record Series:

Following is the new e-mail record series (0800-0010 on both the county and local schedules):

This schedule facilitates the management of e-mail records of all kinds that pertain to routine administrative activities that are not otherwise classified by their record type. To use this schedule, agencies must attest that their e-mail systems and general management practices incorporate elements designed to ensure soundness and accountability with respect to e-mail records maintenance, access and destruction. Agencies must make these attestations each time they request authority, via ARTEMIS, to dispose of e-mail in the general schedule category (Note 1).



Attestation elements include:

1. That the agency's general records management program ensures that records with retention periods exceeding seven (7) years are held for the prescribed periods of time, in accessible form, in a records-keeping system(s) separate from the e-mail system (Notes 2 and 3); 2. That the e-mail system used by the agency includes a central storage and management system for e-mail that is separate from copies of e-mail stored in the end-users' email boxes, wherein only authorized information technology and/or records management staff control the disposition of e-mail records stored in the centrally-managed system. This includes provisions for administration of "litigation holds" wherein individual end-users cannot delete email records from the central storage/management system (Note 2); 3. That the agency has adopted acceptable use policies for e-mail and internet usage, with supporting employee training and/or informational programs; 4. That the agency's system possesses security controls that guard against unauthorized access, use, modification, dissemination, disclosure and/or destruction of e-mail records; and 5. That the agency has back-up/disaster recovery services in place that allow for the restoration of e-mail records following catastrophic or disruptive events.

Note 1: An agency may dispose of e-mail records sooner than the retention period in this schedule if the planned disposition action is in accordance with a specific general records schedule item. In each disposition request involving shorter-term items, the agency will be required to attest that the disposition action includes only the type of record described in the records schedule item referenced in the request. For instance, a request to dispose of e-mail described as internal correspondence must include an attestation that in fact, only e-mail records of internal correspondence aged greater than one year (and no other types of records) are included in the request.

Note 2: Centrally managed e-mail vaults and journals, cloud-based services, enterprise content management platforms and/or file shares may be used as separate records-keeping systems and for addressing the general requirement for central storage and management of e-mail.

Note 3: Use of this General e-mail schedule is not permitted if the agency creates/receives e-mail messages and/or associated attachments with retention periods exceeding seven (7) years and does not store the items in a separate records-keeping system.

Looking forward, the Artemis System will be enhanced to incorporate these attestations as part of the destruction requests. In the interim, agencies may create disposition requests for e-mail within the Artemis System by selecting the appropriate record series and the "electronic medium" medium-type.

Agencies must upload the appropriate attestation.

Attestations can be found here:

<https://www.state.nj.us/treasury/revenue/rms/artemis.shtml>

QUESTIONS SHOULD BE DIRECTED TO YOUR Records Analyst, found here:

<https://www.state.nj.us/treasury/revenue/rms/contact.shtml>

9/15/18

#### § 4-10. ENTERPRISE CONTENT MANAGEMENT SYSTEMS

Enterprise content management (ECM) refers to the process for gaining control of records and information. ECM tools and strategies assist in the management of a municipality's

unstructured information and records, wherever they exist. An Enterprise Management System (ECMS) is a central technology platform used to capture, manage, store, preserve, and deliver electronic content, including those deemed as records.

A. Section Objectives

This section addresses:

- Introduction and provide a general understanding of an ECMS
- The potential capabilities of an ECMS
- Understanding where an ECMS is best utilized
- What to watch out for when considering an ECMS

B. Other Names Used Interchangeably with an ECMS

Although for the simplicity purposes the term ECMS will be used within this chapter, often other terminology is frequently used interchangeable and synonymous when discussing similar systems, including:

- Imaging systems
  - o Primarily focused on scanning paper-based documents and does not always offer all the workflow and advanced capabilities of an ECMS
- Electronic Document Management System (EDMS)
  - o Scanning and electronically generated documents (e.g. MS Office formats, e-mail, etc.)
- Electronic Records Management Systems (ERMS)
  - o Includes records management, retention & disposition scheduling; as options in above
- Electronic Content Management System (ECMS)
  - o Also includes dynamic intranet/Internet site content management and publishing

C. ECMS Benefits

Depending on your specific circumstances, an ECMS can offer many benefits:

- Faster access to documents - View documents from your PC
- Provide cross referencing capabilities — providing other methods to search and locate records if the primary name is unknown
- Reduce paper volume — store hundreds of file cabinets on a single server or hard drive
- Central repository for records of all formats — no more searching in multiple file cabinets, across network folder and individual desktops to find what you need
- Tool to address compliance requirements - Records retention; improved security; authenticity
- Process improvement - Improve collaboration & streamline workflows

## D. When to Consider and Not Consider an ECMS

Again, each municipality will be different, so the following is offered as a basic guideline for discussion when considering the use of an ECMS.

## 1. When to Consider an ECMS

Be sure one or more of the following characteristics is present for each department/records series that is a candidate for an ECMS:

- Relatively higher record retrieval rate
- Records of higher value/importance
- Multiple users needing access to the same record series
- Need to share and collaborate on documents
- Need to improve work processes (i.e. leverage automated workflow)
- Lack of current storage space and related considerations

## 2. When not Consider an ECMS

There are areas where implementing an ECMS may not make the most sense for your municipality.

## a) Low Volume

If you do not have that many documents to store, then it is probably cost prohibitive.

## b) High volume with no retrieval needs

If you have a high volume of records to store, but never need to retrieve them, then keep them in their existing format if space is available.

## c) Low value to documents

If there is a low value to the documents and losing them will not cause undo harm to your local government, the public or any governing body then you may want to think twice about an ECMS and if it is worth the effort to implement.

## E. ECMS Components

Every ECMS solution is different depending on the vendor's particular system and capabilities offered. The following are just some of the capabilities that can be provided by an ECMS.

## 1. Scanning

The scanning and converting paper-based records to a digital image is often the most frequently used and requested capability of these systems. The physical storage space reduction and immediate retrieval benefits as a result of scanning documents into an ECMS provide visible and tangible benefits as soon as they are put in use.

## 2. Native Electronic Document Management

An ECMS is designed to serve as the main place for storage and management and as such they can manage records in many formats — Including those born digitally in native file formats (including but not limited to: Outlook, Word, Excel, PowerPoint, HTML, XML, PDF, PDF/A, PNG, and audio and video files). If your records are already digital, you can capture them electronically without the need to print and scan them.

## 3. E-Mail Management

Not all ECMS solution can properly manage email in their base/core system and may require an 'add-on' module to accomplish the task. Some of the items/functionality to look for include:

An e-mail management module can integrate with your e-mail client software (e.g. Outlook, G-Mail, etc.) so records management functions can be performed without leaving your email software. This allows users to classify an email and store them within the ECMS. Once classified, the e-mail is filed with other related documents in the ECMS. Although approach places the onus on the user to properly classify an e-mail, it is similar to classifying any paper record.

## 4. Records Retention Management

While one may think that every ECMS comes with standard records management functionality built in, this is not the case. Similar to other functionality listed in this section, records management may be another add-on. Make sure your ECMS allows any classified record to have the proper records retention schedule applied when classified into the ECMS.

## 5. Workflow

Automatically routing documents for review and approval to any number of individuals or departments within a municipality can save significant labor and time normally associated with paper approval processes.

## 6. Other Potential Capabilities

- Electronic forms (usually tied with workflow) can eliminate hundreds of manual/paper forms used in departments providing online completion for staff as well as the public.
- Enterprise Report Management/COLD is great direct storage of large computer generated reports automatically
- GIS integration can link documents real-time to spacial maps
- CAD integration links documents with Computer Aided Design application software which is good for larger Engineering departments

## F. Popular Application Uses

While the particular benefits seen and potential application for an ECMS within your municipality will vary depending on individual circumstances, the following are some more common uses:

## 1. Scanning Paper Records

While there are many potential applications for the scanning/digitalizing of paper records in a municipality, the following are some example application uses seen in municipalities:

- Clerks (minutes, resolutions, ordinances)
- Police (incident/arrest reports, traffic violations, etc.)
- Building/Code Enforcement Dept files (inspections/permits)
- Finance (payroll registers, general ledgers, audits)
- Administrators (contracts/agreements, subject files)
- Engineering/Highway (project files)
- Planning/Zoning files (subdivision review, applications, large format plans and maps, violations, etc.)

## 2. Beyond Scanning

While many municipalities use an ECMS solutions for only storing scanned images, there are many more potential application uses for such a system providing significant time savings and other benefits. The following is a small list of examples:

- Procurement process
  - o Allow electronic submission of purchase requests and/or invoices. Received documents are automatically routed to the appropriate individuals for review, approval
- Personnel files and any standard processes
  - o Besides just storing personnel files, an ECMS' workflow can be leveraged to automate the numerous processes affecting municipal employees (e.g. new hire process, annual review, benefit information, vacation/time off requests and more)
- Computer report management
  - o Allow the direct storage of common municipal reports as they are created (e.g. financial report, payroll reports, tax bills, tax rolls, internal copy of invoices & PO's, W-2's, and more)
- Subdivision review process
  - o Automatically review and record actions as a part of the normal plan submission and review process to include review from both within the municipality and outside reviewers (attorneys, engineers, county planning departments, etc.)

## G. Considerations prior to ECMS Acquisition and/or Implementation

While the following is not to be considered an exhaustive list of everything to be considered prior to selecting an ECMS for your municipality, this section should be some of the primary areas:



1. Purge and Organize Records before Scanning

Do not scan what is not required to be kept. Before you purchase any ECMS solution, review your records and purge those that are no longer required to be retained following appropriate record retention schedules. This will significantly reduce the time and, labor and storage requirements needed to implement your solution.

2. Understand the Work Needed for Scanning

Although there are many benefits, paper documents are not just magically converted to digital form. There is a lot of preparation and work that has to be performed before any scanning is considered.

- a) Document Preparation

This includes, but is not limited to staple and paper clip removal, flattening folded or damaged paper, organizing and more to get documents ready to be scanned.

- b) Documents Indexing

Scanned documents are just dumb pictures without an index to locate them. Without a proper index, finding a scanned document is similar to finding a single paper document that was thrown into a large pile of papers with no labeling or other identification.

- c) Quality Control

Any scanned records entered into and stored on an ECMS or other system must follow state requirements for quality control to ensure the document is readable among other qualities. So a post scanning step must be performed and the time and labor required to perform quality control must be included in every scanning project or effort.

The updated requirements outlined by DORES in Subchapter 15:3-4.6., address the use of multi-function devices for scanning purposes and clarify that visual inspection of scanned images for quality control purposes may be accomplished on an image-by-image basis, via sampling or combined approaches, and may also be supported by machine-based quality control processes.

3. Total Cost of Ownership (TCO)

It is easy to get wrapped up in the technology and the potential uses for an ECMS, but it is important to look at the total cost of ownership to determine its suitability of such a solution to your application needs. You must consider the costs beyond just what is outlaid for ECMS software to include, but not limited to:

- Scanner hardware
- Individual user licenses
- Additional workstation costs

- Potential cost of infrastructure upgrades (e.g. servers, storage space, workstation upgrades, etc.)
  - On-going maintenance and support costs
  - Systems administration
  - Conversion costs
  - Proper training (both upfront and on-going)
4. Establish proper policies & procedures  

You need guidance and rules as to what would be placed within the ECMS and how, among other records management policies.
  5. Organizational Roles and Responsibilities  

Are you ready to support an ECMS? Municipalities must determine who will administer the ECMS as well as provide day-to-day support (usually this is not the same individual for medium to larger implementations). Who will support the system for things such as adding users, setting up indexes for each record series, who will do training after the vendor has finished their contract installation work?
  6. Start simple  

Although an ECMS has many capabilities, keep it simple and get a quick win (i.e. show successful use of the system in a very short time period). This provides a way to get used to the system and avoid complexities normally seen when larger issues or applications are addressed. Focus on simple scanning of a particular record series (invoices, minutes, etc.) for storage and retrieval needs and save workflow and other work process enhancements for later.

#### § 4-11. AWARENESS OF OTHER KEY TECHNOLOGIES AND APPROACHES

The primary objective for this section is to provide a brief understanding of certain technologies and how to begin the process to manage records. This section will not provide detail on every step in the management process due to the variations in systems, technologies and resources available to municipal governments and the resources (staff, system and budgets).

##### A. Web Sites (Web Content Management)

Web sites are groupings of digital content, organized as pages, that center on and allow online access to related topics, functions and/or services via hyperlinks and other automated navigational tools. Web site contents may include various combinations of elements such as information encoded in a mark-up language (e.g. HTML), style sheets, audiovisual files, application software code (executables), presentations and various types of electronic documents.

Currently, New Jersey does not develop retention schedules for web sites per se, but rather focuses on the individual documentary/transactional elements that may appear online such as reports, filing transactions, payments, etc., which are typically stored, for official record-keeping purposes, in back-end production databases and network file

shares. If your municipality uses web sites to store official or record copy versions of public records, basic records management requirements will apply to the content of those sites.

Each municipality must ensure that records published on their website are managed and disposed of according to the appropriate record retention and disposition schedule. The municipal clerk should work with the municipality's information technology support staff and DORES staff to identify the most effective way of managing its website based records.

NARA provides guidance on categorizing and scheduling records found on web sites using the following three general groupings:

1. Web management and operations records that document the site's context including: web site design records;
2. Records that specify a municipality's web policies and procedures by addressing such matters as how records are selected for the site and when and how they may be removed;
3. Records documenting the use of copyrighted material on a site; records relating to the software applications used to operate the site; and records that document user access and when pages are placed on the site, updated, and/or removed.

If the use of more sophisticated software applications that may be able to capture your web site periodically is out of reach of your budget, a standard approach is to capture periodic views of your web site pages and save them in PDF or PDF/A formatted files and retain following the appropriate retention schedule for the content. See your IT professional on the how to capture web site pages in PDF files and for other methods to periodically capture web site documents.

In any case, it seems clear that selected preservation of web sites is needed because of the role they play in documenting the evolution of governmental functions, programs and policies.

#### B. Social Media

Content posted to a municipality-affiliated account on a Social Media Site is subject to record retention and disposition requirements of the State Records Committee. Therefore, each municipality must maintain a copy of all content posted to a social media site that is considered a record in accordance with the record retention and disposition schedule.

In addition, content posted to a municipality-affiliated account on a social media site that is considered an electronic record, is subject to disclosure under OPRA and the Freedom of Information Law and must follow records management policies established within this manual.

For these reasons, each municipality shall maintain copies of postings that are vital to the transaction of public business and that evidence the municipality's public functions, decisions and operations. Where such materials are in the custody of a third party provider, the municipality shall make reasonable efforts to obtain a copy of such when needed for public access or record preservation purposes.

Due to the number of social media sites and applications available, specific recommendations are beyond the scope of this manual (and would most likely be quickly outdated given the constant changes in this space).

There are basically three choices for managing records created or stored on social media:

1. Do not allow the use of social media for any municipal business
2. When possible, periodically capture information deemed as records on a social media site by creating PDF files from the site pages
3. Acquire and invest in a ECMS or other software application specifically designed to capture records from social media sites used by the municipality

C. Instant Messaging/Texting

Similar to the use of social media, any use of Instant Messaging which content is deemed a record is subject to record retention and disposition requirements of DORES the State Records Committee, OPRA, and the Freedom of Information Act.

The municipal clerk along with the IT support staff should contact the communications carrier (and 3rd party vendors of ECMS and other solutions) and investigate options for capturing instant messages and texts in those areas where they are deemed records. In most cases, this should be a very limited scope of departments and users that may create records, if at all.

In any event, personal phones should not be used to create, receive or store municipal records.

D. Mobile Devices

Records should not be maintained on any mobile device (e.g. laptop computers, handheld computers, pagers, cell phones and other portable devices) due to the risk associated with the loss of the device. As such, any record created or received on a mobile device must be transferred to an approved electronic records storage repository. The municipal clerk along with the IT support staff should review and approve acceptable record storage locations for records created or captured on mobile devices.

E. Electronic Signatures

Per Section 7 of UETA (C.12A:12-7), unless exempted from the provisions of UETA (C. 12A:12-3.b and 3.c), if a law requires a record to be in writing, an electronic record satisfies the law; and if a law requires a signature, an electronic signature satisfies the law.

The law defines "electronic signature" broadly as an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record (C. 12A:12-2).

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, per C.12A:12-11, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the



signature or record. In all then, municipalities have a wide range of discretion with regard to how they implement electronic systems that require signatures.

- Unless specifically exempted from the provisions, if a law requires a record to be in writing, an electronic record satisfies the law; and
- If a law requires a signature, an electronic signature satisfies the law.

Municipalities may choose from a number of electronic signature requirements such as the following:

- Conformed signature (typed name/title online) - Consider using this approach when the laws underlying the system do not require an authenticated/verified signature and the operational, economic and service benefits of the approach outweigh the risks and impacts of repudiation or fraud.
- Facsimile-based signature sheet - The use case here is largely the same as that of the conformed signature.
- Personal Identification Number (PIN)
- Authenticated user ID and password
- Use a multi-factor/verified method for setting up an ID and password.
- Public Key Infrastructure or PKI - This involves the use of public/private digital key pairs issued by a trusted third party. The approach offers very high degrees of security, authentication and non-repudiation.

## Appendix

### § 4-12. FILE MANAGEMENT

Filing is the process of categorizing and arranging records for effective storage and retrieval based on record series (i.e. subject matter, types of documents, or identical retention periods).

#### Developing a File Plan

The central element to files management is the file plan. Factors involved in developing a file plan include:

- Records to be filed
- Arrangement techniques, i.e., classification and access systems
- Equipment and supplies
- Integration of the file plan with basic records management processes such as records retention and disposition and transfer of semi-current to records storage.

Approximately 70 per cent of the expense of maintaining a filing system involves labor costs, so municipalities can realize significant savings through the selection of equipment that aids filing and retrieval efforts. The expense of equipment, repairs, operations, supplies and floor space should be considered in relationship to the annual growth rate of files and budgetary levels. Two elements that determine the general cost effectiveness of a filing system are:



- Space efficiency — The capacity of a room or area should be evaluated for accessibility to equipment and files.
- Equipment efficiency— Acquiring equipment that provides effective file storage and retrieval at the lowest possible cost per file inch is a major concern when purchasing equipment. Another factor may include potential of equipment to be updated, modified or augmented.

#### Choosing a Classification System

Classification refers to the method of determining and arranging subjects in a file series based on an evaluation of future retrieval needs. A classification system is:

- Logical & practical
- Standardized
- Uses the simplest terms available
- May be based on the organization functions involved
- Must be exclusive so that subject categories are not redundant
- Flexible enough to permit future expansion

Classification systems are an important part of a filing system and can include three types of classification methods:

- Alphabetic
  - o Ideal for a simple filing system with a very low volume of files, generally under 1,000 and involves filing by subject name (e.g. a particular project, company, individual, or geographic location) — and requires consistent application. For example, if one person creates a file entitled, "Main Street Project," all subsequent documents should be marked with this title. If not, someone unfamiliar with this project file could file new documents in the "Township Street" file.
- Numeric
  - o Most useful where there are a large volume of files, generally ranging from 1,000 - 10,000 files. Invoices, checks, and requisitions are most often requested by number. However, numeric filing systems require cross references for instances in which a number is not known. For example, real property can be listed numerically by block and lot numbers, with alphabetic cross references available by street address or by owners.
  - o Numeric systems also require maintenance. If numbers are unclear, or are transposed when typed or written, records can easily be misfiled. There are several types of numeric systems: straight numeric, duplex numeric (including middle-digit indexing and terminal-digit indexing), decimal filing systems (e.g., the Dewey Decimal System), and chronological systems. Each system has advantages and disadvantages which should be weighed before being instituted.
- Alphanumeric

- o Includes a number/letter combination in which files are arranged in a general category by subjects, i.e., alphabetically and then assigned numbers for subdivisions. This method of filing is not usually found in office applications and is most often reserved for library classification.

All other systems are variations of these basic types.

#### § 4-13. RECORDS RETENTION SCHEDULES

- A. Records Retention Schedules are approved by the State Records Committee [N.J.S.A. 47:3-20] for all New Jersey public records. The Schedules are determined from consideration of the varying needs for the records. Factors Used in Determining Retention Schedules Include:
  - 1) Administrative - How long must a record series be kept for active use?
  - 2) Legal - Are there any laws or regulations for specific retention periods?
  - 3) Fiscal - Will the record series be required for audits?
  - 4) Research - Will the record series be useful for administrative and operational analyses?
  - 5) Historical - Does the record series contain information of enduring worth for future generations?
  - 6) Essential/vital records - Is the record series essential to the continuation of the business of your office during a disaster, or to the resumption of normal operations after a calamity?
- B. Based on the above analysis, retention periods are assigned to each document and recommended by the Records Analysts to the State Records Committee for consideration and adoption. Types of Retention Periods are:
  - 1) Single time frames - Expressed in months or years.
  - 2) Contingent time frames - Keyed to a particular event, e.g., "3 years after audit."
  - 3) Permanent retention - Items which must be maintained in perpetuity.
  - 4) Discretionary retention - For items of minimal value only, "Periodic review."
  - 5) Serial or on-going retention - For cumulative record series in which new items supersede old items, e.g., "As updated."

ALWAYS BE SURE TO REFERENCE RETENTION SCHEDULES FROM ARTEMIS  
AS THERE MAY BE UPDATES

Check DORES' web site for latest revision of all municipal records retention schedules. The Municipal Clerk Retention Schedule (M200000-007) can be found at:

<http://www.nj.gov/treasury/revenue/rms/pdf/m200000.pdf>

## Chapter 5

### ELECTIONS

- § 5-0. REGISTRAR OF VOTERS & ADMINISTRATOR OF ELECTIONS
- § 5-1. VOTER REGISTRATION
- § 5-2. POLLING PLACES
- § 5-3. DISTRICT BOARDS
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- § 5-5. SAMPLE BALLOTS, EMERGENCY BALLOTS, REMOVED RESIDENT (PRESIDENTIAL BALLOT LAW) & FEDERAL ELECTION MAIL-IN VOTING AND UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT
- § 5-6. CHALLENGERS
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- § 5-12. NON-PARTISAN ELECTION
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- § 5-23. MISCELLANEOUS INFORMATION
- § 5-24. CAMPAIGN CONTRIBUTIONS
- § 5-25. CAMPAIGN LITERATURE
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- § 5-27. FIRE DISTRICT ELECTIONS

## REGISTRAR OF VOTERS &amp; ADMINISTRATOR OF ELECTIONS 9/15/09

**§ 5-0. REGISTRAR OF VOTERS & ADMINISTRATOR OF ELECTIONS**

9/15/09

In accordance with the Statutory Duties of the Municipal Clerk of the State of New Jersey as described in N.J.S.A. 40A:9-133 et seq. the New Jersey Municipal Clerk is the Chief Administrative Officer in all elections held in the municipality and the Chief Registrar of Voters in the municipality subject to the requirements of N.J.S.A. 19.

Form of Municipal Government. The Form of Government of each of New Jersey's 565 Municipalities has an impact on the Election of the local governing body. In the Introduction Course to Duties of the Municipal Clerk you learned about the five (5) traditional forms of government. There are other varied forms of government, many that were added by the Optional Municipal Charter Law also known as the Faulkner Act. The following list provides brief information on the types of elections covered in this chapter. Please note that some dates and types of elections are dictated by the type of Government established in the Municipalities Charter, the number of elected officials, terms, and manner of elections are relative to the form of government. The process of changing the form of government or the structure of that form will be covered later in this Chapter under the Section entitled Charter Study Commission. 9/15/13

REFERENCES: 9/15/09; 9/15/10; 9/15/12

The Statutory references for the Municipal Clerk with regard to elections held in New Jersey are as follows:

N.J.S.A. 19 - Duties and responsibilities as regards the conduct of elections

N.J.S.A. 40:45 - Non-partisan Elections

N.J.S.A. 18A - School Board Elections

Each Municipal Clerk should have an updated copy of these statutes, including the annually updated "pocket parts" available in their office.

The *Chronological Index* is a "handy reference guide" which is posted annually on the New Jersey Division of Elections' website, [www.njelections.org](http://www.njelections.org) and most County Clerks will provide a calendar of significant dates to each Municipal Clerk within their county. 10/31/04

This "Study Guide" contains some of the duties and responsibilities of the Municipal Clerk as regards the conduct of elections. The Municipal Clerk should always reference the appropriate State Statutes to ascertain any updates of the information contained in this Chapter, and when in doubt, seek the written opinion of their Municipal Attorney.

The following is a list of the Elections that pertain to the Municipality and are covered in this chapter:

Types of Elections				
Type	Month	Date	Purpose	Partisan Non-Partisan
School	April	3rd Tuesday; or 1st Tuesday after 1st Monday in November if Resolution adopted pursuant to P.L. 2011, c.202 9/15/13	Elect School Board members and vote to approve or defeat proposed school board budget; School Budget not on ballot if election held in November 9/15/13	Partisan Non-Partisan
Municipal	May or Nov.**	2nd Tuesday** Or 1st Tuesday after 1st Monday in November if Ordinance Adopted pursuant to P.L. 2009, Chapter 196.	Elect Officials to Governing Body in Non-Partisan Municipalities. Also Public Questions and Referenda	Non-Partisan
Primary	June	1st Tuesday after the 1st Monday	Select Candidates who will run for elected office for each political party in the General Election. Also elect members to Municipal Committee (County Committee)	Partisan
General	November	1st Tuesday after the 1st Monday		Partisan
Runoff	June or December	4th Tuesday following the Municipal Election or Special Election on 2nd Tuesday in December if Municipal Election is held on date of General Election pursuant to P.L. 2009, C196	Utilized when a sufficient number of candidates do not receive a majority of the votes that were cast	Non-Partisan Only where charter provides for
Special	Varies	Varies	Various: Recall, Initiative, Referenda, Charter Study, etc.	Varies
Recall	Varies	Varies	Decides whether or not an elected official should be removed from office and provides for voters to elect replacement if official is recalled.	All Municipalities
Fire Districts	February	3rd Saturday or 1st Tuesday after 1st Monday in November 9/15/18	Elect Fire Commissioners and approve or defeat proposed budget	After creation Handle by the Fire District

The Municipal Clerk interacts with the following County Officials regarding Elections:

1. Commissioner of Registration (N.J.S.A. 19:31-2)
  - a. In all Counties having a Superintendent of Elections, the Superintendent of Elections is the Commissioner of Registration.
  - b. In all other Counties the Secretary of the County Board of Elections is constituted as the Commissioner of Registration.
  - c. The Commissioners of Registration shall have complete charge of registration of all eligible voters within their respective counties.
2. County Clerk
3. County Board of Elections - This board is made up of four (4) appointed members; two (2) Democrats and two (2) Republicans. 9/15/12

**DEFINITIONS:**

- a. **Election** means the procedure whereby the electors of this State or any political subdivision thereof elect persons to fill public office or pass on public questions.



- b. **Incumbent** means a person currently holding an elected public office.
- c. **Public office** includes any office in the government of this State or any of its political subdivisions filled at elections by the electors of the State or political subdivision.
- d. **Public question** includes any question, proposition or referendum required by the legislative or governing body of this State or any of its political subdivisions to be submitted by referendum procedure to the voters of the State or political subdivision for decision at elections.
- e. **Political party** is any political group that has at least ten percent (10%) of the total vote cast in a General Election held for the election of members of the General Assembly, prior to the primary. 9/15/10
- f. **Partisan** means belong to a political party and affiliates when voting in a primary.
- g. **Party office** means the office of delegate or alternate to the national convention of a political party or member of the State, county or municipal committees of a political party.
- h. **Non-Partisan** means no affiliation with a political party.

#### § 5-1. VOTER REGISTRATION

[N.J.S.A. 19:31-1 et seq.] 9/15/2021

##### A. NATIONAL VOTER REGISTRATION ACT [N.J.S.A. 19:31-1 ET SEQ.]

- 1. No person shall be permitted to vote at any election unless such person shall have been registered to vote. [N.J.S.A. 19:31-1] 9/14/07
- 2. No registrant shall lose the right to vote or have their names removed from the registry solely for failing to vote in one or more elections. [N.J.S.A. 19:31-5] 10/31/04; 9/14/07

##### B. WHO IS ELIGIBLE TO REGISTER TO VOTE: [N.J.S.A. 19:31.5] 9/14/07

- 1. A person who will be eighteen (18) years of age or older at the time of the next ensuing election.
- 2. A person who is a United States Citizen.
- 3. A person who is a resident of the State of New Jersey and of the County at least thirty (30) days before the election.

##### C. WHEN TO REGISTER [N.J.S.A. 19:31-6.1]

- 1. The deadline to register is twenty-one (21) days before an election. Voters may register after the deadline, but registrant should be advised that he will not be eligible to vote in the election immediately forthcoming but will be eligible to vote in elections held thereafter. 9/15/06; 9/14/07

2. Evening registration may be held prior to the close of registration from 4:00 p.m. to 9:00 p.m. on the twenty-first (21st) day prior to election. [N.J.S.A. 19:31-2]. 12/02; 9/15/06
  3. Schools are required to provide voter registration material to those students eligible to register. P.L. 2009, C281. 9/15/10
- D. VOTER REGISTRATION IN NEW JERSEY IS PERMANENT, PROVIDED THE VOTER REMAINS AT THE SAME ADDRESS THAT THEY HAVE REGISTERED IN. ONCE A VOTER MOVES WITHIN THE COUNTY THEY MUST FILE A CHANGE OF ADDRESS NOTICE WITH THE COUNTY BOARD OF ELECTIONS. 9/15/06; 9/14/07; 9/15/09
- E. EXCEPTIONS: 10/31/04; 10/31/05; 9/15/09
1. If the voter moves to another County or State a new registration form must be completed.
  2. In the event of a death of a registered voter the name is removed from the registration list after the Superintendent of Elections/Commissioner of Registration receives the following verifications:
    - a. The Registrar of Vital Statistics shall file with the Commissioner of Registration for the county in which the municipality is located once each month, during the first five (5) days thereof, the age, date of death, name and addresses of all persons eighteen (18) years of age or older who have died within such municipality during the previous month.
    - b. Within thirty (30) days after the receipt of such list, the Commissioner of Registration shall make and complete such an investigation as is necessary to establish that such deceased person is registered as a voter in the County.
    - c. The Commissioner shall cause the registration and record of voting forms of the deceased registrant to be transferred to the death file as soon as possible.
  3. Once a month during the first five (5) days, the chief State election official shall notify the Commissioner of Registration of a county, any information which the official shall have received during the previous month from the United States Attorney concerning the conviction of a resident of the county of a crime which would, under the laws of the United States, or any other official action relating to such a conviction, constitute grounds for disfranchise of the person under the laws of this State. 9/15/18
  4. Once each month during the first five (5) days the prosecutor shall deliver to the Commissioner of Registration of that County a list of the names and addresses of all persons and their ages and offenses who have been convicted during the previous month of a crime which would disfranchise them under the laws of this State. 9/15/18
- F. ELECTRONIC SUBMISSION OF VOTER REGISTRATION FORM 9/15/2021

1. A person who is qualified to register to vote may submit a voter registration form electronically on a secure Internet website maintained by the Secretary of State, if applicant has the following:
  - a. An email address
  - b. A valid NJ Driver's License number, or a valid NJ non-driver identification card number
  - c. The last 4 digits of the applicant's Social Security number.
2. For each online voter registration form the Secretary of State shall obtain either an electronic copy of the applicant's signature from their Driver's License or non-driver identification card directly from the NJ Motor Vehicle Commission, or the applicant's digitized or electronic signature.

G. REGISTRATION BY MUNICIPAL CLERK: 9/15/09; 9/15/12

1. The Commissioner of Registration shall forward to each Municipal Clerk a sufficient supply of mail in voter registration forms. This form may be used for first time registration, change of address, party affiliation or change of name. 10/31/05; 9/15/12
2. The Commissioner and Municipal Clerks may make arrangements for transmitting registrations. It is a good practice to maintain a list of registrants in the event registrations mailed to the Commissioner of Registration are misplaced or lost.

H. REGISTRATION BY MAIL: [N.J.S.A. 19:31-6.3] 9/15/09

1. Registration by mail is permissible in New Jersey.
2. Forms may be obtained from the:
  - a. Municipal Clerk's Office
  - b. County Board of Elections
  - c. Commissioner of Registration
  - d. Division of Worker's Compensation 9/14/07
  - e. Division of Employment Services 9/14/07
  - f. Division of Unemployment and Temporary Disability 9/14/07
  - g. Division of Taxation 9/14/07
  - h. Public Libraries 9/14/07
  - i. Any office or commercial establishment where State licenses or permits (other than professional or occupational) are available to the public 9/14/07
  - j. Any recruitment office of the NJ National Guard 9/14/07
  - k. New Jersey Transit Corporation 10/31/05; 9/14/07

- i. Public Institution of Higher Education for eligible enrolled students and eligible prospective students as defined in the Statute 10/31/05; 9/14/07
  - m. Any eligible institution receiving financial assistance, aid or grants from State funds 10/31/05; 9/14/07
3. Voter Registration Agencies (including the Municipal Clerk's Office) shall prominently display voter registration applications and voting instructions, make applications readily available, obtain voter registration forms from the Commissioner of Registration. [N.J.A.C. 15:10-1.4]
4. Whenever an individual registers by mail to vote for the first time in his or her current county of residence: [N.J.S.A. 19:31-5] 10/31/04
  - a. That individual shall provide either:
    - (1) The individual's New Jersey driver's license number; or
    - (2) The last four digits of the individual's Social Security Number; or shall submit with the voter registration form a copy of:
      - (a) A current and valid photo identification card;
      - (b) A current utility bill, bank statement, government check or pay check;
      - (c) Any other government document that shows the individual's name and current address; or
      - (d) Any other identifying document that the Attorney General has determined to be acceptable for this purpose.
  - b. If the individual does not provide his or her New Jersey driver's license number or Social Security Number information or submit a copy of any one of these documents, either at the time of registration or at any time thereafter prior to attempting to vote, **the individual shall be asked for such identification when voting for the first time** at an election at which candidates are seeking federal office or thereafter. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot. 10/31/05; 9/15/10
  - c. (Reserved) 9/15/10
  - d. This subsection shall not apply to any voter: 10/31/05
    - (1) Entitled to vote by mail-in ballot under the 'Uniformed and Overseas Citizens Absentee Voting Act'; 9/15/09
    - (2) Provided the right to vote other than in person under the 'Voting Accessibility for the Elderly and Handicapped Act';
    - (3) Entitled to vote otherwise than in person under any other federal law;

- (4) Who registers to vote by appearing in person at any voter registration agency or to any person whose voter Registration form is delivered to the County Commissioner of Registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery.
5. No registrant shall lose the right to vote, and no registrant's name shall be removed from the voter registration list of the county in which the person is registered, solely on grounds of the person's failure to vote in one or more elections. 9/15/09
- I. Every person who meets the requirement to be eligible to vote who is applying in person for a driver's license, permit, probationary driver's license or non-driver identification card, including renewals, will be provided the opportunity to decline automatic voter registration. 9/15/18
- J. **MILITARY SERVICE — EMERGENCY VOTING FORM**

This is a convenience for members of our military and their family when recently discharged in a district other than the one in which they may be registered to vote. [N.J.S.A. 19:57-34]: 9/15/09

  1. Any person who has been in the military service (including his spouse and dependents) or a civilian attached to or serving with the Armed Forces of the United States (including his spouse and dependents who accompanied him) or a patient in any such veterans' hospital, but who has been discharged or released from such service or discharged from said hospital too late to register at the last registration day before any election, may obtain an emergency voting form at the office of the proper Commissioner of Registration if he has been previously permanently registered, and upon presentation of such emergency voting form to the proper district board, he shall be permitted to vote.
  2. In the event that he has not been permanently registered, upon exhibiting his discharge or certificate of service to such Commissioner of Registration, such Commissioner shall require such discharged or released elector to register notwithstanding any provisions of law prohibiting the taking of registrations at such time, before issuing such emergency voting form.
  3. Emergency Voting Form is a means to vote for a recently discharged voter who is not residing in his place of registration. It also provides for a recently discharged person attached to the military to register at a new residence within the twenty-one (21) days prior to the election. 9/15/09
- K. **WHO HAS TO ADHERE TO THE REGISTRATION DEADLINES: 9/15/09**
  1. Persons who want to register for the first time;
  2. Persons who move from one county to another county before the close of the registration deadline; 12/01
  3. Persons who move from another state to New Jersey.



## L. PROVISIONAL VOTING 10/31/04

PROVISIONAL VOTING IS A MEANS OF VOTING BY "PAPER BALLOT" AT THE POLLS WHEN THERE MAY BE A QUESTION REGARDING VOTER ELIGIBILITY; IT IS A MEANS THAT ALLOWS FOR CONFIRMATION OF REGISTRATION, RESIDENCY AND ELIGIBILITY BEFORE THE VOTE IS COUNTED. PROVISIONAL VOTING IS ALSO REFERRED TO AS FAIL SAFE VOTING. REMEMBER-TO VOTE IN NEW JERSEY, A VOTER MUST BE REGISTERED. 9/15/09

1. The County Clerk or the Municipal Clerk, in the case of a municipal election, shall arrange for the preparation of a provisional ballot packet for each election district. The statutory requirements for the preparation, use and counting of provisional ballots is set forth in N.J.S.A. 19:53C.
2. Voters eligible to vote by Provisional Ballot:
  - a. A voter who has moved within a municipality but currently resides in an election district different from that listed, he/she may vote at his newly designated polling place by means of a Provisional Ballot and after completing an affirmation statement. [N.J.S.A. 19:53C-3b] 10/31/04
  - b. A voter who is currently registered in the county and moves to another address within the same county and neglects to file a change of address or fails to respond to confirmation notice mailed by the Board of Elections. The provisions of this act apply only to voters who are already registered and have moved within the county. He/she may vote at his newly designated polling place by means of a Provisional Ballot. [N.J.S.A. 19:53C-3c] 10/31/04
  - c. A voter whose voter registration information is missing may vote by means of a Provisional Ballot and after completing an affirmation statement. [N.J.S.A. 19:53C-3g] 10/31/04
  - d. First time voters for a Federal Election who registered to vote and failed to submit required identification with the registration form at the polls. [N.J.S.A. 19:15-17] 10/31/04
3. Fail Safe Voting Procedure At The Polls Involving Change of Address: 10/31/04
  - a. The voter will go to the polling place of the voting district to which the voter has moved to get permission to vote through the provisional voting procedure.
  - b. The District Board worker shall receive verification from the Board of Elections or the Superintendent of Elections to confirm that the voter is indeed a registered voter in the county.
  - c. If the voter's registration is confirmed:
    - (1) Voter makes a written affirmation regarding the change of address.

- (2) District Board worker provides registrant with provisional ballot and affirmation statement; the affirmation statement must be completed and returned with the completed provisional ballot to the District Board Worker. The affirmation statement constitutes a transfer to the registrant's new residence for any subsequent election. 9/15/09
- d. If page in registration book is flagged: 9/15/09
  - (1) If voter has **not moved**, voter completes an Affirmation of address form and votes at the polls.
  - (2) If a voter **has moved** to another county after the close of registration, the voter will be permitted to return to the former residence to vote, even though it is a different county. [*Afran v. County of Somerset*, 244 N.J. Super.229 (App. Div. 1990)] 10/31/04
  - (3) If voter has moved within the county after the close of registration, the voter will go to the polling place of the voting district to which the voter has moved to get permission to vote through the provisional ballot.
  - (4) This is a one-time exception.
- e. If Voter's Registration is Not Confirmed: 9/15/09
  - (1) Voter will not be permitted to vote.
  - (2) Voter has right to go to Superior Court and obtain a Court Order to permit them to vote.
  - (3) Provisional Ballot Free Access System [*Voting Opportunity & Technology Enhancement Act*] 10/31/04

The Secretary of State shall establish a free-access system, such as a toll-free telephone number, an Internet website or any combination thereof, that any individual who casts a provisional ballot may access to ascertain whether the ballot of that individual was accepted for counting and, if the vote was not counted, the reason for the rejection of the ballot. The system shall at all times preserve the confidentiality of each voter, and shall ensure that no person, other than the individual who cast the ballot, may discover whether or not that individual's ballot was accepted, unless so informed by the voter. [N.J.S.A. 19:31-3.2] 10/31/04

M. HANDLING OF VOTER REGISTRATION IN SITUATIONS OF DOMESTIC VIOLENCE/STALKING 9/15/09

A person who is:

- 1. A victim of domestic violence who has obtained a permanent restraining order against a defendant pursuant to N.J.S.A. 2C:12-10 and fears further violent acts by the defendant or

2. A victim of stalking, or member of the immediate family of such victim as protected under the terms of a permanent restraining order issued pursuant to N.J.S.A. 2C:12-10.1 and who fears death or bodily injury from the defendant against whom that order was issued may be allowed to register to vote without disclosing the person's street address by leaving the space for street address blank, attaching a copy of the permanent restraining order and a note which indicates that the person fears future violent acts by the defendant and which contains the mailing address, post office box or other contact point where mail can be received by the person. That person shall indicate on a map to the commissioner or superintendent of elections the election district in which the person resides and that person shall be allowed to vote at the polling place for that district.

Any person who makes public any information which has been provided by a victim of domestic violence or by a victim of stalking or the family member of such victim is guilty of a crime of the fourth degree.

- N. M. P.L.2018, c.2018 dramatically expanded the opportunity for automatic voter registration through the New Jersey Motor Vehicle Commission. The instances of registration through the municipal clerk may decrease in the future. 9/15/18

## § 5-2. POLLING PLACES

[N.J.S.A. 19:8-2] 10/31/05; 9/15/12

- A. DEADLINE FOR CERTIFICATION OF SUGGESTED POLLING PLACES [N.J.S.A. 19:8-2]

1. On or before April 1st of every year, the Municipal Clerk of every municipality shall certify to the County Board of Election a suggested list of places in the municipality suitable for polling places. 10/31/05; 9/14/07; 9/15/12
2. The County Board of Election shall select the polling places and may select schoolhouses, public buildings as polling places, whether or not they are located within the election district, and shall designate the rooms or places, entrances and exits to be used for the election. The County may select a polling place other than a schoolhouse or public building for the convenience of the voters. Consideration shall be given to the use of buildings accessible to individuals with disabilities and the elderly.

In no case shall the authorities in charge of a public school or other public building deny the request of the County Board for the use of such building as a polling place. Preference in locations shall be given to schools and public buildings if same can be used without detriment to the operation of the building. [N.J.S.A. 19:8-2 & 3] 10/31/05

3. The County Board of Elections shall certify polling places by May 15th of every year to the Superintendent of Elections and Municipal Clerks. [N.J.S.A. 19:8-4] 10/31/05; 9/14/07; 9/15/12

- B. ACCESSIBILITY TO POLLING PLACES - BARRIER FREE 10/31/05

1. Each polling place selected by the County Board of Elections for use in any election shall be accessible to elderly and physically disabled voters unless the Attorney General determines that a state of emergency exists that would otherwise interfere with the efficient administration of that election; or grants a waiver based upon a determination that all potential polling places have been surveyed and no accessible polling place is available; nor is the municipality able to make one temporarily accessible in or near the election district involved.
2. Whenever possible, the County Board of Elections shall contact the managers or owners of commercial or private buildings that are deemed suitable as polling places and are in or near election districts lacking an accessible polling place, to attempt to use such building as a polling place. Reimbursement will be the same as for schools and public buildings. No manager or owner shall relocate the polling place room without the express approval of the Board.
3. The County Executive or Governing Body of each county shall establish a Voting Accessibility Advisory Committee.

C. EXPENSES FOR USE OF POLLING PLACES

The authority in charge of such polling places shall be reimbursed, by agreement, for expenses of light, janitorial and other services for such use.

D. EQUIPMENT

The County Board of Elections in Counties of the first class and the Municipal Clerks in all other Counties shall purchase or lease and furnish the proper equipment for the polling places. This equipment shall consist of tables, chairs, lights, booths and all other items necessary for conducting an election. The Municipal Clerk's responsibility is that all equipment shall be ready for use by the district boards in ample time to enable them to perform their duties.

E. VOTER INFORMATION NOTICE 10/31/05

1. A County Board of Elections shall have posted a voter information notice, which shall be referred to as a voter's bill of rights, in a conspicuous location in each polling place before the opening of the polls on the day of any election. The information required to be posted is set forth in N.J.S.A. 19:12-7.1.
  2. The voter information notice shall be printed on each sample ballot, to the extent practicable, or if not practicable, information on how to view or obtain a copy of the voter information notice shall be printed on each sample ballot.
- F. For seven (7) days before the day of any election, each County Board of Elections may cause to be displayed a sign outside of each polling place identifying it as such, and identifying the date and hours of polling. 10/31/05

**§ 5-3. DISTRICT BOARDS**

[N.J.S.A. 19:6-1]

**A. APPOINTMENT**

Appointed by the County Board of Elections on or before April 1st. 9/14/07; 9/15/12

Appointment shall be for one (1) year or until their successors are appointed.

**B. MEMBERSHIP**

1. The district boards of each election district shall consist of four (4) members, except that where electronic voting systems are in use any election district in which there are more than nine hundred (900) registered voters that district shall consist of six (6) members.
2. The members of any district board shall be equally apportioned between the two (2) political parties.

Exception. If the county board is unable to fill all of the positions of the members of particular district board from among qualified members of those two (2)



political parties, the County Board shall appoint to any such unfilled position a qualified person who is unaffiliated with any political party, but no such appointment of an unaffiliated person shall be made prior to March 25th of each year, and in no event shall more than two (2) such unaffiliated persons serve at the same time on any district board. 10/31/05; 9/14/07; 9/15/12

3. In an election district in which the primary language of ten percent (10%) or more of the registered voters is Spanish, the County Board of Elections shall appoint two (2) additional members who shall be of Hispanic origin and fluent in Spanish.
4. Any person selected as a member of a district board may be assigned by the County Board of Elections to any election district. The district board member need not live or vote in the district to which they are assigned.

C. QUALIFICATIONS 10/31/04; 9/15/12

1. Any legal voter is eligible, whether a member of a political party or not. 9/15/12
2. United States citizen and resident of this State who is sixteen (16) or seventeen (17) years of age, attends a secondary school with:
  - a. Written permission of his or her parent or guardian;
  - b. Written statement from his or her school excusing him or her from school on the days of elections, training or board meetings;
  - c. For no more hours than the number of hours permitted for such a person to work pursuant to other applicable statutes in New Jersey. 10/31/04

Students are considered members who are unaffiliated with a political party for purposes of the maximum unaffiliated members who can serve at the same time on any district board.

3. United States citizen and resident of this State who is sixteen (16) or seventeen (17) years of age, and has graduated from a secondary school or has passed a general educational development test (GED), and has the written permission of his or her parent or guardian, and for no more hours than the number of hours permitted for such a person to work pursuant to other applicable statutes in New Jersey. 10/31/04
4. Good moral character.
5. Not convicted of a crime involving moral turpitude.
6. Eyesight, with or without correction, sufficient to read nonpareil type. 10/31/04
7. Ability to read the English language readily.
8. Ability to write legibly with reasonable facility. 10/31/04
9. Reasonable knowledge of the duties to be performed as an election officer under the election laws of this state. 10/31/04
10. Health sufficient to discharge his or her duties as an election officer. 10/31/04

11. Ability to add and subtract figures correctly. 10/31/05
12. No person shall be precluded from applying to serve as a member of a district board of any municipality for failure to vote in any year such person was ineligible to vote by reason of age or residence. 10/31/05

D. JUDGE AND INSPECTOR

1. Each district board shall, on or before the primary election each year, meet and elect one of its members as judge. The judge is the Chairperson of the Board. 10/31/05; 9/15/12
2. Another member shall be elected as Inspector.
3. The judge and inspector shall not be members or voters of the same political party. 10/31/05

E. RESPONSIBILITIES AND DUTIES OF DISTRICT BOARDS 9/15/12

1. Report to the polls at least 45 minutes before the polls open to the public.
2. Prepare the Polling Place for Voting.
3. Open the polls for the election at 6:00 a.m. and close them at 8:00 p.m. and keep them open during the whole day of election between these hours. (Except for School Board elections held in April, or School Board Special Elections). 12/01; 9/14/07; 9/15/18
4. Verify Voters are registered (Act in capacity of Challenger).
5. Maintain order at the polls.
6. One member of the board is charged with the duty of obtaining and signing for the signature copy registers and other required material from the Municipal Clerk, and one member of the board is charged with the duty of returning these items to the municipal clerk at the close of polls.
7. The County Board of Elections shall provide Voting and Registration Instructions which shall be conspicuously displayed at each polling place on the day of election. Board members shall demonstrate the voting process, upon request.
8. An American Flag shall be displayed at the outside entrance to each polling place by the district boards during the hours of the election. The flag shall be furnished to the Municipal Clerk by the County Clerk [N.J.S.A. 19:8-5]
9. In some municipalities, it is the responsibility of the Municipal Clerk to keep, repair, store and deliver the polling booths, ballot boxes and other equipment in time for use by the district boards at the expense of the municipality. 9/15/10

F. SALARY AND STIPEND [N.J.S.A. 19:45-6] 12/01; 9/15/12

1. In all counties, for all services rendered, two hundred (\$200.00) dollars is paid for each primary, general, non-partisan municipal, special or recall election. 9/15/13

2. Any board member who fails to attend a required training program shall only receive fifty (\$50.00) dollars per election.
3. In counties where voting machines are used, no additional compensation shall be paid for any services rendered at any special election held concurrent with a primary or general election.
4. Compensation for school elections shall be paid by the Board of Education. 10/31/05; 9/15/13
5. Compensation shall be paid within thirty (30) days, but not before twenty (20) days, after each election. No compensation shall be paid to any member who has been removed from office or whose application for removal is under consideration.

**G. POLICE ASSIGNED TO DISTRICT BOARDS [N.J.S.A. 19:6-16] 9/15/12**

An Official in charge of the police department in any municipality may assign one or more police officers to any district board when deemed necessary. If requested by the District Board, the police officers may assist the District Board Members in carrying the ballot box or boxes to the Office of the Municipal Clerk after the ballots are counted.

**§ 5-4. EARLY VOTING**

[N.J.S.A. 19:15A-1] 9/15/2021

A registered voter shall be permitted to vote at a specially designated polling place before the day of certain primary and general elections.

**A. The early voting periods shall:**

1. Start on the 4th calendar day before a non-presidential primary election for a non-presidential general election and end on the second calendar day before that non-presidential primary election;
2. Start on the 6th calendar day before a presidential primary election for a presidential general election and end on the second calendar day before that presidential primary election; or
3. Start on the 10th calendar day before a general election and end of the second calendar day before that general election.

**B. Non-Partisan Elections:**

Any municipality conducting regular municipal elections in May pursuant to the "Uniform Nonpartisan Election Law," may, by ordinance adopted by its governing body, also conduct early voting for the regular municipal elections, in accordance with the provisions of this act. If adopted by a municipal governing body, the early voting period for a regular municipal election in May shall start on the 4th calendar day before the regular municipal election and end on the second calendar day before that regular municipal election.

1. The County Board of Elections shall designate at least one, but not more than three, public locations within the municipality.
  2. No public school building and no building used as a public school as defined under N.J.S.A. 18A:1-1, shall be designated as an early voting location.
  3. In the event of a tie vote among members of the county board with respect to the selection of sites for early voting, the municipal clerk shall cast the deciding vote.
- C. The voting process during the early voting period shall be conducted using electronic poll books and optical-scan voting machines that read hand-marked paper ballots or other machines that produce a voter-verified paper ballot.
- D. For the primary and the general election, each county board of elections shall designate early voting locations as follows:
1. At least three, but not more than five, public locations within each county, except:
    - a. If the number of registered voters in the county is between 150,000 and less than 300,000 then the county board shall designate at least five, but not more than seven public locations.
    - b. If the number of registered voters in the county is 300,000 or more, then the county board shall designate at least seven, but not more than 10 public locations.
  2. A county or municipality shall be reimbursed by the State for any additional costs incurred by the county or municipality as a result of the provisions of this act. Additionally, the county board of elections is allowed to set up additional sites as they deem necessary, but the State will not reimburse the county board for these additional sites.
- E. All early voting locations shall be public facilities, such as county courthouses, public libraries, and the offices of the municipal clerk, county clerk and county board of elections, or places of public accommodation, with the exception of public schools. No public school building and no building used as a public school shall be used as an early voting location.
- F. Each early voting site in a county or municipality shall be open for early voting as follows:
1. Monday through Saturday from at least 10:00 a.m. to 8:00 p.m.
  2. Sunday from at least 10:00 a.m. to 6:00 p.m.
  3. Any voter who is on line at the time scheduled for the closing of an early voting site shall be permitted to vote.
- G. The election officers responsible for conducting early voting shall be the same as those responsible for conducting a primary and a general election, as appropriate. The number of such officers and their hours of service shall be as determined by each county board of elections. The compensation for such officers shall be the same as provided to

district board of election members serving at a school election, or that require pursuant to Article I, paragraph 23 of the New Jersey Constitution, whichever is greater.

- H. The restrictions governing the conduct of voters at a polling place on the days that early voting occurs, the procedures governing who is permitted in a polling place on such occasions and the prohibitions on electioneering within 100 feet of a polling place during an election, shall be as provided for on regular election days.
- I. The appointment of challengers for early voting shall be in the following manner:
  - 1. The chairperson of the county committee of any political party that has duly nominated any candidate for public office to be vote for at an election by all the voters within the county or any political division thereof greater than a single municipality, or where the election is with and for a single municipality only, or any subdivision thereof, then the chairperson of the municipal committee of the political party making such nomination within and for such single municipality, or subdivision thereof, may appoint two challengers for each grouping of candidates choosing to be grouped together on the ballot for each early voting site in the chairperson's county or municipality, as the case may be.
  - 2. If two or more candidates choosing to be grouped together on the ballot do not belong to an organization represented by a county or municipal committee of any political party, as the case may be, the candidate listed on the highest position on the ballot for that grouping of candidates may appoint two challengers for that grouping of candidates for each early voting site in the county, municipality, as the case may be.
  - 3. A candidate who has filed a petition for an office to be voted for at the primary election, and a candidate for an office whose name may appear upon the ballot to be used in any election, may act as a challenger. A candidate who is not grouped with any other candidate on the ballot may appoint two challengers for each early voting site at which the candidate is to appear on the ballot.
  - 4. Whenever a public question shall appear on the ballot to be voted upon by the voters of an election district and application has been made by the proponents or opponents of such public question for the appointment of challengers, the county board may in its discretion appoint two challengers each to represent such proponents or opponents at each early voting site.
  - 5. The name and address of each challenger, including a candidate acting as a challenger or a challenger representing a grouping of two or more candidates, together with the number or name and location of the early voting site at which the challenger is to serve, shall be filed with the county board of elections not later than the fifth day preceding the start of the early voting period.

#### § 5-4.1. VOTE BY MAIL

[N.J.S.A. 19:63-1 et seq.]



Any qualified and registered voter can choose to vote in any election by using a mail-in ballot. Vote by Mail replaced the civilian and military absentee ballots.

A. APPLICATION 9/15/09

1. Application must be received by County Clerk:
  - a. At least seven (7) days prior to election if it is mailed;
  - b. By 3:00 p.m. on the day prior to the election if the voter appears in person at the County Clerk's Office.
2. A voter has the option of indicating on the mail-in ballot application that they would prefer to receive a mail-in ballot for a specific election. 9/15/18
3. A voter has the option of indicating on the mail-in ballot application that they would prefer to receive a mail-in ballot for all future elections until they request otherwise in writing. 9/15/18
4. A new voter may also choose to vote for all future elections when completing their voter registration form. 9/15/18
5. A voter who is a member of the armed forces of the United States may use a federal postcard application form to apply for a mail-in ballot. 9/15/18

B. AUTHORIZED MESSENGERS 9/15/09

1. A qualified voter is entitled to apply for and obtain a mail-in ballot by authorized messenger.
2. No person shall serve as an authorized messenger for more than ten (10) qualified voters in an election.
3. No person who is a candidate in the election for which the voter is requesting the mail-in ballot shall be permitted to serve as an authorized messenger.

C. VOTE BY MAIL BALLOT AND VOTER

1. Starting the 45<sup>th</sup> day before the day of the election each County Clerk shall forward mail-in ballots by first class postage or hand deliver to each mail-in voter whose request has been approved. 10/1/11
2. It is against the law for anyone except the mail-in voter to mark or inspect the ballot, however a family member may assist the mail-in voter.
3. Any voter who receives a mail-in ballot, but wishes to vote at the polls on the day of election shall be permitted to vote by provisional ballot after completing the affirmation statement attached to the provisional ballot. However, if the voter has received and returned the mail-in ballot to the County Board of Elections shall not be permitted to vote at the polls on Election Day.

D. PUBLIC NOTICE 9/14/09

1. A public notice must be published before the 55<sup>th</sup> day immediately preceding the election as a display advertisement. 10/1/11

2. For statewide or countywide election the display advertisement must be published in at least two (2) newspapers published in each county.
3. For municipal, school or fire district election the display advertisement must be published in at least one (1) newspaper published in each municipality or district. If no newspaper is published in the municipality or district, then the display advertisement must be published in a newspaper published in the county and circulating in the municipality or district.

E. MAIL-IN BALLOT FREE-ACCESS SYSTEM 10/31/04; 9/15/09

The Secretary of State shall establish a free-access system, such as a toll-free telephone number, an Internet website or any combination thereof, that any individual who casts a mail-in voter ballot or an overseas ballot in a federal election may access to ascertain whether the ballot of that individual was accepted for counting and, if the ballot was not counted, the reason for the rejection of the ballot. The system shall at all times preserve the confidentiality of each voter, and shall ensure that no person, other than the individual who cast the ballot, may discover whether or not that individual's ballot was accepted for counting, unless so informed by the voter. This system may be the same one used for provisional ballots. *[Voting Opportunity & Technology Enhancement Act]* 10/1/11

F. OPTIONS FOR DELIVERY OF MAIL-IN BALLOTS BY VOTER: 9/15/2021

1. By mail through USPS
  - a. Must be postmarked on or before 8:00 p.m. on election day and received by the County Board of Elections within 6 days after the election.
  - b. If not postmarked by USPS, then must be received by County Board of Elections with 2 days of election.
2. In person by 8:00 p.m. on election day to the County Board of Elections Office.
3. In a Ballot Drop Box by 8:00 p.m. on day of election.

G. BALLOT DROP BOX 9/15/2021

For any election, the County Board of Elections in each county shall establish ballot drop boxes where voters may deposit their voted mail-in ballots at least 45 days before the election. The Ballot Drop Boxes shall be located throughout the county as follows:

1. A ballot drop box shall mean a secured drop box that is not required to be within view of a live person for monitoring. All ballot drop boxes shall be available for use by a voter 24 hours a day and shall be placed at locations equipped with security cameras that allow for surveillance of the ballot drop box.
2. A least one ballot drop box shall be located at each of the following locations:
  - a. Any county government building in which the main office of the county clerk is located;

- b. Any municipal government building in which the main office of the municipal clerk is located in municipalities with populations larger than 5,000 residents;
  - c. The main campus of each county community college;
  - d. The main campus of each State college or university;
  - e. The main campus of each independent four-year college or university with enrollments larger than 5,000 students.
- 3. There shall be no fewer than 10 drop boxes per county.
  - 4. All ballot Drop Box locations shall be on sites that meet the accessibility (ADA) requirements applicable to polling places and shall be subject to the same compliance oversight applicable to polling places.

**§ 5-5. SAMPLE BALLOTS, EMERGENCY BALLOTS, REMOVED RESIDENT (PRESIDENTIAL BALLOT LAW) & FEDERAL ELECTION MAIL-IN VOTING AND UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT**

10/31/04; 10/31/05; 9/15/09

**A. SAMPLE BALLOTS**

1. The printing and mailing of sample ballots are handled by the County Clerk for Primary & General Elections and are mailed by 12:00 Noon on the Wednesday prior to the Election. [N.J.S.A. 19:14-25 & N.J.S.A. 19:23-34] 9/15/06; 9/15/08
2. For each district in a county in which the primary language of ten percent (10%) or more of the registered voters is other than English, the County Clerk shall cause to be printed bilingually in English and the other language a sufficient number of sample ballots of each political party and furnish same to the proper officers. [N.J.S.A. 19:23-22.4] 9/15/06
3. In counties over 700,000 in population, second class counties having a population between 300,000 and 425,000 and other counties having a population between 150,000 and 300,000, the cost of printing sample ballots shall be paid by the county but the county shall be reimbursed by the municipalities, each municipality paying such amount as shall be apportioned to it by the County Clerk based on the proportion of the number of official primary election ballots and primary election sample ballots required for use in such municipality. [N.J.S.A. 19:23-22.5]

**B. EMERGENCY BALLOTS**

1. Court decisions have ruled that voters should not have to wait more than fifteen (15) minutes to vote because of a malfunctioning voting machine.
2. When a voting machine malfunctions, the Board workers contact the County for repair. If a mechanic has not arrived at the polling place and repaired the machine within fifteen (15) minutes of the discovery of the malfunction or opening of the polls, whichever is later, and at the request of any voter in line, Emergency Ballots are used.
3. Emergency ballots and a ballot box for this purpose are provided by the County Board of Elections.
4. The Board workers must obtain specific permission from the County Board of Elections to use the Emergency Ballots.
5. Instructions for using and counting Emergency Ballots are provided in sealed envelopes to the board workers at each election.

**C. REMOVED RESIDENT - PRESIDENTIAL BALLOT 9/15/12**

1. A removed resident is a registered voter who was formerly a resident of one of the Counties of this State but has moved out of that county to another county, State, District of Columbia, Puerto Rico, etc., who by reason of an insufficient period of residence in his/her new place of residence will not be able to qualify to vote at a presidential election.

a. Removed Resident

Any removed resident shall be entitled to qualify and vote for the President and Vice-President of the United States.

b. Ballot Application Form

Obtained from the Clerk of the Municipality or the Clerk of the County in which the applicant was registered to vote.

c. Preparation of Ballot Application Forms

(1) Application forms and forms of affidavits of residence shall be prepared by the County Clerk.

(2) The forms shall be of a different color than the mail-in voter ballot application forms. 9/15/09

(3) The County Clerk shall supply the Municipal Clerk with a sufficient number of these forms.

2. Regulations

a. The County Clerk shall receive the application whether mailed or delivered in person not later than seven (7) days preceding the date of the election.

b. The application must also include a certificate of the Commissioner of Registration of the district that the person now resides in stating that the voter did not qualify to register in upcoming Presidential election. This is the affidavit that accompanies the application.

c. The County Board of Elections of his/her former residence must have the completed ballot by the closing of the polls on Election Day. 10/1/11

D. OVERSEAS FEDERAL ELECTION VOTER [N.J.S.A. 19:59; 42 USC 19073ff-2] 10/31/05

1. Any United States citizen residing abroad or military person on active duty who immediately prior to departure from the United States was domiciled in New Jersey and had all the qualifications to register and vote in New Jersey; or 9/15/09

a. Who does not maintain a residence and is not registered or qualified to vote in the United States; and

b. Who holds a valid passport.

2. Application for an Overseas Federal election voter ballot must be received by the appropriate County Clerk on or before the thirtieth (30th) day preceding the election. The County Clerk can begin sending the ballot to the voter at least forty-five (45) days before the day of the election. 10/1/11

3. Overseas voter can request an application for an absentee ballot by airmail or electronic means such as fax or e-mail. If overseas voter requests an application



be sent by electronic means, the voter must provide a fax number or e-mail address. 9/15/08

4. The deadline for receipt of the Federal Absentee Ballot is the same as for any other ballot. The executed ballot must be in the possession of the County Board of Elections by the closing of the polls on Election Day. 9/15/08; 9/15/10; 10/1/11
5. Since 1988, Federal Write-in Absentee Ballot is available, upon request, to United States citizens outside the United States. 9/15/08
  - a. The overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot would be counted for the candidate of that political party.
  - b. Any abbreviation, misspelling, or other minor variation in the form of the name of the candidate or a political party is to be disregarded in determining the validity of the ballot if the intention of the voter can be ascertained.
  - c. The deadline for receipt of the Federal Write-in Absentee Ballot is the same as for any other ballot. The executed ballot must be in the possession of the County Board of Elections by the closing of the polls on Election Day. 9/15/10; 10/1/11
6. (Reserved) 10/31/04; 9/15/08; 9/15/09

Note: The Secretary of State shall make available to the general public a report of the number of Military and Federal Overseas Ballots provided, judged valid and returned for each election. 9/15/10

## § 5-6. CHALLENGERS

[N.J.S.A. 19:7-3 to 19:7-6]

### A. FILING OF APPOINTMENT OR APPLICATIONS

1. Filed with County Board of Elections.
2. Filed 2nd Tuesday preceding any election.
3. Must be a registered voter in the County.
4. Can only serve in district to which appointed (except At-Large Challengers).

### B. PERMITS TO CHALLENGERS

1. Permit must be filed with the District Board.
2. Permit may only be used by person it was issued to.
3. Candidate may act as challenger. [N.J.S.A. 19:7-2]

### C. TYPE OF CHALLENGERS

1. Authorized challengers for respective political parties.
2. Authorized challengers for candidate.
3. Proponents or opponents of a public question.

D. POWERS

1. Power to challenge the right to vote of any person.
2. May ask all necessary questions to determine the right to vote.
3. May be present while votes cast are being counted.
4. Power to challenge the counting.

E. BADGE

1. Every challenger shall wear a badge.
2. Badge is furnished by the County Board of Elections.
3. Badge indicates which party or candidate the challenger represents.

F. LIMITATION ON THE NUMBER OF CHALLENGERS

1. The Chairman of the County Committee, a Candidate for an office and proponents or opponents of a public question appearing on the ballot may appoint two (2) challengers to serve in each election district. The Chairman of the County Committee of each political party may also appoint additional challengers (At-large challengers) for any election equal in number to the municipalities in the county and such challengers may exercise their powers at the polling place of any election district in the county during the time an election occurs therein. 12/01
2. Not more than one (1) challenger may be present at any one time in the polling place for a Political Party, Candidate, Public Question.
3. More than one (1) challenger may be present only with the permission of the County Board of Elections, and upon request, a like number shall be permitted to be present on behalf of any opposing party candidate or public question.

**§ 5-7. ELECTIONEERING**

[N.J.S.A. 19:34-5 to 19:34-15] 9/15/12

A. INTERFERENCE WITH THE CONDUCT OF ELECTION

1. No person shall, during an election, with intent to hinder or delay same, or to hinder or delay any voter in the preparation of his ballot, remove or destroy any of the ballots or pencils placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot.
2. No person shall tamper, deface or interfere with polling booth.
3. No person shall obstruct the entrance to any polling place.

4. No person shall obstruct or interfere with any voter.
5. No person shall loiter or do any electioneering within the polling place.
6. No person shall suggest or solicit any support for any candidate, party or public question WITHIN ONE HUNDRED FEET (100') OF THE OUTSIDE ENTRANCE TO ANY POLLING PLACE OR ROOM.
7. No person shall distribute or display any circular or printed matter.
8. Any person willfully violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished by fine not exceeding five hundred (\$500.00) dollars and imprisonment until such fine and the costs of the conviction are paid.

This shall not be construed to prohibit a minor from entering a polling place on the day of an election to vote in a simulated election at that polling place. 12/01

**B. PERSONS ALLOWED IN POLLING PLACE:**

1. Officers connected with the election;
2. Candidates;
3. Duly authorized challengers;
4. Voters present for the purpose of voting.
5. Persons connected with the operation of a simulated election for minors and minors present for the purpose of voting in a simulated election as permitted by N.J.S.A. 19:34-6b. 12/01

**§ 5-8. ELECTION DAY DUTIES**

[N.J.S.A. 19:8-6 and N.J.S.A. 19:9-5]

- A. The Office of the Municipal Clerk shall remain open from the opening of the polls until after the closing of the polls and all district workers have delivered their returns. 10/31/04
- B. THE MUNICIPAL CLERK PROVIDES ELECTION SUPPLIES FOR EACH ELECTION DISTRICT:  
  
Any other equipment and supplies not provided by the county board in time for use by the district boards at the cost and expenses of the municipality. 9/15/2021
- C. The County Clerk provides and the Municipal Clerk distributes American Flags to the polling places.

D. THE COUNTY BOARD OF ELECTIONS PROVIDES AND THE MUNICIPAL CLERK DISTRIBUTES FOR THE USE OF THE POLL WORKERS AT THE POLLING PLACE: 12/02

Voter registration duplicate books — Per P.L. 2019, c.80 each county commissioner of registration and county board of elections may adopt electronic poll books for use at each polling place on the day of any election, in place of the paper polling record or signature copy register, to access the registration record, eligibility, signature, and other information of each registered voter in the election district. 9/15/19

Voting authority slips

Payroll vouchers

Voting machine keys

Sample ballots

E. The County Board of Elections (Superintendent of Elections) provides for delivery to the polling places:

Voting machines

Emergency ballots and equipment for delivery to the polling place 10/31/04

Superintendent of Elections or the County Board of Elections shall provide to each polling place a sufficient number of a form on which voters or persons attempting to vote may register complaints. [N.J.S.A. 19:32-4.1] 9/15/10

F. RESULTS OF ELECTION - CLOSE OF THE POLLS [N.J.S.A. 19:17-3]

1. At the close of the polls, the District Board workers are to return to the Office of the Municipal Clerk all registration books, tally sheets, pay vouchers, voting authorities, and all other materials required to be returned by your County Election Officials.
2. The statement of election results are required to be transmitted to the County Clerk and the County Superintendent of Elections. The exact procedure for the delivery differs in each of the twenty-one (21) counties.

**§ 5-9. PRIMARY ELECTION**

[N.J.S.A. 19:23-1 et seq.] 10/31/04; 10/31/05; 9/15/12

A. TIME FOR HOLDING [N.J.S.A. 19:2-1 & 19:2-2] 10/31/05

Presidential Primary elections for delegates and alternates to national conventions of political parties are held in each presidential year during the regular Primary Election for the general election which is held on the 1st Tuesday after the 1st Monday in June. All polling places shall open at 6:00 a.m. and close at 8:00 p.m. 9/14/07; 9/15/14

B. PARTY AFFILIATION DECLARATIONS [N.J.S.A. 19:23-45] 10/31/05

1. Voters who have never voted in any Primary Election are "Undeclared Voters." Should they wish to vote in a Primary Election, they may declare their political party at the polls. 9/14/07
2. Voters who have voted at a primary election are considered "Declared Voters." They will be either a Democrat or a Republican. Should they wish to change their political affiliation to another political party or to declare themselves "Unaffiliated," they must file a declaration of Party Affiliation with the County Commissioner of Registration at least fifty-five (55) days prior to the Primary Election should they want to vote for that party in that Primary. If they affiliate themselves with a political party for a particular primary they may file a declaration at any time following that Election to return to "Unaffiliated." 9/14/07; 9/15/10; 10/1/11; 9/15/12
3. Voters may indicate on their voter registration form their choice of political party affiliation. 10/31/05
4. The declaration of Party Affiliation form is the same form that is used to register to vote. 9/15/09

C. NOMINATING PETITIONS [N.J.S.A. 19:13-1, 19:13-3, 19:23.5 et seq.]

1. Nominating Petitions must be filed in the office of the Municipal Clerk by 4:00 p.m. on the 64th day next preceding the day of the holding of the primary election for the general election. 12/01; 9/14/07; 10/1/11; 9/15/12
2. Who submits petitions to Municipal Clerk.
  - a. Candidates for Municipal Office.
  - b. Candidates for Municipal Committee (County Committee).
3. Candidates in any election are permitted to sign their own nominating petition and be a circulator thereof. 10/1/11
4. Not later than the close of business on the 54th day preceding the primary election for the general election, the Municipal Clerk shall certify to the County Clerk the full and correct names and addresses of all candidates for nominations for public and party office and the name of the political party of which such person are candidates together with their slogan and designation. 10/1/11

**TIP BOX:**

Municipal Clerks should consult with their Solicitors if an unaffiliated voter signature will be a "make or break" signature on a Nominating Petition. Check NJ Supreme Court Case – Lezniak v. Budzach, 1993. 9/15/2021

D.

E. NUMBER OF SIGNATURES

1. The number of signatures is calculated by the County Clerk.
2. Population of 14,000+ - 50 signatures



3. Population less than 14,000 - 25 signatures
4. Wards - 25 signatures
5. Single election district - not less than 1 signature OR
6. Five percent (5%) of the total votes cast by the voters of that political party at the last preceding primary election at which a member of the General Assembly was elected, WHICHEVER IS LESS; BUT
7. Not less than one (1) signature.

F. INDEPENDENT CANDIDATE FOR MUNICIPAL OFFICE:

1. Name does not appear on Primary Ballot.
2. Names appear on the General Election Ballot in November.
3. Filing Petition: Petition must be filed with the County Clerk by 4:00 p.m. on Primary Election Day. 12/99
4. Signatures required: Two percent (2%) of the total votes cast by all voters at the last preceding general election at which a member of the General Assembly was elected, but no more than one hundred (100).
5. Slogan may not exceed three (3) words and may not contain reference to any political party entitled to participate in the primary election. 9/15/14
6. Deadline for amendments to defective petitions for independent general election candidates — on or before the third (3rd) day after petition filing deadline. [N.J.S.A. 19:13-13] 10/1/11

G. PARTISAN PETITION REQUIREMENTS:

1. Candidate must be legally qualified.
2. Only candidates of political parties entitled to participate in the primary election can file a Partisan Petition. Currently, those parties are the Democratic and Republican political parties. 12/01; 9/15/14
3. Name and Address of Candidate.
4. Consent to accept nomination if nominated.

H. SLOGAN

1. Any candidate may designate a ballot slogan.
2. Slogan may not exceed six (6) words.
3. First candidate to select slogan shall get designation.

I. OATH OF ACCEPTANCE

1. Appears on nominating petition.
2. Certifies candidate is a resident and legal voter of jurisdiction.

3. Oath must be signed in presence of someone authorized to administer oaths.

J. BRACKETING OF CANDIDATES

Candidates with common designation may choose to be grouped together on the ballot, which is called Bracketing. 9/15/14

K. DEFECTS AND OBJECTIONS

1. Candidate shall be notified as to the nature of the defect.
2. The number of signatures cannot be changed.
3. Amended petition must be returned to Municipal Clerk by the sixty-first (61<sup>st</sup>) day or prior to the Primary Election or within three (3) days after the deadline for filing petitions. 9/14/07; 9/15/12

L. WRITTEN OBJECTION TO PETITIONS

The deadline for filing a written objection is not later than the fourth (4th) day after the deadline for filing petitions. 12/01; 9/14/07

M. DRAWING FOR POSITION ON BALLOT [N.J.S.A. 19:23-24]

1. The Municipal Clerk draws for local candidates only.
2. The drawing for position on the ballot is held on the fifty-third (53rd) day prior to the Primary Election at 3:00 p.m. unless  
9/14/07; 9/15/12
  - a. The 53rd day falls on a holiday, at which time the drawing will be held on the fifty-fourth (54th) day prior to the Primary Election at 3:00 p.m.
  - b. A clerk's office that conducts the drawing from the box on the 54th day prior to the primary election for the general election as required shall post notice of the change of date and time in the clerk's office and on the clerk's official website at least by 3:00 p.m. 60 days prior to the primary election for the general election.
3. Although not required the Municipal Clerk should notify the candidates of the date, time and place of such drawing.

N. IRREGULAR BALLOTS (WRITE IN BALLOTS) [N.J.S.A. 19:49-5]

1. A person whose name appears on the ballot at the Primary Election for a political party cannot serve as a candidate for any other political party should they receive Irregular ballots for that other party.
2. When a person whose name appears on the ballot at either the Primary or General Election and receives Irregular Ballots, the Irregular Ballots will not be added to that person's total vote. 9/14/07
3. In the case of a candidate for elective office, if the greatest number of votes received is for the name of a person for whom votes are cast by irregular ballot in

a primary election, that person's name shall not be included on the general election ballot unless he received a number of irregular ballots at least equal to the number of signatures required on a nominating petition for that office. (N.J.S.A. 19:14-2.1) 9/15/14

4. In the case of a County or Municipal Committee candidate, the highest total votes received determines the winner even if the number of votes received is less than the signatures required on a nomination petition. (Legal Opinion of Richard Lustgarten, Esq. 2014). 9/15/15

O. **CANVASS OF VOTES BY MUNICIPAL CLERKS; CERTIFICATES OF ELECTION TO COUNTY BOARD** [N.J.S.A. 19:23-54] 9/15/2021

The municipal clerk shall canvass the statements of the district board, not later than the third day after they are received, as far as they relate to the election of members of the county committee of any political party, and, after counting information on write-in votes, vote by mail ballots, and provisional ballots received from the county clerk or board of elections, as appropriate, shall issue a certificate of election to each person shown by the returns to have been so elected.

1. When a person whose name was not printed on a primary ballot as a candidate for a member of the county committee has been elected as a member of the county committee for more than one political party, they shall file with the municipal clerk within three days a statement to which political party they belong, and a certificate of election shall be issued to such person as a member of the county committee of the political party so certified.
2. The municipal clerk shall within 13 days after the primary election certify to the county clerk and also to the county board two copies of the names and post-office addresses of the person's elected as members of the county committee of the several political parties, together with the ward, district or unit which they respectively represent.

**§ 5-10. GENERAL ELECTION**

[N.J.S.A. 19:1-1]

A. **TIME FOR HOLDING**

The annual election to be held on the 1st Tuesday after the 1st Monday in November. All polling places shall open at 6:00 a.m. and close at 8:00 p.m. 12/01

B. **ELECTION DAY DUTIES — MUNICIPAL CLERK'S OFFICE OPEN ALL DAY**

1. The Municipal Clerk's office must be open all day from prior to the opening of the polls and until all ballot boxes used at the various polls in the municipality are delivered to the Municipal Clerk's Office.
2. In accordance with the National Voter Registration Act (Fail-Safe), the Municipal Clerk or their authorized Deputies must be available to handle all matters which arise during election day (see section entitled "Voter Registration," § 5-1 of this chapter).

**§ 5-11. MUNICIPAL CLERKS RESPONSIBILITY TO THE FOLLOWING****A. COUNTY CLERK**

1. Not later than the fifty-seventh (57<sup>th</sup>) day preceding the primary election **for the general election**, shall certify statement of municipal offices to be filled at such election, and the number of persons to be voted for each office. 10/31/05; 9/14/07; 9/15/12
2. Provide certified list of names, address and political party of all persons endorsed by petition not later than fifty-four (54) days prior to the Primary Election. 9/15/12
3. Provide list of elected Municipal (County) Committee members by party, ward and district within eight (8) days after the primary.
4. Within twenty (20) days after the meeting of each County committee that is held on the first Tuesday following the primary election at which committee members are elected, the Municipal Clerk shall certify to the County Clerk an official list of the duly elected County committee members and an official list of the municipal committee chairs. 10/1/11; 9/15/12
5. Some county committee members are appointed after the Primary. Their certificate of acceptance should be mailed to the Clerk and a complete certified list of county committee members and their chairpersons must be mailed to the Municipal Clerk who shall certify an Official List of the names and addresses of the County Committee persons to the County Clerk. 9/15/12

**B. COUNTY BOARD OF ELECTIONS**

1. Provide suggested list of polling places on or before April 1st of every year. 9/15/06; 9/14/07; 9/15/12

2. Provide list of the elected Municipal (County) Committee members by party, ward and district within eight (8) days after the Primary Election. 9/14/07
3. Notify Board of Elections when new streets are added to the Municipality.

**C. COMMISSIONER OF REGISTRATION (SUPERINTENDENT OF ELECTIONS)**

1. Send in voter registration forms in a timely manner.
2. Be sure Registration books are delivered to or picked up by District Board workers.
3. In some counties it may be advisable to check voting machines and compare the serial numbers to the keys prior to the election.

**§ 5-11.1. EXHIBIT - CHRONOLOGICAL INDEX FOR PRIMARY, GENERAL, SPECIAL ELECTIONS**

Also non-partisan municipal and school Board elections that are being held in November. 10/31/05; 9/15/12

The Exhibits provided in this Chapter are summarized lists of Election schedules considered to be relevant to the Municipal Clerk; a complete Chronological Index is provided by the Secretary of State and may be found on [www.njelections.org](http://www.njelections.org) now listed under Election Information, Important Election Dates. 9/15/10; 9/15/12

**April 1 Polling Places**

On or before this date, each year, the Municipal Clerks shall send to the County Board of Elections a list of suggested polling places. [N.J.S.A. 19:8-1] 10/1/11; 9/15/12

**30 days before closing registration books for any election.**

Newspaper notices of election date, registration information, offices to be filled and public questions to be voted upon. County Board of Elections shall publish in a newspaper or newspapers, Primary Election and the General Election. Such notices shall be published once during the thirty (30) days next preceding the day fixed for the closing of the registration books for the Presidential Primary Election, Primary and the General Election. [N.J.S.A. 19:12-7]

This notice is to be published by the Municipal Clerk before a special election. 9/15/12

**64 days before the Primary Election 10/1/11; 9/15/12**

Before 4:00 p.m. on this date, all petitions nominating candidates for the Primary Election shall be filed with the Secretary of State, County Clerk or Municipal Clerk. Municipal Clerk receives Primary petitions only. [N.J.S.A. 19:23-14] 12/01; 9/14/07; 9/15/09

**61 days before the Primary Election 9/15/12**

Deadline for amendment of defective petition (Not later than three (3) days following filing deadline. [N.J.S.A. 19:23-20 and N.J.S.A. 19:13-13] Such candidate shall be permitted to amend the petition either in form or in substance, but not to add signatures, so as to remedy the defect within three (3) days. 10/1/11



60 days before the Primary Election 9/15/12

Any objections to nominating petitions must be duly made in writing and filed with the officer with whom the original petition was filed. (Not later than the fourth (4th) day after the deadline for filing of petitions) [N.J.S.A. 19:13-10] 10/1/11

55 days before the Primary Election 10/1/11

Last day to declare party affiliation in order to change party for the Primary Election. [N.J.S.A. 19:23-45] 12/02; 9/15/12

55th day preceding the day any election is to be held 9/15/09; 10/1/11

A public notice for the mail-in voter application must be published as a display advertisement. 9/15/09

57 days before the Primary Election 10/1/11; 9/15/12

Municipal Clerks to certify to the County Clerk, no later than fifty-seven (57) days prior to the election, the public offices which are to be filled and the number of persons for each. [N.J.S.A. 19:12-6] 10/1/11

54 days before the Primary Election 10/1/11; 9/15/12

Not later than the close of business of the 54th day preceding the primary election for the general election, the Municipal Clerk shall certify to the County Clerk the full and correct names and addresses of all candidates for nomination for public and party office and the name of the political party of which such persons are candidates together with their slogan and designation. [N.J.S.A. 19:23-14] 10/1/11

53 days before the Primary Election 10/1/11; 9/15/12

The County Clerk shall certify to the Municipal Clerk concerning all persons endorsed in petitions filed in his/her office and in the Secretary of State's Office specifying in such certificate the political party to which the person or persons so nominated belong. [N.J.S.A. 19:23-22] 10/1/11

53 days before the Primary Election at 3 P.M. 10/1/11; 9/15/12

A drawing for positions on the ballot shall be held at the office of the Municipal Clerk for positions to be filled by the voters of a municipality only and at the office of the County Clerk for all other positions to be voted on in that county. [N.J.S.A. 19:23-24]

45 days preceding the day any election is to be held 10/1/11

The County Clerk shall forward mail-in ballots by first-class postage or hand delivery to each mail-in voter whose request has been approved. [N.J.S.A. 19:63-9] 10/1/11

30th day preceding an election "Federal Elections Only"

The last day overseas voters can apply for a mail-in voter ballot. [N.J.S.A. 19:59-4] 9/15/09

21 days before any election

Last day to register to vote in the ensuing election. [N.J.S.A. 19:31-6] 9/15/06

2nd Tuesday before any election

Applications for challengers shall be filed with the County Board of Elections no later than the second Tuesday preceding any election. The challenger must be registered to vote in the county in which the district is located in which such person is appointed to serve. [N.J.S.A. 19:7-3]

The calendar week before the week in which any election is held

Newspaper notices of election date, offices to be filed and public questions to be voted upon. The County Board of Elections shall publish in a newspaper or newspapers a notice for the Primary Election and for the General Election. Such notices shall be published once during the week next preceding the weeks in which the Primary Election and the General Election are held. [N.J.S.A. 19:12-7]

This notice is to be published by the Municipal Clerk before a special election. 9/15/12

7 days before any election

The last day a voter may apply for a mail-in voter ballot by mail. [N.J.S.A. 19:57-4] 9/15/09

6 day period prior to any election

Any voter who fails to apply seven (7) days prior to the election may apply in person to the County Clerk for a mail-in ballot on any day up to 3 p.m. of the day before the election. [N.J.S.A. 19:57-5] 9/15/09

Wednesday before any election

Sample ballots shall be mailed on or before 12:00 noon on the Wednesday preceding the election. [N.J.S.A. 19:23-34]

Last Monday in July

Not later than 4:00 p.m. on the day of the Primary Petitions for School Board Candidates to be elected simultaneously with the General Election must submit their Petition to the County Clerk. 9/15/12; 9/15/2021

1st Tuesday after first Monday in June - Primary Election

The polls will be open from 6:00 a.m. to 8:00 p.m. [N.J.S.A. 19:23-40] 12/01

Within 3 days after the Primary Election

When a person whose name was not printed on a primary ballot as a candidate for member of the County Committee has been elected as a member of the County Committee of more than one political party, he shall file with the Municipal Clerk within three (3) days a statement certifying to which political party he belongs. [N.J.S.A. 19:23-54]

As soon as possible following the Primary Election

The Municipal Clerk shall canvass the statements of the District Board of Election as far as they relate to the election of the members of the County Committee of any political party and shall issue a certificate of election to each person so elected. [N.J.S.A. 19:23-54]

1st Saturday after the Primary Election

The members of the Municipal Committee shall take office. The members of the County Committee shall take office. The members of the Municipal Committee of political parties shall consist of the elected members of the County Committee resident in the respective municipality. [N.J.S.A. 19:5-2]

Monday following the Primary Election

Annual meeting of the Municipal Committee of each political party. [N.J.S.A. 19:5-2]

**1st Tuesday following the Primary Election**

Annual meeting of the County Committee of each political party. [N.J.S.A. 19:5-3] Note: Twenty (20) days following this meeting the Municipal Clerk shall certify to the County Clerk an official list of the municipal committee members and chair. [N.J.S.A. 19-13-20] 10/1/11

**7 days after the Primary Election**

Any person nominated at the Primary Election by having his name written or pasted upon the primary ballot shall file a certificate stating he is qualified for the office for which he has been nominated, that he is a resident of and a legal voter in that jurisdiction and that he consents to stand as a candidate at the ensuing General Election. Such acceptance shall be filed with the County Clerk in the case of the County and Municipal offices and with the Secretary of State for all other offices. [N.J.S.A. 19:23-16]

**8 days after the Primary Election**

The Municipal Clerk shall certify to the County Clerk and the County Board of Elections two (2) copies of the names and post-office addresses of the persons elected as members of the County Committee of the several political parties, together with the ward, district or unit which they respectively represent. [N.J.S.A. 19:23-54]

**15 days after any election**

Deadline for filing an application for a recount of election returns. [N.J.S.A. 19:28-1]

**Last Monday in July**

No later than 4:00 p.m. petition for nomination for School Board Candidate are to be submitted to the County Clerk. 9/15/15

**81 days before the General Election 10/1/11**

The last day for the governing body of any municipality to file a request with the County Clerk for a proposition to appear on the ballot. [N.J.S.A. 19:37-1]

**67 days before the General Election 10/1/11**

The last day for the governing body of any municipality to file a request with the County Clerk for a proposition to appear on the ballot which has been requested by the voters in such municipality. [N.J.S.A. 19:37-1.1]

**64 days before the General Election**

The last day to file with the Municipal Clerk nomination Petitions for Municipal Non-Partisan Candidates to be voted at the November Election [N.J.S.A. 40:45-8] 9/15/12

**61 days before General Election**

Deadline for Amendment to Defective Petitions for Municipal Non-Partisan Candidates to be voted at the November General Election 9/15/12

**59 days before General Election (no later than 4 days after filing deadline)**

Filing Deadline for Objections for Nominating Petitions for Municipal Non-Partisan Candidates (N.J.S.A. 19:13-10) 9/15/12

**9 days after the last day for filing nomination petitions**

Deadline for Determination of Petition Challenge to Municipal Non-Partisan Candidates to be Voted at the November General Election (N.J.S.A. 19:13-11) 9/15/12

To be coordinated by Municipal Clerk N.J.S.A. 19:23-24 9/15/14 Drawing of Ballot Positions for Municipal Non-Partisan Candidates to be Voted at the November General Election 9/15/12	
60 days before the General Election	The last day for a person to decline nomination in writing to the officer with whom the original petition or certificate of nomination was filed. [N.J.S.A. 19:13-16]
64 days before the General Election 10/1/11	The last day for filing a petition to fill a vacancy among direct petition nominees. [N.J.S.A. 19:13-19]
56 days before the General Election 10/1/11	The last day on which a vacancy can occur for the political party to fill a vacancy among the Primary Election nominees. [N.J.S.A. 19:13-20] 10/1/11
54 days before the General Election 10/1/11	The last day for the political parties to file with the County Clerk their selection of candidates for any vacancy in any office. [N.J.S.A. 19:13-20d] 10/1/11
7 days before the General Election	The last day for a Removed Resident who does not live in the State to apply to the County Clerk of the County of his former residence for a Presidential Ballot. [N.J.S.A. 19:58-9]
<b>1st Tuesday after the 1st Monday in November - General Election</b> The polls will be open from 6:00 a.m. to 8:00 p.m. [N.J.S.A. 19:2-3]	

*Note: The Municipal Clerk preparing for a Special Election should review this Chronological Index to be aware of the many procedures that would also apply to the special election.*

## § 5-12. NON-PARTISAN ELECTION

[N.J.S.A. 40:45-1 et seq.] 10/31/04

- A. Except as may otherwise be provided by law for initial elections conducted in a municipality following its adoption of a plan or form of government, or a charter or an amendment thereto, regular municipal elections are held on the second (2<sup>nd</sup>) Tuesday in May in a year when any member of the Governing Body's term of office expires. If the Municipality chooses, in accordance with P.L. 2009 Ch. 196, this election is held on the same day as the General Election in November in the years in which municipal officials are to be elected.
  1. Municipal elections, certain change of date permitted.
    - a. Any municipality governed by the provisions of the "Uniform Nonpartisan Election Law," P.L. 1981, c.379 (C.40:45-5 et seq.) may, by ordinance, choose to hold regular municipal elections on the day of the general election, the Tuesday after the first Monday in November.



- b. Once a municipality has chosen to change the day of the regular municipal election to the day of the general election in November, it shall not be permitted to change the day of the election back to the second Tuesday in May until: (1) at least ten (10) years have passed since the adoption of the ordinance changing the date of the municipal election to the day of the general election; and (2) a new ordinance providing for regular municipal elections to occur on the second (2nd) Tuesday in May is adopted by the municipality's governing body.
  - c. The term of any person in office on the date of the adoption of such an ordinance shall be extended until the beginning of the term of the person elected to that office on the day of the general election in November. P.L. 2009, c.196, s.1. 9/15/10
- B. Polls are open from 6:00 a.m. to 8:00 p.m., the same as for Primary and General Elections. 12/01
- C. The Municipality is responsible for all costs involved with a Non-Partisan Municipal Election and the Municipal Clerk is responsible for all the duties which are performed by the County Clerk in the Primary and General Election. See petition dates on Chronological Index for General Election - Non-Partisan Municipal Elections. 9/15/12
- D. **NOMINATING PETITIONS**

The following should be prepared by January 1 for potential candidates:

  - 1. Petitions of Nomination;
  - 2. Certificate of Acceptance/Candidate;
  - 3. Certificate of Appointment/Campaign Manager;
  - 4. Oath of Candidate;
  - 5. Oath of Campaign Manager;
  - 6. Request for Designation on Ballot.
- E. **FILING OF PETITION**

File with the Municipal Clerk by 4:00 p.m., on the sixty-fourth (64<sup>th</sup>) day prior to the Municipal Election. 9/15/10; 10/1/11
- F. **NUMBER OF SIGNATURES**
  - 1. One percent (1%) (but in no case less than twenty-five (25)) of the registered voters of the municipality or ward as the case may be.
  - 2. Each petition signature must be on a separate sheet of paper bearing the name and address of the petitioner.
  - 3. Each petition signature may be for only one candidate.
  - 4. Each petitioner must be a registered voter of the municipality or ward for which the candidate is running.



5. Each petitioner must not sign more certificates for candidates for that office than there are places to be filled for each office.

G. SLOGAN [DESIGNATION]

1. Any candidate may have a designation not to exceed six (6) words.
2. A designation may not indicate any political party affiliation.
3. If two (2) candidates select the same designation, the candidate who files first gets it and the other candidate must choose a new designation.

H. OATH OF ACCEPTANCE

1. Oath of Acceptance must be signed by candidate and campaign manager. 9/14/07
2. The oath constitutes acceptance of nomination.
3. Oath of Acceptance is attached to petition when filed.
4. Deadline for submission is on the fifty-fourth (54<sup>th</sup>) day prior to the election.
5. Oath must be signed in presence of anyone authorized to administer oaths.

I. BRACKETING [N.J.S.A. 40:45-10]

1. Several candidates for the same office may petition that their names be grouped together and one designation named by them be printed opposite their names.
2. The Municipal Clerk must group their names in a bracket and print the designation opposite the bracket.
3. Petitions requesting a designation or grouping of candidates shall be filed with the Clerk on or before the last day fixed for filing the petition for nomination; fifty-seven (57) days prior to Election. If two (2) candidates or groups select the same designation, the Clerk shall notify the candidate or group whose petition was last filed, and that candidate or group shall select a new designation. 9/15/10

J. OBJECTIONS [N.J.S.A.19:13-10]

Deadline for filing a written objection to petitions is the fourth (4th) day after the deadline for filing. 12/01

K. CLERK'S CERTIFICATION — REVIEW OF PETITIONS

1. Municipal Clerk must examine petition for conformity to N.J.S.A. 40:45 and to N.J.S.A. 19.
2. Candidate must be notified of any defect.
3. Candidate may take steps to correct the defect.
4. No new signatures may be added.
5. Office running for cannot be changed.
6. Deadline is sixty-one (61) days before the election. 10/1/11

**L. DRAWING FOR POSITION ON THE BALLOT**

1. The Municipal Clerk draws lots to determine the order in which the candidates' names will appear on the ballot.
2. There is no statutory date for conducting the drawing of position on ballots for Nonpartisan elections. Some Clerks draw on the 53rd day before the election to be consistent with partisan election requirements. 9/15/13; 9/15/14

**M. NEWSPAPER ADVERTISEMENT**

Publication of names of candidates and polling places.

1. Within ten (10) days after the filing and drawing for position on the ballot, the Municipal Clerk must publish the names of the candidates as they will appear on the ballot.
2. Must be published once in each of two (2) newspapers having circulation in the municipality and published in this State.
3. Copy of the publication should be submitted to the County Clerk at the time of newspaper submission.

**N. ARRANGING BALLOTS FOR NONPARTISAN ELECTION IF DATE HAS BEEN CHANGED TO SAME DAY AS GENERAL ELECTION. 9/15/10**

1. Whenever a municipality has passed an ordinance pursuant to subsection a. of section 1 of P.L. 2009, c.196 (C.40:45-7.1), the clerk of the county in which the municipality is located shall arrange the ballot for each subsequent general election to:
  - a. Include those candidates for election to public office in the municipality that has adopted a form of government that provides for the holding of a regular municipal election on the second Tuesday in May but will be holding that election at the general election in November;
  - b. Ensure that there is a clear separation between each candidate described in subsection a. of this section, each candidate for another public office who has been nominated for that office by a political party in the immediately preceding primary election and each candidate nominated directly by petition, so that there is no discernable alignment between candidates otherwise elected at a regular municipal election, candidates nominated by a political party for any other public office and candidates nominated directly by petition; and
  - c. Follow such provisions of the "Uniform Nonpartisan Elections Law," P.L.1981, c.379 (C.40:45-5 et seq.) as the clerk may deem feasible. 9/15/10

**O. SAMPLE BALLOTS—FOR REGULAR MUNICIPAL ELECTIONS IF HELD IN MAY. 9/15/10**

1. Not required for Regular Municipal Elections.
2. If sample ballots are desired by the Governing Body:

- a. The Municipal Clerk must prepare mailing labels.
- b. Mailing labels may be obtained from the County Board of Elections.
- c. Arrange with printer to print and mail sample ballots.
- d. Sample ballots must be mailed by 12:00 noon, the Wednesday prior to the Election.

P. POLLING PLACES 9/15/10

The same polling places used for the Primary and General Election are utilized.

Q. DISTRICT BOARDS: 9/15/10

1. District Board Workers should have attended the Election Class.
2. District Board Workers are paid by the Municipality, if election is held in May.
3. Municipal vouchers should be prepared for each Board Worker, if election is held in May.
4. Cash stipend for the pick up and return of books and supplies is paid by the municipality, if election is held in May.

R. CHALLENGERS [N.J.S.A. 19:7.1 et seq.] 9/15/10

1. Two (2) challengers per district per candidate are permitted, but not more than one (1) may be present at any time in the polling place.
2. Two (2) challengers each for pro and con of public question, but not more than one (1) may be present at any time in the polling place.
3. Candidates can act as a challenger.
4. Challengers must be a registered voter in the county.
5. No challenger shall serve in any district other than that to which appointed.
6. Candidates must file list of challengers with County Board of Elections by the second Tuesday preceding the election.
7. Challenger appointment papers and permits are prepared by the County Board of Elections.
8. Challengers shall wear a badge to be furnished by the county board.

S. ELECTIONEERING WITHIN OR ABOUT THE POLLING PLACE [N.J.S.A. 19:34-15] 9/15/10

No person is permitted to distribute or display any circular or printed matter, offer any suggestion, or solicit any support for any candidate, party or public question WITHIN THE POLLING PLACE OR ROOM OR WITHIN A DISTANCE OF ONE HUNDRED FEET (100') OF THE OUTSIDE ENTRANCE TO SUCH POLLING PLACE OR ROOM.

## T. ELECTION DAY DUTIES 9/15/10

1. The Municipal Clerk's office must be open all day from prior to the opening of the polls and until all ballot boxes used at the various polls in the municipality are delivered to the Municipal Clerk's Office.
2. In accordance with the National Voter Registration Act (Fail-Safe), the Municipal Clerk or their authorized Deputies must be available to handle all matters which arise during election day (see section entitled "Voter Registration").
3. Service Fail Safe voters.
4. Receive results of the election.
5. Certify the election.

## U. RESULTS OF ELECTION [N.J.S.A. 40:45-16] 9/14/07; 9/15/10

1. The District Boards will tally the votes cast for each candidate.
2. The tally is returned to the Municipal Clerk immediately after completion.
3. Vote by mail ballots are tabulated by the County Board of Elections and sent to the Municipal Clerk for inclusion in the tally. 12/02; 9/15/10
4. Copy of vote tally sent to County Board of Elections and County Clerk after the election.
5. Candidates notified of election results and provided with Certificate of Election.

## V. CERTIFICATION OF ELECTION 9/15/10

The Municipal Clerk has the responsibility of Certifying the election results.

## W. RUN OFF ELECTIONS [N.J.S.A. 40:45-19] 9/15/10

1. Run-Off elections are permitted in those municipalities which have adopted run-off elections in their form of government.
2. A run-off election is held when a sufficient number of candidates do not receive a majority of votes cast to elect the required number of councilmembers, commissioners, trustees.
3. No candidate for mayor or ward councilman received majority of the votes cast for his/her respective office.
4. A run-off election must be held on the fourth (4th) Tuesday following the municipal election, unless that date is the Primary Election, then it is held on the fifth (5th) Tuesday after the regular municipal election.

**§ 5-12.1. EXHIBIT - PARTISAN & NON-PARTISAN FORMS OF GOVERNMENT**

	PARTISAN	NON-PARTISAN
Political Party	R - D - I	No Party Designation
Election Dates 10/31/05; 9/15/12	Primary – Tuesday after 1st Monday in June to select candidates for the General Election	May – 2nd Tuesday; or November - Tuesday after 1st Monday in November (same as General Election) if chosen by Municipality pursuant to P.L. 2009, c.196 9/15/10; 9/15/14
	General - Tuesday after 1st Monday in November to elect candidates 9/15/09	
Sworn Into Office	January 1	July 1 (Except Commission form which is one week after election) or January if election is held in November pursuant to P.L. 2009, C.196 9/15/10
Forms of Government	All Faulkner Forms Township Committee Borough Form	All Faulkner Forms Commission-Walsh Act Village Form Municipal Manager Form
Nominating Petitions	Required Number of signatures may be on one petition	Each petition signature must be on separate sheet of paper bearing name and address of petitioner
Number of Signatures	5% of total votes cast by voters of that political party last election to the general assembly but not less than one (1) signature. Independent: 2% of the total votes cast in the municipality at last preceding general election for general assembly, but not more than 100 signatures.	1% of registered voters of the ward or municipality but never less than 25
Where Petitions Filed	R & D - Municipal Clerk I/Independent – County Clerk	Municipal Clerk
Ballot Preparation	Municipal Clerk certifies to County Clerk the names, addresses of all persons filing petitions for municipal office. County Clerk responsible for printing ballots	Municipal Clerk examines all petitions; Municipal Clerk responsible for preparation
Newspaper Publication	Candidates names not required to be published	Municipal Clerk must publish names of candidates as they appear on the ballot, once in each of two (2) newspapers circulated in the municipality and published in NJ within ten (10) days after the last date to file petitions and drawing of positions
Sample Ballot	Prepared and mailed to each registered voter by County Clerk and Board of Elections	Not required but may be mailed if traditionally done
Ballots and Election Supplies	County Clerk and Board of Elections prepare and supply to the Municipal Clerk for distribution to the District Election Boards	Municipal Clerk prepares and supplies to the District Election Boards



	<b>PARTISAN</b>	<b>NON-PARTISAN</b>
District Election Board	Recruited by the local political parties. Named and assigned by County Board of Elections	Recruited and assigned to the District Election Election Boards by Municipal Clerk
Election Results	Filed with Municipal Clerk, County Clerk and Superintendent of Elections	Filed with Municipal Clerk, and in counties with Superintendents of Elections, the Municipal Clerk makes a set of returns available to Superintendent
Canvas Returns	County Clerk with the County Board of Elections Monday after election. Results filed in County Clerk's Office	Municipal Clerk, day after election. Results are filed in Municipal Clerk's Office

### § 5-12.2. EXHIBIT - STATUTORY SCHEDULE AND REFERENCE FOR NON-PARTISAN MUNICIPAL ELECTIONS

9/15/10

Pursuant to the Uniform Non-Partisan Elections Law, N.J.S.A. 40:45-5 et seq.

51 DAYS PRIOR TO REGULAR MUNICIPAL ELECTION (30 DAYS BEFORE CLOSING OF REGISTRATION) 10/1/11

- |           |   |                              |
|-----------|---|------------------------------|
|           | Notice of election to be published, stating date of election, voting hours and a list of all polling places. [List of polling places is required specifically under N.J.S.A. 19:12-8] | [N.J.S.A. 19:12-7]           |
| Reminder: | Certification of polling places must be sent to County Board of Elections   | [N.J.S.A. 19:8-2]<br>9/15/12 |
|           | This notice should also be published once during the calendar week preceding the Municipal Election date.   | [N.J.S.A. 19:12-7]           |

64 DAYS PRIOR TO REGULAR MUNICIPAL ELECTION 9/15/10; 10/1/11

LAST DAY FOR FILING THE FOLLOWING:

- |     |   |                     |
|-----|---|---------------------|
| (a) | Petitions of Nomination   | [N.J.S.A. 40:45-8]  |
|     | Election Law Enforcement Commission (ELEC) to be notified of eligible candidates by Municipal Clerk | [N.J.S.A. 40:45-8]  |
| (b) | Candidates acceptance of nomination (annexed to petition)   | [N.J.S.A. 40:45-8]  |
| (c) | Campaign Manager's oath (annexed to petition)   | [N.J.S.A. 40:45-8]  |
| (d) | Application for designation (6 words) (included in petition)  | [N.J.S.A. 40:45-10] |
| (e) | Application for bracketing of candidates (included in petition)                                     | [N.J.S.A. 40:45-10] |
| (f) | Identification (Candidates with same name)  | [N.J.S.A. 40:45-14] |

AT LEAST 55 DAYS PRIOR TO REGULAR MUNICIPAL ELECTION 10/1/11

- |  |   |
|--|---|
| Publish a display advertisement for the Mail-In voter ballot application | [N.J.S.A. 19:63-6(d)]<br>9/14/07; 9/15/09 |
|--|---|

60 DAYS PRIOR TO REGULAR MUNICIPAL ELECTION: 4th DAY AFTER FILING  
DEADLINE 9/15/10; 10/1/11

Last day to file written objections (4:00 p.m.)

[N.J.S.A.19:13-10]

61 DAYS PRIOR TO REGULAR MUNICIPAL ELECTION: 3rd DAY AFTER FILING  
10/1/11

- (a) Last date for defects in petitions to be corrected. Names may not be added after the last day for filing of original petition. [N.J.S.A. 40:45-9 (d)]
- (b) Municipal Clerk makes determination on sufficiency of petitions filed.

DRAWING FOR POSITION ON BALLOT

Two day notice to candidates by registered mail of date, time and place for drawing for position on ballot

[N.J.S.A. 40:45-12]

Drawing for position on ballot held at the Municipal Clerk's office (Title 40 does not specify date for drawing), Municipal Clerk usually draws on the 53rd day as required for the Partisan Elections) 12/01; 9/15/10; 9/15/13

[N.J.S.A. 40:45-12]

WITHIN 10 DAYS AFTER EXPIRATION DATE FOR FILING OF PETITIONS AND  
DRAWING FOR POSITION ON BALLOT

Names of candidates as they appear on ballot to be published once in each of two newspapers having circulation in the municipality and published in the State of New Jersey.

[N.J.S.A. 40:45-13]

50 DAYS PRIOR TO REGULAR MUNICIPAL ELECTION 10/1/11

On or before noon of this date, the Municipal Clerk should prepare a copy of the contents of official ballots for the printer

[N.J.S.A. 19:14-1]

Statutory references for printing ballot

[N.J.S.A. 40:45-15]

Vote by Mail 9/15/10

[N.J.S.A. 19:63-9]

Voting Machine

[N.J.S.A. 19:49-1]

Emergency

[N.J.S.A. 19:53B-1]

Provisional

[N.J.S.A. 19:53C-1]

45 DAYS PRIOR TO REGULAR MUNICIPAL ELECTION 10/1/11

Mail-in voter ballots to be mailed by County Clerk as soon as practicable after 45th day before election 9/15/09; 10/1/11; 9/15/12

[N.J.S.A. 19:63-9(a)]

21 DAYS PRIOR TO REGULAR MUNICIPAL ELECTION

Last day for voters to register or change voter registration (21st day before election the Municipal Clerk's office can remain open to 9:00 p.m.); however, use of provisional ballots still applies 9/15/06; 9/14/07; 9/15/09

[N.J.S.A. 19:31-6]

**NOT LATER THAN 2nd TUESDAY PRECEDING ELECTION**

Last day to file with County Board of Elections, names of two challengers for each candidate per district. Generally only one may remain in polling place at any one time. [N.J.S.A. 19:17-3]

**TEN DAYS BEFORE ELECTION**

When several candidates for the Office of Commissioner (in non-partisan municipalities where such office exists), petition for bracketing with the same slogan, they may file with the Municipal Clerk the names of three persons as a Committee on Vacancies [N.J.S.A. 40:45-10.1]

**NOT LESS THAN SEVEN DAYS PRIOR TO REGULAR MUNICIPAL ELECTION**

Vote by mail applications must be filed with County Clerk's Office 9/15/09 [N.J.S.A. 19:63-6(a)]

Mail-in voters who fail to apply in writing for a ballot seven days prior to the election may apply in person, or by authorized messenger, to the County Clerk on any day up to 3:00 p.m. of the day before the election. 9/15/09

Two sets of official ballots should be provided for each voting machine, for each polling place, for each election district, and for use in and upon voting machines [N.J.S.A. 19:49-3]

**SIX DAYS PRIOR TO REGULAR MUNICIPAL ELECTION**

On or before noon on Wednesday preceding election, mail sample ballots [N.J.S.A. 19:14-25]

**ONE DAY BEFORE REGULAR MUNICIPAL ELECTION**

Ballots, ballot boxes, keys and other equipment and supplies delivered to District Boards [N.J.S.A. 19:14-35]

**2nd TUESDAY IN MAY: MUNICIPAL ELECTION DAY: [N.J.S.A. 40:45-7]**

Election results certificates, completed by District Boards, shall be delivered to Municipal Clerks, County Clerks and Superintendents as required [N.J.S.A. 40:45-16]

Municipal Clerk certifies election results, public may be present [N.J.S.A. 19:17-3]

**JULY 1**

Terms of office commence unless otherwise provided by law. [N.J.S.A. 40:45-17]

**§ 5-13. SCHOOL ELECTIONS**

[N.J.S.A. 19:60-1 et seq.] 9/15/12

- A. APRIL SCHOOL BOARD ELECTIONS - P.L. 2011 C.202-third (3<sup>rd</sup>) Tuesday in April- This section references School Board Elections for Type II Districts that have

held to the separate School Board Election date and did not select the option provided by P.L. 2011, c. 202, signed into law on January 17, 2012, which permits a board of education, a municipal governing body, or voters (by way of petition) to move the April annual school board election to the date of the November general election.

1. 3<sup>rd</sup> Tuesday in April

- a. In each Type II District an annual school election on the third (3<sup>rd</sup>) Tuesday in April. However, in any school year, the Commissioner of Education shall make any adjustments to the school budget and election calendar which may be necessary if that date coincides with a period of religious observance. The Commissioner shall inform local school boards, county clerks and boards of elections of these adjustments no later than the first working day in January of the year in which the adjustments are to occur. 10/31/05
- b. The Board of Education of a Type II District may call a special election of the legal voters on only the fourth (4<sup>th</sup>) Tuesday in January, the second (2<sup>nd</sup>) Tuesday in March, the last Tuesday in September or the second (2<sup>nd</sup>) Tuesday in December when in its judgment the interests of the schools require such an election after giving no less than sixty (60) days' notice to the Municipal Clerk or Clerks and the County Board of Elections. 10/31/05
- c. The polling locations shall be open for such elections at 6:00 a.m. and closed at 8:00 p.m., and they shall be kept open between these hours; except that for a school election held at a time other than the general election the polls shall be open between the hours of 4:00 p.m. and 8:00 p.m. and during an additional time which the school board may designate between the hours of 6:00 a.m. and 8:00 p.m. 9/15/16
- d. One member at a time of the assigned board workers may be allowed to be absent from the polling place and room for a period of one hour, or less as necessary, between the hours of 1:00 p.m. and 5:00 p.m. At no time from the opening of the polls to the completion of the canvass shall there be less than a majority of the poll workers present in the polling room or place, except that during a school election held at a time other than at the time of the general election there shall always be at least one member of each polling place present or if more than two poll workers are designated to serve at the polling place, at least two members present. 9/15/16

2. Statutory Reference

All school elections shall be by ballot and shall be conducted in accordance with N.J.S.A. 18A and N.J.S.A. 19 of the Revised Statutes. No grouping of candidates or party designation shall appear on any ballot to be used in a school election. 10/31/05; 9/14/07; 9/15/10

3. Duties of the Municipal Clerk

- a. Municipal Clerk's Office must be open during the hours of this election in conjunction with the National Voter Registration Act. 12/02

- b. Conduct one (1) evening voter registration if such requirement is determined by the Commissioner of Registration.
  - c. The Municipal Clerk shall advertise the mail-in voter information for the local school election. 9/14/07; 9/15/09
  - d. Recipient of tally sheet after election.
  - e. Disbursement of poll lists and supplies.
4. Duties of the Secretary of the Board of Education
- a. Certifies to the County Clerk a statement designating any public question to be voted upon by the voters of the district;
  - b. Accepts nominating petitions for candidates to be voted upon at the school election by 4:00 p.m. of the fiftieth (50th) day preceding the date of the school election. Candidate has seven (7) days to amend petitions.
  - c. Conducts a drawing for position on the ballot seven (7) working days following the last day for filing a petition for nomination of such candidate and within two (2) days certifies to the County Clerk positions on the ballot.
  - d. Certifies to County Clerk names of candidates and ballot positions.
  - e. Receives objections to nominating petitions, conducts investigations and makes determination as to validity of petitions.
  - f. Recipient of tally sheets from Municipal Clerk after election.
5. Duties of the County Board of Elections
- a. Appointment of District Board Workers;
  - b. Selection of Polling Places.
  - c. Newspaper Advertisement of closing date of registration, time and place of annual school election.
  - d. Appoints Challengers.
  - e. Mail-in voter processing and advertise for regional elections. 9/15/09
  - f. Certification of Election.
6. Duties of Commissioner of Registration/Superintendent of Elections
- a. Provide computerized list with signatures.
  - b. Receives emergency ballots from County Clerk.
  - c. Evening registration.
  - d. Supplies & Books delivered to Municipal Clerk.
  - e. Voting Machines.



## 7. Duties of the County Clerk

- a. Mailing of Sample Ballots.
- b. Publication of Notices for Vote by Mail Voters. 9/15/10
- c. Printing of Ballots.
- d. Recipient of results along with Municipal Clerk, County Superintendent of Elections and Local School Board Secretary.

## 8. Petitions

Received by the School Board Secretary by 4:00 p.m. on the fiftieth (50th) day prior to the School Election. After conducting the drawing for position on the ballot, the School Board Secretary certifies to the County Clerk the names and ballot positions of all candidates.

## 9. Publications

- a. The County Clerk advertises the mail-in voter requirements for regional school district elections. 12/01; 9/15/09
- b. The County Board of Elections is responsible for advertisement of the evening registration and challenger notices.

## 10. District Boards (Consolidation of Polling Places)

If during each of the two (2) preceding annual school board elections no more than five hundred (500) ballots were cast by the voters of the election districts for which that polling place is designated, the Municipal Clerk or the Board of Education may request or the County Board of Elections may determine on their own initiative to consolidate the polling places.

## 11. Challengers

Challengers are appointed in accordance with N.J.S.A. 19 by the County Board of Elections (see Challengers).

## 12. Electioneering [N.J.S.A. 19:34-15]

- a. No person within the polling place or within one hundred (100') feet of the outside entrance to the polling place shall distribute or display any circular or printed material or electioneer or campaign in any form. Such an act of electioneering is a misdemeanor.
- b. No person shall be allowed or permitted to be present in the polling place or polling room during the progress of the election except the officers connected with the elections, the several candidates, the duly authorized challengers, such voters as are present for the purpose of voting and such officers as may be duly detailed to be present, for preserving the peace and enforcing the provisions of the elections laws. [N.J.S.A. 19:15-8]

## 13. Results of Election

- a. At the close of the polls, the District Board workers are to return all registration books, tally sheets, pay vouchers, voting authorities, and all other materials required to be returned by your County Election Officials, to the Office of the Municipal Clerk.
  - b. Results are required to be transmitted to the County Clerk and the County Superintendent of Elections. The exact procedure for the delivery differs in each of the twenty-one (21) counties.
- B. NOVEMBER SCHOOL BOARD ELECTIONS - P.L. 2011, 202-first (1<sup>st</sup>) Tuesday after first (1<sup>st</sup>) Monday in November - Changing School Board Elections to the date of the General Election. In an effort to reduce costs by holding separate elections, and to increase the public participation in School Board Elections P.L. 2011, 202 sign into law on January 17, 2012 permits a board of education, a municipal governing body, or voters (by way of petition) to move the April annual school board election to the date of the November general election.
  1. A Type 11 school district may be moved to the November General Election through the following methods:
    - a. A petition signed by not less than fifteen percent (15%) of the number of legally qualified voters who voted in the district at the last preceding general election held for the election of electors for President and Vice-President of the United States is filed with the board of education.
    - b. Upon the adoption of a resolution by the board of education of a local or regional school district.
    - c. Upon the adoption of a resolution by the governing body or bodies of the municipality or municipalities constituting the district.
  2. Upon adoption of a resolution by School Board or Governing Body the following government offices must be notified:
    - a. P.L. 2011, 202 requires notification to the applicable County Clerk
    - b. County Board of Election (and the County Superintendent of Elections, if there is one in the county)
    - c. The applicable Municipal Clerk(s) and school board secretary or secretaries;
    - d. State Division of Elections
    - e. Department of Education's Executive County Superintendent
    - f. Department of Community Affairs, Division of Local Government Services.
  3. The November School Board Election remains non-partisan.
  4. The hours for the election will coincide with the General Election hours: 6:00 a.m. to 8:00 p.m. 9/15/13

5. Petitions for nomination for School Board Candidates are to be submitted to the County Clerk no later than 4:00 p.m. of the last Monday in July preceding the November School Election. 9/15/15
6. The voters will only be voting on the School Board candidates and any proposed CAP over-ride referendum. The election may also include a capital spending proposal. There is no vote on the annual school based budget within the levy cap. However, the School is still required to hold Public Meetings on their budget.
7. Once the School Board Election has been moved to November, it cannot revert back to April for four years. The procedure to move the election back in April is the same as to move it to November - by School Board or Governing Body Resolution or petition.
8. The School Board's option to hold a special election, as is currently permitted by law four times a year at specified times remains unchanged (January, March, September and December).

#### § 5-13.1. EXHIBIT CHRONOLOGICAL INDEX - SCHOOL BOARD ELECTIONS

9/15/10

Jan. 2	State Commissioner of Education to notify Local School Board Secretary of any change in the date for annual School Board Election. [N.J.S.A. 19:60-1]
50 days before Annual School Board Election	Last day for candidates to file nominating petition with local School Board Secretary [N.J.S.A. 19:60-7]
50 days before Annual School Board Election	County Clerk to publish display advertisement for mail-in voter ballot for Regional School Board Election. Municipal Clerk to publish display advertisement for mail-in voter ballot information for Local School Board Election. [N.J.S.A. 19:57-7] 9/14/07; 9/15/09
44 days before Annual School Board Election	A candidate may withdraw by filing a written notice with the Secretary of the School Board. [N.J.S.A. 19:60-7]
44 days before Annual School Board Election	The last day a candidate may amend a defective affidavit of petition. [N.J.S.A. 19:60-7]
7 working days following filing of nominating petitions	A drawing for positions on the ballot shall be held at the office of the Secretary of the Board of Education. [N.J.S.A. 19:60-8]
21 days before the Annual School Board Election	The last day to register to vote in the Annual School Board Election. [N.J.S.A. 19:31-6] 9/15/06
2 weeks preceding annual school election	Challengers file request with County Board of Elections 9/15/09

17 days before the Annual School Board Election, no later than 10 a.m. The Secretary of the Board of Education shall certify and forward to the County Clerk any public questions to be voted upon. [N.J.S.A. 19:60-4]
April 1 9/15/10; 9/15/13 On or before this date, Municipal Clerks shall send to the County Board of Election a list of suggested polling places. [N.J.S.A. 19:8-2]
2nd Tuesday before the Election Applications for challengers shall be filed with the County Board of Elections no later than the second Tuesday preceding the election. [N.J.S.A. 19:7-3]
The week before the week in which the election is to be held The County Board of Election shall publish a general notice for Annual School Board Election. [N.J.S.A. 19:12-7]
7 days before the election The last day a voter may apply to the County Clerk for a mail-in ballot to be voted by mail. [N.J.S.A. 19:57-4] 9/15/09
6 day period prior to the election Any voter who fails to apply seven (7) days prior to the election may apply in person to the County Clerk for a mail-in ballot on any day up to 3:00 p.m. of the day before the election. [N.J.S.A. 19:57-4] 9/15/09
3rd TUESDAY IN APRIL - ANNUAL SCHOOL BOARD ELECTION [N.J.S.A. 19:60-1]* *School Election may be held in November on same date as General Election if resolution adopted by School Board or Municipal Governing Body. If an election in November, the Budget is not voted on. Monday after the School Board Election The County Board of Canvassers shall meet for the purpose of checking the canvass made by the County Clerk. [N.J.S.A. 19:19-1]
15 days after the election Deadline for filing an application for a recount or recheck for the School Board Election. [N.J.S.A. 19:28-1]
15 day period following the election The counter compartment shall remain locked for a period of fifteen (15) days, except it may be opened by order of a Judge of the Superior Court. [N.J.S.A. 19:52-6]

## § 5-13.2. EXHIBIT SAMPLE RESOLUTION FOR MOVING SCHOOL BOARD ELECTION TO NOVEMBER - GENERAL ELECTION

### RESOLUTION

Establishing the Election of Members of the \_\_\_\_\_ Board of Education

As the First Tuesday after the First Monday in November

WHEREAS, P.L. 2011, c. 202 authorizes changing the election date of school board members from the third Tuesday in April to the first Tuesday after the first Monday in November (the General Election); and

WHEREAS, Such action requires the adoption of a resolution by a school district or the municipality or municipalities constituting such district, as set forth in P.L. 2011, c. 202; and

WHEREAS, P.L. 2011, c. 202 requires that the change to a November election remain in effect for four years; and

WHEREAS, P.L. 2011, c. 202 eliminates the annual voter referendum on the proposed general fund tax levy (i.e., the base budget which is at or below the statutory tax levy cap) in school districts where board of education members are elected at the General Election; and

WHEREAS, P.L. 2011, c. 202 requires that an additional general fund tax levy proposal (i.e., for an expenditure in excess of the tax levy cap) be presented to voters as a separate question at the General Election; and

WHEREAS, (optional) The \_\_\_\_\_ (Board of Education or Governing Body) believes that the financial interest of its constituents is safeguarded by the state's tax levy cap and the thorough review of the proposed school budget by the Executive County Superintendent and the Executive County School Business Administrator; and

WHEREAS, (optional) The \_\_\_\_\_ (Board of Education or Governing Body) believes that more citizens will participate in the selection of school board members at the General Election than on the third Tuesday in April and that the higher level of participation will foster positive interest in our public schools; and

WHEREAS, (optional) The \_\_\_\_\_ (Board of Education or Governing Body) is committed to the non-partisan status of school board membership and the nonpartisan conduct of school elections, and believes this principle will not be compromised by conducting board member elections in November.

NOW, THEREFORE, BE IT RESOLVED, That, pursuant to P.L. 2011, c. 202, the \_\_\_\_\_ (Board of Education or Governing Body) changes the annual election date for school board members from the third Tuesday in April to the November General Election, beginning in 2012;

BE IT FURTHER RESOLVED, That pursuant to P.L. 2011, c. 202 the annual organization meeting off the \_\_\_\_\_ Board of Education will take place in the first week of January following the November General Election and that the board of education's next organization meeting will take place in the first week of January 2013; and

BE IT FURTHER RESOLVED, That, pursuant to P.L. 2011, c. 202, members of the \_\_\_\_\_ Board of Education whose terms would have expired by May 2012 will continue to serve in office until the January 2013 organization meeting; and

BE IT FURTHER RESOLVED, That this resolution be transmitted to the \_\_\_\_\_ County Clerk; the \_\_\_\_\_ County Board of Elections and/or Superintendent of Elections; the \_\_\_\_\_ municipal clerk(s) and school board secretary or secretaries; the Department of State, Division of Elections; the Department of Education's Executive County Superintendent; and the Department of Community Affairs, Division of Local Government Services; and be it further RESOLVED, That a copy of this resolution also be provided to the New Jersey School Boards Association and New Jersey State League of Municipalities.



**§ 5-14. SPECIAL ELECTIONS**

Special elections are those other than the primary, general, school board or regular municipal election. There are many and varied reasons for holding special elections, most of which are set forth in the following sections.

**A. IN MUNICIPALITIES WITH PARTISAN ELECTIONS**

1. The special election matters are combined with the General Election Ballot and handled as part of the General Election by the County Clerk.
2. If the statute does not permit the combining of the special items with the General Election, a Special Election must be held.
3. If required, the municipality is responsible for conducting the election and the Municipal Clerk should follow the procedures set forth herein for Regular Municipal Elections (non-partisan).

**B. In municipalities with Regular Municipal (non-partisan) Elections, special election matters are combined with the Regular Municipal Election or a Special Election must be held if the Statute requires. Again, the Municipal Clerk is required to follow the procedures set forth for Regular Municipal Elections.****C. REASONS FOR SPECIAL ELECTIONS:**

1. To fill certain vacancies [N.J.S.A. 40A:16]
2. Recall Elections [N.J.S.A. 19:27A]
3. Abandonment of present form of government [N.J.S.A. 40:69A-25]
4. Reversion to prior form [N.J.S.A. 49:69A-25]
5. Initiative or Referendum [N.J.S.A. 49:69-184 et seq.]
6. Exceed budget cap [N.J.S.A. 40A:4-45.3]
7. Creation of Fire Districts [N.J.S.A. 40A:14-70]

**§ 5-15. MUNICIPAL VACANCY LAW**

[N.J.S.A. 40A:16 et seq]

The "Municipal Vacancy Law" sets forth the rules concerning vacancies in the offices of Mayor and member of a municipal Governing Body and applies to all forms of municipal government. The law specifies when a municipal elected office is deemed vacant. It sets forth distinct procedures for a municipality to follow to fill a vacant office based upon whether the municipality holds elections in May or November and whether the elections are partisan or nonpartisan. 9/15/18

**A. REASONS FOR VACANCY [N.J.S.A. 40A:16-3]**

The office of a mayor or a member of the Governing Body of a municipality shall be deemed vacant for the following reasons:

1. Upon its being so declared by virtue of a judicial determination;
2. Upon the death of the mayor or a member of the Governing Body;
3. Upon a determination of the other members of the Governing Body that the mayor or a member of a Governing Body no longer resides within the corporate limits of a municipality or ward from which he was elected;
4. Upon the refusal of the mayor or member of the Governing Body to qualify or serve;
5. Upon a judicial determination that the mayor or member of the Governing Body shall become physically or mentally incapable of serving;
6. Upon the filing of a *written resignation with the Municipal Clerk* by the mayor or a member of the Governing Body, except a resignation filed following the filing of a recall petition;
7. Whenever the mayor, when required by law to attend meetings of the Governing Body, or a member of the Governing Body, fails to attend and participate in any meetings of the Governing Body for a period of eight (8) consecutive weeks:
  - a. unless excused from attendance by a majority of the members of the Governing Body, at the conclusion of such period;
  - b. however, that the Governing Body may refuse to excuse only with respect to those members whose failure to attend and participate which are not due to legitimate illness;
8. Upon a determination that the office comes within the purview of N.J.S.A. 19:3-25. - removal from office, nomination or election declared null and void.
9. Tie vote creates a vacancy. [N.J.S.A. 19:3-25]

**B. PROCEDURES TO FILL VACANCY IN PARTISAN MUNICIPALITIES 9/15/09**

The Municipal Vacancy Law also provides rules for filling vacant municipal offices both temporarily and for unexpired terms of office. Under certain circumstances, the law requires vacancies to be filled through election; in other circumstances, it allows vacancies to be filled by governing body appointment. While the Municipal Vacancy Law, at N.J.S.A. 40A:16-13, allows a vacancy in the membership of the municipal governing body to remain vacant for an extended period of time, another provision of law, N.J.S.A. 40A:9-131, prohibits extended mayoral vacancies. 9/15/18

N.J.S.A. 40A:9-131 provides that upon occurrence of a mayoral vacancy, the presiding officer of the governing body automatically becomes the acting mayor until a successor is elected and qualified. This statute operates immediately upon any unexpected mayoral vacancy. It complements the provisions of the Municipal Vacancy Law, which provide for the appointment of a successor as mayor. 9/15/18

1. Procedure to be followed to fill vacancy where incumbent was a nominee of a political party.

- a. If the vacancy occurs prior to September 1 in the next to last year of the term of the officer whose office has become vacant, the office shall be filled for its unexpired term at the next general election to be held not less than sixty (60) days after the occurrence of the vacancy. The Governing Body may fill the position on a temporary basis until that next general election using the same method as set forth in N.J.S.A. 40A:16-5. 9/15/12
- b. If the vacancy occurs on or after September 1 of the next-to-the last year of the term of the officer whose office has become vacant, the office may be filled for its unexpired term by appointment by the Governing Body in manner set forth below. [N.J.S.A. 40A:16-5] 9/14/07; 9/15/12

The Governing Body may fill the vacancy by appointment in the following manner: [N.J.S.A. 40A:16-11] 12/01

- (1) Within fifteen (15) days after the occurrence of a vacancy, the municipal committee of the political party shall present to the Governing Body the names of three (3) nominees for the selection of a successor to fill the vacancy.
- (2) Within thirty (30) days after the occurrence of a vacancy, the Governing Body shall appoint one of the nominees as the successor to fill the vacancy.
- (3) If the Governing Body fails to appoint one of the nominees within the prescribed time, the municipal committee shall within the next fifteen (15) days or forty-five (45) days after the occurrence appoint one of the nominees as the successor to fill the vacancy.
- (4) If the municipal committee fails to submit the names of the nominees within the fifteen (15) days after the occurrence, the Governing Body may within the next fifteen (15) days or a total of thirty (30) days appoint a successor from the same political party which had nominated the incumbent whose office has become vacant. 12/01

Note: If the vacancy occurs prior to September 1 in the next to last year of the term, the Governing Body may make a temporary appointment to fill the position until the next General Election. See paragraph B.1.a. above.

- 2. Procedure to be followed to fill vacancy where incumbent was NOT a nominee of a political party. [N.J.S.A. 40A:16-12]
  - a. If the incumbent whose office becomes vacant was NOT elected to office as the nominee of a political party, the Governing Body may within thirty (30) days appoint a successor to fill the vacancy without regard to party.
  - b. Failure of Governing Body to fill vacancy in membership of Governing Body [N.J.S.A. 40A:16-13]

If a Governing Body shall fail or decline to fill a vacancy in the membership of the Governing Body by appointment within the prescribed time, the office shall remain vacant for the remainder of the term or until the election and qualification of a successor, as the case may be.

3. Authority of Governor to fill vacancies when a majority of the positions of the Governing Body become vacant [N.J.S.A. 40A:16-9]

- a. Whenever the offices of *all* or a *majority* of the members of a Governing Body shall become vacant, the *Municipal Clerk or any remaining member of the Governing Body must immediately certify to the Governor* the fact that the vacancies have occurred.
- b. The Governor shall, within thirty (30) days of the occurrence, fill the vacancies. If the incumbent whose office has become vacant was elected to office other than as nominees of a political party, the Governor shall appoint a successor to fill the vacancy without regard to party. 12/99
- c. If the incumbent whose office has become vacant was elected to office as the nominee of a political party, the Governor shall fill the vacancy by the appointment of a successor from the same political party which had nominated such incumbent.

C. VACANCIES — NON-PARTISAN MUNICIPAL ELECTION HELD IN MAY [N.J.S.A. 40A:16-4] 9/15/09; 9/15/12

1. Whenever a vacancy occurs in the office of mayor or in the membership of the Governing Body of a municipality holding regular municipal elections, the vacancy shall be filled in the following manner:
  - a. If the vacancy occurs subsequent to September 1 of the last year of the term of the officer whose office has become vacant, the office *may be* filled for its unexpired term by appointment by the Governing Body:
  - b. If the vacancy occurs at any other time, the vacancy shall be filled for its unexpired term at the next general or regular municipal election, whichever occurs first, to be held not less than sixty (60) days after the occurrence of the vacancy. The Governing Body may fill the vacancy temporarily by appointment.

D. VOTE REQUIRED: 9/15/09

1. An appointment to fill a vacancy in the office of mayor shall be by a *majority vote of the entire membership of the Governing Body*. [N.J.S.A. 40A:16-6]
2. An appointment to fill a vacancy in the membership of the Governing Body shall be by a *majority vote of the remaining members of the Governing Body*. [N.J.S.A. 40A:16-7]
3. A *mayor* shall be permitted to vote to fill a vacancy in the membership of Governing Body *only in the case of a tie vote* in municipalities governing by the provisions of Article 3 or 16A of the "Optional Municipal Charter Law" or by the provisions of laws governing boroughs.
4. The procedures of the governing body should dictate the interpretation of an abstention for purposes of determining whether a tie exists. In such circumstances, consult with the municipal attorney for a legal interpretation. 9/15/18



E. QUALIFICATIONS OF APPOINTEE TO FILL VACANCY [N.J.S.A. 40A:16-10] 9/15/09

Every person appointed to fill a vacancy, for either an unexpired term or temporarily, shall have the qualifications required by statute to permit the appointee to qualify for election to office. 12/99

F. SPECIAL ELECTION REQUIRED 9/15/09

1. If the Governing Body shall fail to fill a vacancy in the office of the mayor within the thirty (30) day period prescribed, the Municipal Clerk shall fix the date for a special election to fill the vacancy to be held not less than forty-five (45) days nor more than fifty (50) days after the expiration of the time fixed for the filling of the vacancy.
2. If the date fixed for a special election shall fall within twenty (20) days prior to the holding of any general election, regular municipal election or any other election within the municipality, the vacancy shall be filled at that election.
3. If the date fixed for a special election shall fall within twenty-nine (29) days after the holding of any general election, regular municipal election or any other election within the municipality, then the special election to fill the vacancy shall be held not less than twenty (20) days nor more than twenty-five (25) days from the date of the election. 12/99

G. OFFICE OF MAYOR 9/15/09

1. Vacancy occurs in final six (6) months of term of office.
  - a. If a vacancy in the office of the mayor occurs in the final six (6) months of the term of the mayor, *NO SPECIAL ELECTION SHALL BE HELD TO FILL THE VACANCY.*
  - b. No appointment shall be made by a Governing Body to fill a vacancy occurring in the office of the mayor after the fixing of a date for a special election to fill the vacancy.

H. TIME OF TAKING OFFICE [N.J.S.A. 40A:16-21] 9/15/09

1. All appointees to fill a vacancy, whether to fill the unexpired term or temporarily, shall take office immediately after appointment and qualification.
2. All persons elected to serve for the unexpired term of an office shall take office immediately upon certification of the results of the election. [N.J.S.A. 19:20-9] 9/14/07
3. All persons elected to serve for a full term of office shall take office on the date fixed for the commencement of the term of office.

I. VACANCY OF CANDIDATES BETWEEN PRIMARY AND GENERAL ELECTIONS

Withdrawal of Candidate/Vacancy between Primary and General Elections [N.J.S.A. 19:13-20]



1. If a candidate changes his mind and declines a nomination after the petitions have been certified or after having been elected at the Primary Election, notification of such withdrawal is submitted to the County Clerk by the Municipal Clerk immediately. [N.J.S.A. 19:13-20] When an equal number of votes shall have been given to two (2) or more persons to fill any office for which they shall by law be qualified, the office shall be deemed to be vacant.
2. In either case, if this vacancy occurs not later than the fifty-sixth (56th) day before the general election, in the case of an office to be filled by the voters of a portion of a single county, the candidate shall be selected by those members of the county committee of the party wherein the vacancy has occurred who represent those portions of the county which are comprised in the district from which the candidate is to be elected. 12/99; 10/1/11
3. In the case of a vacancy in membership in the county political committee; howsoever caused, the municipal committee of any political party shall be filled for the unexpired term by the remaining members of the committee in the municipality in which the vacancy occurs. [N.J.S.A. 19:5-2]
4. The law does not require that the person selected be one of those people who actually were in the contest or on the ballot. 9/15/18

**J. VACANCY OCCURRING IN THE CASE OF A NOMINATION FOR PUBLIC OFFICE AMONG PRIMARY ELECTOR NOMINEES [N.J.S.A. 19:13-20]**

1. The candidate shall be selected by those members of the county committee of the party wherein the vacancy has occurred who represent those portions of the county which are comprised in the district from which the candidate is to be elected. [N.J.S.A. 19:13-20a(4)]. In this case, if a tie occurred, the selection must be made among those who received the same number of votes in the primary. [N.J.S.A. 19:13-20(c)] 9/15/09
2. The selection must be made not later than the fifty-fourth (54th) day preceding the general election by means of the County Chairman filing a Statement with the County Clerk of the selection made, accompanied by a certificate from the candidate, which contains his acceptance, oath of allegiance and the statement that if so elected shall be the candidate of the party for such office at the ensuing general election. 9/15/14

**§ 5-16. INITIATIVE AND REFERENDUM (I&R)**

[N.J.S.A. 40:69A-184-196] 12/01

The power of Initiative and Referendum is only available to those municipalities who have adopted a Faulkner Act form of government. Initiative and Referendum refers to a means of

providing the voters the powers of initiate a process to either adopt ordinances or have them repealed or rejected. 9/15/09

A. DEFINITION

Initiative - The power of the voters to propose and enact legislation themselves is known as the initiative. 9/15/09

B. COMMITTEE OF THE PETITIONERS: 9/15/09

A group of voters known as the "Committee of the Petitioners" is responsible for circulating and filing the initiative petition. This petition can only be withdrawn by at least four (4) of the five (5) members of the Committee of the Petitioners.

C. SIGNATURE REQUIREMENTS: 9/15/09

The difference between the following two (2) sets of numbers is that the first provides an opportunity for the ordinance to be placed on the ballot in a special election, while the second does not:

1. If the petition contains a number of signatures equal to at least fifteen percent (15%) of the total votes cast in the municipality at the last election which the members of the General Assembly were elected - the ordinance will be put on the ballot in a special election if there is no general or regular municipal election occurring not less than forty (40) days after the final date for withdrawal of the petition.
2. If the petition contains a number of signatures equal to at least ten percent (10%) but less than fifteen percent (15%) of the total votes cast in the municipality at the last election at which members of the General Assembly were elected the ordinance will be submitted to the voters at the next general or regular municipal election occurring not less than forty (40) days after the final date for withdrawal of the petition.

D. WHEN AN ORDINANCE IS INITIATED: 9/15/09

1. It shall be deemed to have had first reading and provisions shall be made for a public hearing.
2. The Municipal Clerk has twenty (20) days after filing of the initiative petition to determine whether the petition is legally correct in its form and signed by a significant number of qualified voters.
3. The Municipal Clerk certifies as to the acceptance of this petition to the Governing Body at their next regular meeting.
4. The Governing Body has twenty (20) days following submission of a certified initiative petition by the Municipal Clerk to pass an ordinance in substantially the same form.
5. If the Governing Body fails or refuses to pass such an ordinance within the twenty (20) days, the Municipal Clerk shall submit the ordinance to the voters.

E. PETITION AMENDMENTS: 9/15/09

1. The Committee of the Petitioners has ten (10) days to gather additional signatures and file a supplementary petition with the Municipal Clerk.
2. The Municipal Clerk has five (5) days following the filing of a supplementary petition to examine it and determine if sufficient.
3. If the petition is still found to be insufficient, the Municipal Clerk shall file a certificate to that effect in his office, and shall notify the Committee of the Petitioners of their findings.

F. WITHDRAWAL OF PETITION 9/15/09

1. The Committee of the Petitioners may file with the Municipal Clerk a request signed by at least four of the five members of the Committee asking that the petition be withdrawn. This request is to be filed within ten (10) days after final adverse action of the Governing Body or after the expiration of the time allowed for such action.
2. Upon the filing of this request for withdrawal, the original initiative petition shall cease to have any force or effect.

G. PUBLICATION REQUIREMENTS 9/15/09

Whenever an initiative ordinance is to be submitted to the voters of the municipality the Municipal Clerk shall have the proposed ordinance published in at least two (2) newspapers that are either published or circulated in the municipality. The publication of the proposed ordinance shall not be more than twenty (20) days nor less than five (5) days before the election at which the ordinance will be voted on. [N.J.S.A. 40:69A-194]

H. ELECTION RESULTS: 9/15/09

1. If a majority of the votes are in favor of the proposed ordinance, it becomes a valid and binding ordinance of the municipality and shall be published as in the case of other ordinances. Shall not be amended or repealed within three (3) years immediately following the date of adoption by the voters.
2. The Governing Body may within three (3) years submit a proposition for the repeal or amendment to this ordinance to the voters at any general or regular election held during that period.
3. If a proposition is so submitted and receives a majority of the votes cast at that election, the ordinance shall be repealed or amended accordingly.

**§ 5-17. REFERENDUM**

A. DEFINITION OF REFERENDUM: 9/15/09

The power of the voters to approve or reject at the polls any ordinance submitted to them by the Governing Body or any ordinance passed by the Governing Body against which a referendum petition has been filed.

B. ORDINANCE SUSPENDED:

1. Ordinance in question is suspended:

Until ten (10) days following a finding by the Municipal Clerk that the petition is insufficient or

If an amended petition is filed, until five (5) days after that, or until it is withdrawn by the Committee of Petitioners, or until the Governing Body repeals the ordinance, or until the ordinance is approved or rejected by the voters at the polls.

2. Once the Municipal Clerk finds the referendum petition or amended referendum petition is sufficient, the Municipal Clerk must submit it to the Governing Body without delay.

C. REPEAL OF ORDINANCE:

1. The Governing Body has twenty (20) days following the submission of a certified referendum petition by the Municipal Clerk to repeal the ordinance in question.
2. If within twenty (20) days the Governing Body fails to act on the petition or refuses to repeal the ordinance in question, the MUNICIPAL CLERK shall submit the question to the voters in a referendum election.

D. ELECTION RESULTS:

1. If adopted by a majority of the voters, this ordinance becomes a valid and binding ordinance and is published as in the case of other ordinances.
2. If opposed by the majority of the voters, ordinance is defeated.

E. MATTERS AVAILABLE TO ALL MUNICIPALITIES IN THE FORM OF REFERENDUM:

1. To adopt or modify or abandon a charter form of government;
2. Salaries of municipal officials who are elected, managerial, executive or confidential employees;
3. To contest any ordinance authorizing an improvement (improvement ordinance takes effect in ten (10) days after publication and final passage).
4. To contest any ordinance authorizing indebtedness, except current expenses (bond ordinance takes effect in twenty (20) days after publication of final passage);
5. Approval to exceed budget cap [N.J.S.A. 40A:4-45.3] 9/15/09
6. Civil Service [N.J.S.A. 11A:9-1] 9/15/09
7. Consolidation of municipalities [N.J.S.A. 40:43-66.35] 9/15/09
8. Fire Protection conversion of a volunteer dept. to paid or part-paid dept. [N.J.S.A. 40A:14-41] 9/15/09
9. Libraries - establishment of [N.J.S.A. 40:54-2] 9/15/09
10. Police Protection [N.J.S.A 40A:14-132] 9/15/09

11. Recreation [N.J.S.A. 40:12-10] 9/15/09
12. Amusement Games [N.J.S.A. 5:8-116] 9/15/09; 9/15/16
13. Bingo [N.J.S.A. 5:8-43] 9/15/09; 9/15/16
14. Raffles [N.J.S.A. 5:8-70] 9/15/09; 9/15/16
15. Alcoholic Beverages - Regulating Hours of Sale [N.J.S.A. 33:1-45] 9/15/09; 9/15/16
16. Annual Tax Levy for acquisition/development of lands for recreation, conservation, farmland preservation [N.J.S.A. 40:12-15.7] 9/15/09; 9/15/16
17. Emergency Service Volunteers Length of Service Award Program (LOSAP) [N.J.S.A. 40A:14-183] 9/15/09; 9/15/16
18. Annual Tax Levy for support of Arts and Culture, P.L. 2019. C. 335. 9/15/2021

F. MATTERS NOT SUBJECT TO INITIATIVE AND REFERENDUM:

1. The annual municipal budget;
2. Matters which would permanently tie the hands of the Governing Body;
3. Matters over which the Governing Body has no control.

**§ 5-18. NON-BINDING REFERENDA**

[N.J.S.A. 19:37-1] 10/31/04

A. BY GOVERNING BODY: 9/15/16

1. All municipalities have the right to non-binding referenda. If the Governing Body of any municipality desires to ascertain the sentiment of the legal voters of the municipality upon any question or policy pertaining to the government or internal affairs thereof and there is no statute by which the sentiment can be ascertained, the Governing Body has adopted at any regular meeting an ordinance or resolution requesting the Clerk of the County to print upon the official ballots to be used at the next ensuing general election a certain proposition to be formulated and expressed in the ordinance or resolution. 9/15/16
2. The request, certified by the Municipal Clerk, shall be filed with the County Clerk not later than eighty-one (81) days prior to the election. [N.J.S.A. 19:37-1] 10/1/11; 9/15/16

B. PUBLIC'S RIGHT TO INPUT ON NON-BINDING REFERENDUM QUESTION:

If the Governing Body has adopted an ordinance or resolution set forth above, and if they are subsequently presented with a petition, signed by ten percent (10%) or more of the voters registered and qualified to vote at the last general election in the municipality, requesting that they ascertain the sentiments of the voters upon a question or policy which is reasonably related to the question which the Governing Body adopted then at its next regular meeting following the presentation of the petition, the



Governing Body shall adopt a resolution requesting the County Clerk to print upon the official ballots the proposition as formulated and expressed in the petition.

Such request, certified by the Municipal Clerk, shall be filed with the County Clerk not later than the sixty-seventh (67<sup>th</sup>) day prior to the election. 10/1/11; 9/15/16

C. ELECTION RESULTS:

The results of such an election shall not bind the Governing Body nor shall it be construed as other than expression of sentiment by the voters to be followed or disregarded by the Governing Body in its discretion. [N.J.S.A. 19:37-4] 9/14/07; 9/15/16

**§ 5-19. RECALL ELECTIONS**

[N.J.S.A. 19:27A-1 et seq.]

The "Uniform Recall Election Law" was enacted in 1995 allowing *all* municipalities the power of recall. This act repealed and replaced existing laws which authorized only some municipalities to conduct recall elections.

A. DEFINITIONS [N.J.S.A. 19:27A-3]

1. Recall Committee means a committee formed by persons sponsoring the recall of an elected official.
2. Recall Election means an election held for the purpose of allowing the voters of a jurisdiction to decide whether an elected official shall be removed from office. 9/15/14
3. Recall Election Official means official authorized by law to receive nominating petitions for an elected office.

B. CONDUCT OF ELECTION [N.J.S.A. 19:27A-14 et seq.] 12/01

A Recall Election which will be held:

1. In a government under partisan elections shall be governed by the provisions of N.J.S.A. Title 19.
2. In a government under non-partisan elections shall be governed by the provisions of the statutes governing elections in that jurisdiction.
3. In connection with a School Board member shall be governed by the provisions of the statutes governing elections in school elections.

C. RECALL DRIVE BEGINS [N.J.S.A. 19:27A-4]

A recall committee of at least three (3) registered voters forms to initiate proceedings. This drive may not begin before the fiftieth (50th) day preceding the completion of the elected official's 1st year of the current term of office.

D. NOTICE OF INTENTION [N.J.S.A. 19:27A-6] 9/15/17

1. Prior to collecting any signatures, the sponsors of a recall petition shall file a notice of intention with the recall election official.

2. Contents of Notice of Intention:
  - a. Name and office of the elected official to be recalled;
  - b. Name and business or residence address of at least three (3) sponsors of the recall petition, who shall constitute the recall committee.
3. Name of Recall Committee [ex. "COMMITTEE TO RECALL (name of official to be recalled) FROM THE OFFICE OF (name of the office)"].
4. A certified statement by each member of the recall committee that the member is:
  - a. A registered voter in the jurisdiction;
  - b. Supports the recall of the named official;
  - c. Accepts responsibility of serving on this committee.
5. An optional statement of the reasons of the recall not to exceed two hundred (200) words.
6. A statement as to whether or not the recall election shall be held at the next general election or a regular election or at a special election.

E. DUTIES OF THE RECALL ELECTION OFFICIAL [N.J.S.A. 19:27A-7]

Within three (3) business days of receipt of the Notice of Intention, the recall election official shall:

1. Review the notice for compliance with statutory provisions;
2. Calculate the cost of a special election, if necessary;
3. If found in compliance, return a certified copy of the approved notice to the recall committee with a certified statement of the recall official's approval on the face of the notice of intention.
4. If the notice of intention is not found to be in compliance, return to the Recall Committee the notice of intention together with a written statement of the reasons.

F. NOTIFICATION TO THE ELECTED OFFICIAL [N.J.S.A. 19:27A-7]

Within five (5) business days of approving the Notice of Intention, the recall election official shall serve a copy by personal delivery or certified mail of intention on the official to be recalled.

G. PUBLICATION [N.J.S.A. 19:27A-7]

Within two (2) weeks of approving the Notice of Intention, the recall election official shall publish a copy of the notice of intention (or abbreviated version to include information on only three (3) members of the recall committee) in a newspaper published in the jurisdiction, or if none exists, in a newspaper in general circulation within the jurisdiction.

## H. ANSWER BY THE ELECTED OFFICIAL [N.J.S.A. 19:27A-7]

Within five (5) business days, the elected official to be recalled acknowledges the notice served and may elect to file an answer of up to two hundred (200) words. This statement shall be printed on the 1st page of each section of the petition. If no response is filed by the elected official, the recall election official, within two (2) business days of the expiration of the time period, shall, by personal delivery or certified mail, transmit to the recall committee a signed statement that no such answer or acknowledgment was filed with the recall election official.

## I. PETITIONS [N.J.S.A. 19:27A-5]

The petition for recall of an elected official shall be reviewed by the recall election official for compliance.

1. Contents must be prepared by the recall committee in accordance with the statutory requirements;
2. There must be a separate petition for each elected official to be recalled;
3. Must be signed by at least twenty-five percent (25%) of the registered voters in the jurisdiction as of the general election preceding the date the sponsors of the petition filed the notice of intent;
4. Shall contain the statement of reasons for the recall along with the answer of the elected official, if submitted;
5. Shall indicate if a special election has been requested and the estimated cost of such election as prepared by the recall election official;
6. Shall be signed by every member of the recall committee and every circulator of the petition or the petition shall be deemed void.

## J. LIMITATION OF EFFORT FOR THE COLLECTION OF SIGNATURES [N.J.S.A. 19:27A-10]

The recall effort is limited to three hundred twenty (320) days for a Governor or one hundred sixty (160) days for other elected officials from the date of the notice of intention. 12/99; 9/15/17; 9/15/18

## K. PETITION REVIEW [N.J.S.A. 19:27A-11]

The recall election official certifies the number of signatures appearing on the petition and determines if the petition is valid within ten (10) days of receipt.

## L. CHALLENGE [N.J.S.A. 19:27A-12]

1. The determination of the validity of the recall petition may be challenged by the official to be recalled or the recall election committee by filing a written objection within ten (10) business days of the issuance of the certification by the recall election official.
2. The recall election official shall provide a certified copy of the recall petition to whoever requests it.

3. The recall election official shall pass on the validity of the objection in an expedient manner.
4. The decision of the recall election official may be contested by filing action in Superior Court.

M. CERTIFICATE OF SUFFICIENCY OF THE PETITION [N.J.S.A. 19:27A-13]

1. Issuance of Certificate of Sufficiency:

If the recall election official determines that the petition is sufficient and if the official to be recalled does not resign with five (5) business days of this determination, the recall election official shall issue a "Certificate of Sufficiency" to:

- a. The recall election committee;
  - b. The elected official to be recalled;
  - c. The office or public body designated by law to be responsible for published notice of any other election to be held in that jurisdiction on the same day as the recall election;
  - d. The County Board or Board of Elections if a special election is to be held.
2. Contents of the Certificate of Sufficiency of the Petition:
- a. The name and office of the official sought to be recalled;
  - b. The number of signatures required by law to cause a recall election to be held for that office.
  - c. A statement to the effect that a valid recall petition, determined to contain the required number of signatures, has been filed with the recall election official and that a recall election will be held.
  - d. The date and time when the recall election will be held if the official does not resign.

3. Publication of the Certificate of Sufficiency of the Petition:

The information contained in the "Certificate of Sufficiency" shall be published in a newspaper circulated in the jurisdiction of the official to be recalled, or if none exists, in a newspaper generally circulated in the jurisdiction by:

- a. The officer or body responsible for publication of any other election to be held on that day.
- b. The County Board or Board of Elections for a special recall election.

N. RECALL ELECTION DATE [N.J.S.A. 19:27A -13]

1. If the petition is accepted and the recall election official issues a "Certificate of Sufficiency," the recall election official schedules the recall election at the next



regular or general election or at a special election, if requested by the recall committee on a date that does not conflict with the statutory requirements.

2. No recall election shall be held on the same date as a primary election.
3. The recall election shall not be held six (6) months prior to the general election or regular election in the final year of the term of the official to be recalled.
4. A vacancy resulting from the resignation of the elected official sought to be recalled shall be filled in the same manner provided by statute for filling vacancies and no recall election shall be held.

O. CANDIDATE TO SUCCEED ELECTED OFFICIAL [N.J.S.A. 19:27A-15]

1. May be nominated within nine (9) days after the fifth (5th) business day following certification of the petition:
  - a. In partisan governments, each political party may file a petition with the Municipal Clerk or by direct nomination by petition for a general election with the County Clerk.
  - b. In non-partisan governments, nomination shall be by petition.
2. An elected official, who is subject of a recall election, shall be eligible to be elected as that official's own successor in the event that the election results in the official's recall.

P. RECALL ELECTION CAMPAIGN [N.J.S.A. 19:27A-17]

All funds raised and expended on behalf of the recall effort or the recall defense effort are subject to the regulations of the New Jersey Election Law Enforcement Commission and other statutes of N.J.S.A. 19.

Q. ELECTION RESULTS [N.J.S.A. 19:27A-16]

1. Term of elected official terminates upon certification of the election results that a majority of the votes cast on the question of recall are in the affirmative.
2. If the official is recalled, the person receiving the majority of votes cast for this office shall take office immediately.
3. If the majority are in the negative, the official shall continue in office and the vote for the successor of such office shall be void.
4. If the elected official is not recalled as a result of a recall election, the elected official shall not be subject to recall until after having served one (1) year of a term calculated from the date of the recall election.

NOTE: This statute, as written is somewhat confusing, and the Municipal Clerk should exercise caution when called upon to execute their statutory responsibilities and seek legal counsel throughout this process.

**§ 5-19.1. EXHIBIT - REVIEW OF RECALL DEADLINES**

Not before the 50th day preceding the completion of the elected official's 1st year of the current term

Notice of Intention filed with recall election official

Within 3 business days of filing of the notice of intention with the recall election official

Recall election official reviews notice of intention

Within 5 business days of approval of notice of intention

Recall election official notifies elected official to be recalled

Within 5 business days of receiving the notice of intention

Elected Official to be recalled acknowledges the notice served and may elect to file an answer

Within 2 business days of the expiration time period, if no response is filed with the recall election official

Recall election official shall certify that no such answer was filed

Within 2 weeks of approving notice of intention

Recall election official publishes notice of intention

Recall election official has 10 business days to certify to validity of petition

After petition is filed with the recall election official

Within 9 days after the 5th business day following service of the certification of petition by the recall election official

Each political party may nominate by petition candidate to succeed the elected official being recalled

Within 10 business days of certification by recall election official of the validity of the recall petition

Challenge may be filed in writing by the official to be recalled or recall committee

160 days from the date of the notice of intention

Petitioners gather signatures

## § 5-19.2. EXHIBIT - SAMPLE RECALL PETITION

9/15/14

The recall petition has been updated and can be found at <https://www.state.nj.us/state/elections/candidate-recall-election-process.shtml> 9/15/14; 9/15/17

## § 5-20. CHARTER STUDY COMMISSION

[N.J.S.A. 40:69A-1 et seq.]

Forming a Charter Study Commission is not required in order to change the municipality's form of government. It may be done through a **Direct Petition**, however, the formation of a Charter Study Commission provides for an opportunity to research, compare, and consider a new charter study or changes to the present Charter; it gives the public an opportunity to be informed of all the information obtained and the recommendations of the Commission Members. 9/15/09

The Election of five (5) charter commission members will be placed on the ballot at the same time the public question is submitted; the question should read "Shall a charter commission be elected to study the charter of \_\_\_\_\_ and to consider a new charter or improvements in the present charter and to make recommendations thereon?" 9/15/09

A. CHARTER STUDY COMMISSION INITIATED BY ORDINANCE

1. The Governing Body may adopt an ordinance requesting that a question be placed on the ballot for the creation of a Charter Study Commission and for the election of five (5) registered voters to serve on the Charter Study Commission.
2. Placed on the ballot at the next general or regular municipal election occurring not less than seventy-five (75) days after the passage of the ordinance.

B. CHARTER STUDY COMMISSION INITIATED BY PETITION

1. Petition of the Voters to create a Charter Study Commission to be placed on the Ballot and the election of a five (5) member Charter Study Commission.
2. The Municipal Clerk determines if the petition is legally correct and contains the proper number of signatures of qualified voters.
3. The Municipal Clerk will place the question on the ballot at the next general or regular municipal election occurring not less than seventy-five (75) days after the filing of the petition. 9/15/10

C. NUMBER OF SIGNATURES REQUIRED ON PETITION TO CREATE A CHARTER STUDY COMMISSION

1. Twenty-five percent (25%) in municipalities with a population of 7,000 or less;
2. Twenty percent (20%) in municipalities with a population of more than 7,000 but less than 70,000;
3. Ten percent (10%) in municipalities with a population of 70,000 or more.

D. ELECTION OF CHARTER STUDY COMMISSION

1. Charter Study Commission members are elected at the same time the public question is voted on.
2. The voters shall choose five (5) members to serve on the Charter Study Commission.
3. If two (2) or more candidates shall receive an equal number of votes, they shall draw lots to determine which one shall be elected.

E. CANDIDATES FOR THE CHARTER STUDY COMMISSION

Candidates for the Charter Study Commission shall be registered voters of the Municipality.

F. PETITIONS OF CANDIDATES FOR CHARTER STUDY COMMISSION

1. Petitions must be signed by at least three percent (3%) or of the registered voters of the municipality, but at no time shall the number be less than ten (10). 9/15/12
2. Petitions must be filed with the Municipal Clerk not less than sixty (60) days prior to the date of the election.
3. Petition shall set forth the names, places of residence, and post office addresses of the candidate or candidates nominated.
4. Petitioner shall add his/her signature, place of residence, post office address and street number, if any.
5. No registered voter shall sign a petition or petitions for more than five (5) candidates.
6. Each petition shall be verified by an oath or affirmation of one or more of the signers thereof, taken and subscribed before a person qualified under the laws of New Jersey to administer an oath.

#### G. CANVASS OF ELECTION

1. The result of the votes cast for and against the adoption of the public question shall be returned by the District Board Workers to the Municipal Clerk.
2. The votes cast for the members of the Charter Study Commission shall be counted and the results thereof returned to the Municipal Clerk.
3. The five (5) candidates receiving the greatest number of votes shall be elected and shall constitute the Charter Study Commission.
4. If the public question is defeated, none of the candidates shall be elected.

#### H. ORGANIZATION OF THE CHARTER STUDY COMMISSION

1. No later than fifteen (15) days after its election, the Charter Study Commission shall organize and hold its first meeting. A majority of the members shall constitute a quorum.
2. The Commission is subject to the Open Public Meetings Act. 9/15/10
3. They shall: 9/15/10
  - a. Elect one of its members as chairman
  - b. Fix its hours and place of meeting
  - c. Adopt such rules for the conduct of its business

#### I. VACANCIES ON THE CHARTER STUDY COMMISSION

In case of a vacancy, the remaining members of such commission shall fill it by appointing thereto some other properly qualified citizen.

#### J. DUTIES OF THE CHARTER STUDY COMMISSION

1. Study the form of government of the municipality.

2. Compare it with other available forms under the laws of the State.
3. Determine whether or not in its judgment, the government of the municipality could be strengthened, made more clearly responsive or accountable to the people.
4. Determine whether a changed form of government would be more economical or efficient.

K. COMPENSATION AND EXPENSES OF THE CHARTER STUDY COMMISSION

1. Members shall serve without compensation.
2. Members shall be reimbursed by the Municipality for their expenses incurred in the performance of their duties.
3. Within the limits of their appropriations, the Charter Study Commission may appoint one or more consultants and clerical and other assistants to serve at the pleasure of the commission and may fix a reasonable compensation to be paid such persons.

L. HEARINGS; PUBLIC FORUMS

The Charter Study Commission shall hold public hearings, may hold private hearings and sponsor forums and generally shall provide for the widest possible public information and discussion and are subject to the Open Public Meetings Act.

M. CONCLUSIONS AVAILABLE TO THE CHARTER STUDY COMMISSION 9/15/10

The Commission has five (5) alternative decisions/conclusions that may consider and recommend: 9/15/10

1. It can recommend that the form of government be changed to one of the four (4) plans available under the Faulkner Act;
2. It can recommend that the Governing Body petition the Legislature for a special charter or more specific amendments to the current charter [N.J.S.A. 40:69A-16];
3. It can recommend that the current form of government be retained unchanged;
4. If the municipality is already under a Faulkner Act form of government, it may recommend adopting any of the alternative provisions authorized under the current Faulkner form of government; 9/15/10
5. Such other action as it may deem advisable consistent with its functions.

N. REPORT OF CHARTER STUDY COMMISSION

1. The Commission shall report its findings and recommendations to the citizens of the municipality within nine (9) calendar months from the date of its election.
2. It shall file with the Municipal Clerk an original signed copy of any final report containing said findings and recommendations made by any member of the commission.



3. It shall also deliver to the Municipal Clerk sufficient copies of any such report to permit distribution to any interested citizen.
4. The Municipal Clerk shall distribute copies to the Governing Body.

**O. ELECTION OF NEW MUNICIPAL OFFICERS IF THERE IS A CHANGE IN GOVERNMENT**

1. On the second Tuesday in May at least seventy-five (75) days after the referendum for plans with non-partisan, at-large elections.
2. On the second Tuesday in May at least one hundred twenty (120) days after the referendum for plans with non-partisan elections from wards.
3. At the next general election in November at least seventy-five (75) days after the referendum for plans with partisan, at-large elections.

At the next general election in November at least one hundred twenty (120) days after the referendum for plans with partisan elections from wards. [N.J.S.A. 40:69A-205]

**P. INSTALLATION OF NEW MUNICIPAL GOVERNMENT**

1. On July 1 next following the first election of officers for plans with non-partisan elections.
2. On January 1 next following the first election of officers for plans with partisan elections. [N.J.S.A. 40:69A-205]

**§ 5-20.1. EXHIBIT - TIMETABLE FOR CHARTER STUDY**

PETITION FOR CHARTER STUDY COMMISSION: N.J.S.A. 40:69A-1	
ORDINANCE FOR CHARTER STUDY COMMISSION: N.J.S.A. 40:69A-1	
REFERENDUM ON PROPOSAL FOR CHARTER STUDY COMMISSION AND ELECTION OF COMMISSION MEMBERS	
At next general election	In November
Or regular Municipal election	In May
At least 75 days after filing of petition or ordinance enactment [N.J.S.A. 40:69a-1] 9/14/07	
<b>CHARTER STUDY COMMISSION MEETS AND ORGANIZES</b>	
Select Chairman	
Fix hours and place of meetings	
Adopt rules for conduct of business	
No later than 15 days after election [N.J.S.A. 40:69A-5]	
<b>PLANNING PHASES OF CHARTER STUDY</b>	
Plan schedule of work	

Consider use of consultants	
Prepare budget request	
Suggested schedule (General Election)	November 15 to December 15
Suggested schedule (Municipal Election)	June 1 to July 1
<b>STUDY PHASE 1 - PRESENT FORM OF GOVERNMENT</b>	
Interview present and past public officials, civic leaders, and media representatives	
Review reports on present government	
Hold public hearings on present form of government	
Draw tentative conclusions about present form of government	
Suggested schedule (General Election)	December 15 to March 1
Suggested schedule (Municipal Election)	July 1 to September 15
<b>STUDY PHASE 2 - ALTERNATIVE FORMS OF GOVERNMENT</b>	
Review statutory provisions of other forms	
Interview persons having experience with other forms	
Hold public meetings to inform voters of other forms of government which are available	
Hold public hearings to gather opinion on other forms	
Suggested schedule (General Election)	March 1 to May 1
Suggested schedule (Municipal Election)	September 15 to December 15
<b>STUDY PHASE 3 - DECISION</b>	
Discuss advantages and disadvantages of each alternative form of government in relation to present form	
Draw final conclusion and make decision	
Suggested schedule (General Election)	May 1 to June 1
Suggested schedule (Municipal Election)	November 15 to December 15
<b>PREPARATION OF CHARTER STUDY COMMISSION REPORT</b>	
Assign responsibility for drafting report	
Review and approve final draft	
Plan printing of report	

Make filing and distribution plans	
File official copies with Municipal Clerk	
Suggested schedule (General Election)	June 1 to July 15
Suggested schedule (Municipal Election)	December 15 to February 1
<b>CHARTER STUDY COMMISSION ACTIVITY AFTER FILING OF REPORT</b>	
Distribute copies of report	
Publicize findings	
Suggested schedule (General Election)	July 15 to November 1
Suggested schedule (Municipal Election)	February 1 to May 15
<b>IF NO CHANGE RECOMMENDED</b>	
Charter Study Commission is discharged upon filing of official report. [N.J.S.A. 40:69A-11]	
<b>IF AN OPTION PLAN IS RECOMMENDED</b>	
REFERENDUM ON OPTIONAL PLAN MUST BE HELD	
(As specified by Commission) [N.J.S.A. 40:69A-15]	
At the next general election or regular municipal election at least 60 days after filing of report	
OR	
At a special election from 60 to 120 days after filing of report.	

**§ 5-21. WARDS**

[N.J.S.A. 40:44-10]

**A. APPLICABILITY**

The provisions of the subject act govern any municipality having adopted charter or form of government or ordinance providing that the municipality shall be divided into wards or other similar representation districts for the purpose of the election or appointment of any municipal officers.

**B. DIVISION INTO WARDS BY BOARD OF WARD COMMISSIONERS**

1. (Reserved) 9/15/18
2. The County Board of Elections;
3. The Municipal Clerk.

**C. EACH WARD COMMISSIONER SHALL BE ENTITLED TO: [N.J.S.A. 40:44-12]**

1. Reimbursement for necessary expenses;
2. Assistance of a surveyor or engineer;
3. The Governing Body shall provide for the compensation, expenses of the commissioners and the services of surveyor, engineer or other assistants.

D. WARD COMMISSIONER OATH

Each Ward Commissioner shall take an oath to faithfully and impartially perform their duties [N.J.S.A. 40:44-13]

E. WHEN WARD COMMISSIONERS MUST MEET [N.J.S.A. 40:44-13]

1. Within five (5) days following any election at which the voters have adopted a charter or a form of government requiring the wards in the municipality.
2. Within three (3) months following the promulgation by the Governor of the Federal decennial census.
3. Within thirty (30) days following the final adoption by the Governing Body of any ordinance which requires that:
  - a. The municipality be divided into wards;
  - b. The existing wards of the municipality be increased or decreased;
  - c. The existing wards be adjusted to allow for the annexation or deannexation of territory.

F. WARD BOUNDARY REQUIREMENTS [N.J.S.A. 40:44-14]

1. Compact
2. Contiguous
3. The population of the most populous ward shall not differ from the population of the least populous ward by more than ten percent (10%) of the mean population of the wards derived by dividing the total population of the municipality by the number of wards created. The most recent Federal decennial census shall be used as the population determinant.

G. REPORT OF WARD COMMISSIONERS [N.J.S.A. 40:44-15 & N.J.S.A. 40:44-16]

1. Within thirty (30) days following initial meeting, the Ward Commissioners shall file their report.
2. Report shall be certified by at least three (3) of their signatures.
3. Report shall set forth and properly describe the ward boundaries.
4. Report shall contain a map clearly depicting the ward boundaries.
5. Copies of the report shall be filed with the:  
County Clerk

Secretary of State

Municipal Clerk

6. Within two (2) weeks following the filing of the certified report, the Municipal Clerk shall publish at least once in at least one (1) newspaper generally circulating in the municipality A NOTICE of the ward boundaries that have been determined.

#### H. EFFECTIVENESS OF WARD BOUNDARIES [N.J.S.A. 40:44-16]

1. Upon completion of the publication, the former wards, shall be superseded.
2. All officers elected in the municipality shall be based on these ward boundaries, EXCEPT:

In cases where:

- a. Ward municipal officers are elected at November General Elections.
- b. Publication of ward boundaries is completed within the seventy-five (75) days prior to a Primary election at which ward municipal officers are to be elected. 10/31/05
3. The wards so fixed shall take effect on the day following the holding of the General Election.
4. In cases where:  
Ward municipal officers are elected at May Municipal elections;  
Publication of the ward boundaries is completed during the seventy-five (75) day period preceding a Municipal Election at which ward municipal officers are to be elected;  
The wards so fixed shall take effect on the day following the holding of the municipal election.
5. Whenever the boundaries of existing wards are adjusted, all officers elected therefor shall continue in office until their successors are elected and qualified from adjusted wards. [N.J.S.A. 40:44-17]

#### § 5-21.1. EXHIBIT - STATUTORY PROVISIONS FOR DRAWING WARDS

MUNICIPAL WARD LAW [N.J.S.A. 40:44-9 et seq.] [Chapter 496, Laws of 1981]

Applies to:	All municipalities having a form of government which requires wards. (This law, in itself, does not authorize a municipality to have wards.) [N.J.S.A. 40:44-10]
Who draws ward boundaries?	Board of Ward Commissioners, consisting of 4 members of the County Board of Elections, plus the Municipal Clerk. [N.J.S.A. 40:44-12] 9/15/14



When is it done?	Board of Ward Commissioners must hold initial meeting: When a municipality adopts a charter or amends its charter to require wards - within 5 days. After official promulgation by the Governor of a Federal decennial census - within 3 months. [N.J.S.A. 40:44-13]
Number of Wards	Determined by the charter of the municipality.
Compensation for Commissioners	Entitled to reimbursement for necessary expenses, plus such other compensation as set by the municipal Governing Body by ordinance or resolution. [N.J.S.A. 40:44-12] 10/31/04
Technical Assistance	Ward Commissioners may hire a surveyor or engineer and such other assistants as are necessary and the Municipal Governing Body "shall" provide for expense of such services. [N.J.S.A. 40:44-12]
Standards for Wards	Wards must be: Formed of contiguous territory;
	Formed of compact territory. Population of largest ward may not exceed population of smallest ward by more than 10% of average ward population according to the most recent Federal decennial census. [N.J.S.A. 40:44-14]
Time period Allowed for work	30 days from first meeting of Board of Ward Commissioners. [N.J.S.A. 40:44-15]
Majority required for decision	At least 3 of 5 members must sign the report. [N.J.S.A. 40:44-15]
Report	The report of the Board of Ward Commissioners must include a description of the ward boundaries and a map of the wards. [N.J.S.A. 40:44-15]
Filing of report	The original is to be filed with the County Clerk, with copies filed with the Secretary of State and in the Municipal Clerk's Office. [N.J.S.A. 40:44-15]
Publication of Ward boundaries	The Municipal Clerk is required to publish a notice of the ward boundaries within 2 weeks in at least one newspaper circulating in the municipality. [N.J.S.A. 40:44-16]
Effective date	New wards are effective upon publication for the next upcoming election for new wards unless publication occurs less than 75 days prior to a primary or general election in a year in which municipal officials are to be elected, in which case the wards go into effect after that election. [N.J.S.A. 40:44-16]

Succession in office	When wards are redrawn due to an ordinance of the Governing Body or after a Federal decennial census, incumbents serve out the term for which they were elected and until their successors are elected and qualified from the new wards. [N.J.S.A. 40:44-17]
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## § 5-22. ELECTION DISTRICTS

10/31/05 [N.J.S.A. 19-4-10]

### A. ELECTION DISTRICT BOUNDARIES [N.J.S.A. 19:4-10 through 19:4-17]

As nearly as practicable, each election district should:

1. Be **contiguous and compact areas having** clearly definable boundaries; 9/15/10
2. Be contained wholly within one (1) ward, one (1) municipality, one (1) County commissioner district, one (1) State legislative district, one (1) United States Congressional district and only one (1) other district from which any public official is elected;
3. Election districts within each municipality are to be numbered consecutively.

### B. NUMBER OF REGISTERED VOTERS [N.J.S.A. 19:4-13]

1. When, in any two (2) consecutive general elections in an election district, more than seven hundred fifty (750) or less than two hundred fifty (250) votes have been cast, the county board should readjust the boundary lines of such election district and other election districts necessary to effect changes so that none of the election districts affected has more than seven hundred fifty (750) registered voters. 9/15/10
2. The County Board has the power to consolidate any number of districts and subdivide the same.

### C. CHANGES IN ELECTION DISTRICT BOUNDARIES [N.J.S.A. 19:4-15]

1. No County Board of Elections shall make division of any election district in any year in the period commencing **seventy-five (75) days before the primary election and ending the day of the general election.** 9/15/10
2. To facilitate the use of Federal decennial census populations for apportionment and redistricting purposes, no election districts may be created, abolished, divided, or consolidated between **January 1 of any year whose last digit is seven (7) and December 1 of any year whose last digit is zero (0)** without the prior approval of the New Jersey Secretary of State. 9/15/10

### D. ELECTION DISTRICT MAPS [N.J.S.A. 19:4-16]

1. The County Board of Elections is required to have prepared and to maintain up-to-date, suitable maps of the county and of each constituent municipality, clearly delineating the geographical boundaries of each election district.

2. Rules and regulations governing said maps and descriptions are established by the Secretary of State.
3. Maps shall be available for public inspection during normal business hours and available for copies at a fee to cover the cost of reproduction.

### § 5-22.1. EXHIBIT - STATUTORY PROVISIONS FOR DRAWING ELECTION DISTRICT BOUNDARIES

9/15/2021

Who does it?	County Board of Elections. [N.J.S.A. 19:4-13]
When is it done?	Whenever, in two consecutive general elections, more than 750 or less than 250 votes are cast. [N.J.S.A. 19:4-13]
	Whenever districts are inconvenient to voters because of size or shape. [N.J.S.A. 19:4-14]
When is it NOT done?	Not within the time period commencing 75 days before the primary and ending the day of the general election. [N.J.S.A. 19:4-15] 10/31/04;10/31/05; 9/15/12
	Not between January 1 of year ending in 7 and December 1 of year ending in 0, unless approved in advance by Secretary of State. [N.J.S.A. 19:4-15]
Standards to be used.	Contiguous area. [N.J.S.A. 19:4-10]
	Compact area. [N.J.S.A. 19:4-10]
	Clearly definable boundaries. [N.J.S.A. 19:4-10]
	Entirely within one Ward, Municipality, County Commissioner District, State Legislative District, U.S. Congressional District, or any other district from which a public official is elected. [N.J.S.A. 19:4-10]
	Equal numbers of registered voters per voting machine or electronic voting device:

Voting Machines	Electronic Devices	Voters
1	4	750 maximum (except where there is an institution) [N.J.S.A. 19:4-11]
2	5	1,000 as nearly as practicable [N.J.S.A. 19:4-12]
3	8	1,500 as nearly as practicable [N.J.S.A. 19:4-12]
There may be fewer voters per district if necessary for the convenience of the voters.		

Records to be kept	County Board of Elections prepares map of districts and ward description. [N.J.S.A. 19:4-16]
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	Map and ward description to be filed with: Secretary of State County Clerk Municipal Clerk
	within 30 days of revision. [N.J.S.A. 19:4-16]
	Map and ward description to be available for inspection by the public at all offices where filed. [N.J.S.A. 19:4-16]
	Copies of map and ward description to be available to public at cost. [N.J.S.A. 19:4-16]
Miscellaneous:	Secretary of State to issue rules and regulations. [N.J.S.A. 19:4-16]

### § 5-23. MISCELLANEOUS INFORMATION

10/31/05

#### A. IRREGULAR (WRITE IN) BALLOTS [N.J.S.A. 19:49-5]

1. A ballot cast for any person whose name does not appear on the ballot as a nominated candidate for any office is called an irregular ballot *or* as commonly referred to as a write-in.
2. A person whose name appears on the ballot for any election and receives irregular ballots at this same election, the irregular ballots will not be added to that person's total vote.
3. An irregular ballot must be cast in its appropriate place on the machine or ballot or it will be not counted and shall be void.

#### B. SPOILED BALLOT 12/99

Some municipalities have required voting via paper ballots. In the case where such a paper ballot is marred, torn, or otherwise unable to be cast, the district board worker may issue only one more ballot to the voter. The ballot not cast must be retained by the Board worker and notice of the incident included in the written remarks by the Board worker.

#### C. FEDERAL VOTING RIGHT ACT [USCA 1971 *et seq.*] provides that all blind, disabled and illiterate persons are entitled to assistance in the voting booth in any elections:

1. The voter is entitled to assistance from a person of their own choice as long as that person is not the voter's employer or agent of the employer nor an official or agent of the voter's union;
2. If the voter does not have anyone to assist him/her, it is permissible for the district board to offer the assistance of two (2) of the board members from opposite political parties.



3. The district board must record the name and address of the voter and the person(s) assisting the voter in the machine on the disability certificate.

D. RECOUNT [N.J.S.A. 19:28-1-22]

1. When any candidate at any election has reason to believe an error has been made in the counting of the vote, he may within a period of fifteen (15) days following such election apply to a judge of the Superior Court assigned to the county for a recount of the votes cast in that election. 10/31/05; 9/15/10
2. When ten (10) voters at any election shall have reason to believe that an error has been made in the counting of the vote on a matter of a public question, they may also make application for a recount in the same manner as noted above.
3. The applicant or applicants for such a recount must deposit a fee with the Superior Court Judge for this purpose and the judge shall fix and determine the amount of compensation to be paid for making the recount and the costs and expenses of the recount.

E. PETITIONS TO BE DOUBLED SPACED 12/02

Whenever a petition is circulated within a county, municipality, school district or special district for the purpose of gathering the signatures of registered voters in order to place a referendum question on the ballot in any election, each page of the petition shall be arranged to contain, in addition to such other content relative thereto required by law, double spacing between the signature lines of the petition so that each signer thereof is afforded sufficient space to provide his or her printed name, address and signature. [N.J.S.A. 19:1-4]

F. ELECTION BY MAIL

A municipality with a population of five hundred (500) or fewer persons, according to the latest federal decennial census, may conduct all elections by mail, provided there is an affirmative vote to do so by the Governing Body of the municipality and by the Governing Body of the county in which the municipality is located. 10/31/05

## § 5-24. CAMPAIGN CONTRIBUTIONS

[N.J.S.A. 19:44A-1 et seq.] 10/31/05

A. STATE AGENCY

The State Agency responsible for the enforcement of the New Jersey Campaign Contributions and Expenditures Reporting Act is the *New Jersey Election Law Enforcement Commission*.

B. DEFINITIONS

1. Candidate

An individual seeking election to a public office of this State or of a county, municipality or school district at any election. Also any person who shall have been elected or failed to be elected to an office, other than a party office, for

which he/she sought election, and who receives contributions and makes expenditures for any of the authorized purposes, or who still has funds remaining in a campaign account.

2. Political Committee

A group of two (2) or more persons acting jointly which raises or expends one thousand dollars (\$1,000) or more in an election to promote the nomination, election or defeat of a candidate, or which raises or expends one thousand dollars (\$1,000) or more to aid or promote the passage or defeat of a public question. 9/15/09; 9/15/14; 9/15/15

3. Recall Committee

A recall committee is formed by persons sponsoring the recall of an elected official.

4. Recall Defense Committee

A recall defense committee formed by the elected official who is the subject of the recall effort.

C. WHO MUST FILE

1. Candidates for any elected public office in the State of New Jersey must file reports of their campaign financial activity
2. Treasurers of political committees
3. Recall and Recall Defense committees

D. WHO IS NOT REQUIRED TO FILE

Candidates for Federal office or for political party positions (county committee member, state committee member or national party convention delegate) are not under the jurisdiction of this regulation.

E. WHICH ELECTIONS APPLY

Primary, General, May Municipal, June Runoff, School Board, Fire Commission, Recall and Special elections

**§ 5-25. CAMPAIGN LITERATURE**

[N.J.S.A. 19:34 through 38-1] 10/31/05

No person shall print, copy, publish, exhibit, distribute or pay for or cause any circular, handbill, card, pamphlet, statement, advertisement or other printed matter having reference to any election or to any candidate or to the adoption or rejection of any public question at any general, primary or special election unless same shall bear upon its face a statement of the name and address of the person(s) by whom the cost has been paid and the name and address of the person(s) by whom the same is printed, copied or published.

**§ 5-26. CRIMES AND PROHIBITIONS**

10/31/05

Election crimes and prohibited expenditures are set forth in N.J.S.A. 19:34-1 through N.J.S.A. 19:34-66.

**§ 5-27. FIRE DISTRICT ELECTIONS**

10/31/04

Not all municipalities have fire districts. This section is provided for those Municipal Clerks who do have fire districts or may have applications to create them in the future. The Governing Body and Municipal Clerk are involved in the application for creation and the first election. Thereafter, the fire district is a separate corporate entity whose elections are under the jurisdiction of the Secretary of State and budgets under the jurisdiction of the Department of Community Affairs. Problems with districts or district elections should be referred to the Secretary of State. This section provides basic information with which to answer questions from the public.

**A. CREATION [N.J.S.A. 40A:14-70]**

1. The Governing Body of any municipality not having a paid or part-paid fire department and force, upon application of at least five percent (5%) of the registered voters or twenty (20) legal voters, whichever is greater, shall consider the designation of a fire district.
2. The application shall be subject to a public hearing at a time and place fixed by the Governing Body, and the Municipal Clerk shall advertise the notice of the hearing in a newspaper circulating in the county wherein the municipality is located at least once and not less than ten (10) days prior to the hearing.
3. If, after the hearing, the Governing Body shall decide that the designation of a fire district is appropriate, it shall, by ordinance:
  - a. Designate a territorial location or locations for use as a fire district or districts.
  - b. By resolution, provide for the election of a Board of Fire Commissioners for the district/districts and specify the date, time and place for the election of the first Board.
4. Nominating petitions for the first election of a Board of Fire Commissioners are filed with the Municipal Clerk. Any such petition shall be in writing, addressed to the Municipal Clerk for the initial election, after with the Clerk of the Board, stating that the signers thereof are qualified voters and residents in the district and requesting that the name of the candidate be placed on the official ballot. The petition shall state the residence of the candidate and certify his qualification for membership. The candidate's consent to his nomination shall be annexed to the petition and shall constitute his agreement to serve in the event of his election. The petition shall contain the name of only one candidate, but several petitions

may nominate the same person. Each petition shall be signed by not less than 10 qualified voters and shall be filed at least 29 days before the date of the election.

Any form of a petition of nomination which is provided to candidates by the Secretary of State, the County Clerk, or the Municipal Clerk shall contain the following notice: "Notice: All candidates are required by law to comply with the provisions of 'The New Jersey Campaign Contributions and Expenditures Reporting Act,' P.L.1973, c.83 (C.19-44A-1 et seq.) If a petition is found to be defective, either in form or substance, the Municipal Clerk or the Clerk of the Board, as the case may be, shall forthwith notify the candidate to cause to be corrected before the petition is given consideration. 9/15/10

B. COMMISSIONERS [N.J.S.A. 40A:14-70]

1. The Board of Fire Commissioners shall consist of five (5) members, residents therein.
2. The Secretary and Treasurer shall be members of the Board and their appointments shall be for one (1) year.
3. The district shall be assigned a number and shall be a corporate body with power to acquire, hold, lease, sell or otherwise convey real and personal property in accordance with the Local Lands and Buildings Law.
4. The Board may adopt and use a corporate seal, sue or be sued and shall have such powers, duties and functions as are usual and necessary for said purposes.
5. The Board has approval power for the creation of a new volunteer fire company and to contract with volunteer fire companies for services. [N.J.S.A. 40A:14-70.1]
6. On the date, time and place specified for the election of the first Board, the Municipal Clerk shall conduct the election and shall preside at the meeting until the Board shall have been elected.
7. At the first meeting of the Board after the first election, the Board shall choose a chairman and fix the place for the annual election.
8. Members of the first Board shall divide themselves by lot into three (3) classes for purposes of expiration of term of office - two (2) members shall serve for three (3) years, two (2) members shall serve for two (2) years, and one (1) member shall serve for one (1) year.
  - a. Thereafter, terms shall expire at 12:00 o'clock noon on the first (1st) Tuesday in March of the third (3rd) year following their election for April elections.
  - b. If the time of the annual election is moved to the time of the general election, the terms of the fire commissioners then in office shall be extended until 12 o'clock noon on the first Tuesday in December of the years in which their terms expire. 9/15/17
9. Vacancies shall be filled by the remaining members until the next succeeding election at which a resident shall be elected for the unexpired term.

C. ELECTION OF COMMISSIONERS (AFTER INITIAL ELECTION FOR CREATION)  
[N.J.S.A. 40A:14-70 to N.J.S.A. 40A:14-77]

1. Fire District Elections for Commissioners and annual budget are held on the third (3rd) Saturday in February or during the General Election, held the 1st Tuesday after the 1st Monday in November. 9/15/17
2. The Clerk of the Board of Fire Commissioners will follow requirements of N.J.S.A. 40A:14-70 thru N.J.S.A. 40A:14-77 for this and subsequent elections. 9/15/10
3. Arrangements can be made for the use of voting machines from the County Board of Elections. 9/15/10
4. Polls shall be opened between the hours of 2:00 p.m. and 9:00 p.m. but the Board may designate a later closing hour. 9/15/10

D. FIRE DISTRICT BUDGETS

Fire District Budgets are also presented to the voters at the elections held on the third (3rd) Saturday in February or during the General Election, held the 1st Tuesday after the 1st Monday in November. Information on the presentation, election, adoption and actions to be taken if Fire District Budget is defeated appear in Chapter 10, Budget and Fiscal Affairs. 9/15/17

SEE PL2017, C206



## Chapter 6

### LICENSES & PERMITS

§ 6-1. GENERAL LICENSES	RESOLUTION - PLACE-TO-PLACE TRANSFER
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§ 6-3.5. EXHIBIT SAMPLE ALCOHOLIC BEVERAGE	§ 6-4.2. EXHIBIT: RAFFLE CHECKLIST
	§ 6-4.3. EXHIBIT: APPLICATION PROCEDURE - BINGO/ RAFFLE LICENSES
	§ 6-5. CERTIFICATION OF INSURANCE - LIMOUSINES, TAXICABS, AUTOBUSES/ JITNEYS

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#### § 6-1. GENERAL LICENSES

##### A. AUTHORITY TO LICENSE [N.J.S.A. 40:52-1]

1. Governing Bodies are given the general power to make, amend, repeal and enforce ordinances to license and regulate.
2. Municipalities cannot license or regulate anyone holding a license or certificate issued by any department, board, commission or other agency of the State of New Jersey except real estate auctioneers or real estate brokers selling at auction.
3. Governing Bodies may, by ordinance, require as a condition of license or permit that the owner pay any delinquent property taxes or assessments on the property that is the subject to the license or on which a licensed activity or business is or will be conducted. The ordinance may also provide for license revocation or suspension if taxes or assessments become delinquent for at least three

consecutive quarters. Upon payment of the taxes or assessments, the license shall be restored. [N.J.S.A. 40:52-1.2] This provision does not apply to an Alcoholic Beverage licensee.

4. Governing Bodies shall not license the sale of tangible personal property that is subject to sales tax to a vendor having no fixed place of business without the submission of a copy of a valid certificate of authority issued to the vendor empowering the vendor to collect sales tax. [N.J.S.A. 40:52-1.3]

B. ACTIVITIES WHICH MAY BE LICENSED [N.J.S.A. 40:52-1]

1. Vehicles used for the transportation of baggage, merchandise and goods and movable property; 9/14/07
2. Vehicles used for the transportation of passengers:
  - a. Taxicabs (also called autocabs)
  - b. Limousine or livery service
  - c. Autobuses (also known as jitneys)
3. Vendors and dealers;
4. Lodging and Food Establishments;
5. Automobile garages, dealers in second-hand motor vehicles and parts;
6. Bathhouses, swimming pools;
7. Entertainment and Amusement Activities;
8. Merchants and businesses;
9. Street signs or other objects projecting beyond the building line, into or over any public street or highway;
10. Auctioneers, whether they be real estate brokers engaged in selling at auction or real estate auctioneers licensed by the New Jersey Real Estate Commission;
11. Forced sale of goods, ware, and merchandise at reduced prices; 10/31/05
12. Rental of real property for commercial or residential use for terms of less than one hundred seventy five (175) consecutive days;
13. Produce at public markets. 10/31/05

C. FEES AND PENALTIES [N.J.S.A. 40:52-2]

1. The Governing Body may fix fees for all such licenses, which may be imposed for revenue\*, and may prohibit all unlicensed persons and places and vehicles, businesses and occupations from acting, being used, conducted or carried on;

impose penalties for violations and revoke any license for sufficient cause and after notice and hearing.

\*Case law has ruled that license fees cannot be used for revenue and must be directly related to the administrative costs of the municipality in issuing the license. Municipal Clerks are advised to confer with their Municipal Attorney on the issue of license fees.

## § 6-2. DOG LICENSES

[N.J.S.A. 4:19-15.1 et seq.]

### A. LICENSING OF DOGS 10/31/05

1. In some municipalities, the Municipal Clerk is responsible for issuing dog licenses. In others, it may be the responsibility of the local Board of Health.
2. Dog and cat licensing produces revenue for the municipality and State that can be used for regulation, welfare and control. A prerequisite for licensing is proof the pet has been vaccinated against rabies. Pet licensing of dogs (and cats where required) works to minimize the spread of rabies among both domestic and wild animals and to reduce the possibility of human infection.
3. The State Department of Health recommends the licensing of cats to regulate the mandatory rabies vaccination of this domestic animal, as well as help in controlling any free-roaming cat issues. 9/15/16
4. While not required, most Municipal Clerks notify owners of previously licensed animals annually of the need to renew such licenses.

### B. LICENSES

1. Licenses are issued annually, unless a municipality elects to allow for a three (3) year dog license.
2. Proof of current rabies vaccination is required for each license issued. 9/15/08
  - a. The rabies vaccination must have a duration of immunity which extends throughout at least ten (10) of the twelve (12) months of the licensing one year period or 2 years and 10 months of the thirty-six (36) months of the three year licensing period. 9/15/09; 9/15/14
  - b. Requirement of rabies vaccination can be waived for any dog that a veterinarian certifies in writing to be incapable of being vaccinated. 9/15/09
3. A dog temporarily placed in a foster home as part of a formalized training to be a guide dog or service dog shall not be required to be licensed and registered while the dog remains in the foster home for such training. 9/15/16
4. The Governing Body of a municipality may stagger the expiration dates of such licenses as long as all expiration dates occur no later than June 30 in the calendar year stated on the license.

## C. FEES 10/31/05

1. State Statute [N.J.S.A. 4:19-15] regulates municipal dog license fees:
  - a. Fixes minimum \$1.50 and maximum \$21.00 municipal dog license fees allowed to be charged, adopted by ordinance. 9/14/07
  - b. Permits municipalities to elect, by ordinance, to waive all or part of the municipal license fee for spayed or neutered dogs.
  - c. Fixes municipal fees for dog licenses at \$1.50 where no municipal fee ordinance has been adopted.
  - d. Permits municipalities to fix, by ordinance, a three (3) year dog license and fixes the maximum chargeable at three (3) times the annual license fee.
  - e. In the absence of a fee ordinance, fixes the three (3) year municipal dog license fee at \$4.50.
  - f. Dogs who serve as "Seeing Eye, Hearing Ear or Service Dogs" to handicapped persons must be registered the same as other dogs but the fees for such license registrations are waived. 9/15/15
2. N.J. State Fees:
  - a. N.J. Registration Fee: \$1.00
  - b. N.J. Clinic Fund: \$0.20
  - c. N.J. Non-Spayed/Neutered Fee: \$3.00
3. Fees collected for New Jersey Registration, Clinic Fund and Non-Spayed/Neutered funds must be forwarded monthly to the State Department of Health within thirty (30) days after collection or receipt (for the previous month's fees collected). Municipal dog license fees must be forwarded to the Municipal Treasurer within forty-eight (48) hours after collection or receipt. 10/1/11
4. Dog license fees must be kept in a special account separate from other municipal accounts, usable for the following allowable purposes only:
  - a. Collecting, keeping and disposing of dogs liable to seizure under the State Statute or local dog control ordinance;
  - b. Local prevention and control of rabies;
  - c. Provision of anti-rabies treatment under direction of the local Board of Health for any person known or suspected to have been exposed;
  - d. For payment of damages or losses of poultry and domestic animals, except dogs and cats, caused by a dog or cat;
  - e. For administering the provisions of the Statute. [N.J.S.A. 4:19-15.11]

### § 6-3. ALCOHOLIC BEVERAGE LICENSES

[N.J.S.A. 33 & N.J.A.C. 13:2]

The laws governing alcoholic beverages are known as *Title 33, Intoxicating Liquors, New Jersey Statutes Annotated* [N.J.S.A. 33:1 *et seq.*] and the implementing rules and regulations are designated as "*Title 13, Chapter 2, New Jersey Administrative Code*" [N.J.A.C. 13:2 *et seq.*]. Under the Alcoholic Beverage Law, the Director of the Division of Alcoholic Beverage Control, New Jersey Department of Law and Public Safety, hereafter designated as "Director", is authorized to make general rules and regulations and special rulings and findings as may be necessary for the proper control of the alcoholic beverage industry in New Jersey.

The Director establishes and provides the license certificates to the municipal issuing authority. All license numbers consists of 12 digits that identify the licensee's county and municipality, license type and sequential license number within the municipality and license generation number.

1103-XX-XXX-XXX	=	County (alphabetical within State) and Municipality (alphabetical within County)
XXXX-33-XXX-XXX	=	License type
XXXX-XX-001-XXX	=	Municipal sequential license number
XXXX-XX-XXX-001	=	License generation number (this number progresses with every change of facts submitted to the Director for that license)

A. **MUNICIPAL ISSUING AUTHORITY** - Governing bodies act as the municipal issuing authority. In municipalities having a population of 15,000 or more, the Governing Body **may** establish, by resolution or ordinance, a local board of alcoholic beverage control. Duties of the Municipal Issuing Agency include:

1. Issuance and renewal of licenses as well as approval of transfers and amendments of licenses.
2. Enforcement of laws, implementation of regulations controlling the conduct of licensed businesses, discipline of violators to ensure that community standards are upheld. This includes:
  - a. Investigation of all applicants.
  - b. Inspection and/or search of licensed premises or premises sought to be licensed.
3. Set certain regulations by municipal ordinance.
  - a. Limit number of retail licenses.
  - b. Limit hours of sale.
  - c. Restrict license location. Statutes restrict sale of alcoholic beverages within two hundred (200') feet of churches or schools. The two hundred (200') feet is measured in the normal way a pedestrian would lawfully walk from the



nearest entrance of the church or school to the nearest entrance of the premises sought to be licensed.

4. Maintenance of complete records concerning each license in its municipality.

#### B. MUNICIPAL CLERK

1. Administers process related to new licenses, renewals, transfers, and amendments.
2. Signs license certificate as municipal agent designated by the municipal issuing authority.
3. Reviews requests for certain types of special permits and signs on behalf of the municipality.
4. Submits certified copies to the Director of all adopted resolutions and ordinances affecting local alcoholic beverage control.

#### C. LICENSES

1. Club license #31 - by local ordinance which sets the number of licenses to be issued, entitles the licensee to sell alcoholic beverages only for immediate consumption on the licensed premises and only to bona fide club members and their guests, up to nine (9) in number.
  - a. Qualifications - may only be issued to organizations, corporations or associations with the following qualifications:
    - (1) Must be a bona fide club with sixty (60) or more members.
    - (2) Operates solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain and holds non-profit status.
    - (3) Must have been in active operation for at least three (3) continuous years immediately prior to the submission of its application for a license.
    - (4) Must have been in possession and use of a clubhouse for at least three (3) continuous years immediately prior to the submission of its application for a license.
  - b. The fee is fixed by the municipal issuing authority, by ordinance, at not less than sixty-three dollars (\$63) and not more than one hundred eighty-eight dollars (\$188). 10/31/04; 9/15/16
2. Plenary Retail Consumption License with broad package privilege - #32 - authorizes licensee to operate a package store in a separate room from the barroom. No new licenses have been issued with the privilege since 1948, when the law was changed. Licenses with the broad package privilege retain that condition and may be transferred as such.

3. Plenary Retail Consumption License - #33 - entitles the licensee to sell alcoholic beverages for consumption on the licensed premises and also to sell in original containers for consumption off the premises.

The annual renewal fee is fixed by the municipal issuing authority, by ordinance, at not less than two hundred fifty dollars (\$250) and not more than two thousand five hundred dollars (\$2,500). The fee cannot be raised or lowered by more than twenty percent (20%) or five hundred dollars (\$500), whichever is the lesser, from the fee charged in the preceding license year. 10/31/04; 9/15/16

The holder of this license, whose licensed premises is at least 20,000 square feet, shall be eligible to be issued for the licensed premises an amusement game license pursuant to P.L. 1959, c.109 (C. 5:8-100 et seq.), provided that the licensed premises includes at least 100 amusement games and all other requirements for licensure to conduct amusement games are met. 9/15/16

4. Seasonal retail consumption license - entitles the licensee to sell alcoholic beverages for consumption on the licensed premises and also to sell in original containers for consumption off the premises as follows:

- a. Summer Seasonal - #34 - May 1 - November 14
- b. Winter Seasonal - #35 - November 15 - April 30

Annual fee is seventy-five percent (75%) of annual renewal fee for retail consumption licenses.

5. Limited retail distribution license - #43 - entitles the licensee to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than seventy-two (72) fluid ounces for consumption off the licensed premises, but only in original containers. This license can only be issued for premises operated for the primary and principal business of selling groceries or foodstuffs at retail. The issuance of new limited retail distributions licenses was prohibited in 1952, however, existing licenses may be transferred. The fee is fixed by the municipal issuing authority, by ordinance, at not less than thirty-three dollars (\$33) and not more than sixty-three dollars (\$63). 10/31/04

6. Plenary retail distribution license - #44 - entitles the licensee to only sell alcoholic beverages in original containers for consumption off the licensed premises.

The fee is fixed by the municipal issuing authority, by ordinance, at not less than one hundred twenty-five dollars (\$125) and not more than two thousand five hundred dollars (\$2,500). The fee cannot be raised or lowered by more than twenty percent (20%) or five hundred dollars (\$500), whichever is the lesser, from the fee charged in the preceding license year. 10/31/04

7. Hotel Exception - #36 - See Section D, 4b of this Chapter.
8. Theater Exception - #37 - See Section D, 4c of this Chapter.

## D. LIMITATIONS ON NUMBER OF LICENSES

9/15/2021

1. Retail consumption license - no new retail consumption license, plenary or seasonal, can be issued in a municipality unless the total number is fewer than one (1) for each 3,000 of its population as determined by the most recent federal census.
  - a. Special Retail Consumption Licenses - The Director of the Division of Alcoholic Beverage Control may issue up to three (3) special retail consumption licenses to one or more individual corporations or other types of legal entities operating a hotel, restaurant or bar on any premises located in a qualifying development project, as defined in P.L. 2013,c.63(g). The Director, as the issuing authority, is authorized to issue, transfer, and renew such special retail consumption licenses. [REFERENCE - P.L. 2013, c.63] 9/15/13
2. Plenary retail distribution license - no new license shall be issued in a municipality unless the number is fewer than one (1) for each 7,500 of its population based on the most recent federal census.
  - a. Special Retail Distribution Licenses - The Director of the Division of Alcoholic Beverage Control may issue up to two (2) special retail distribution licenses to one or more individual corporations or other types of legal entities operating a hotel, restaurant or bar on any premises located in a qualifying development project, as defined in P.L. 2013, c.63(g). The Director, as the issuing authority, is authorized to issue, transfer, and renew such special retail distribution licenses. [REFERENCE - P.L. 2013, c.63] 9/15/13
3. Club licenses - no population restrictions; number of licenses set by local ordinance.
4. Exceptions

9/15/2021

- a. The municipal issuing authority may, by ordinance, enact that **no** retail consumption or retail distribution licenses be granted within the municipality.
- b. Hotel Exception - #36 - A license can be issued to a hotel or motel containing one hundred (100) or more guest sleeping rooms exclusive of the population cap and without affecting the municipality's population cap. Can only be transferred to another hotel/motel within municipality. The fee is fixed by the municipal issuing authority, by ordinance, at not less than two hundred fifty dollars (\$250) nor more than two thousand five hundred dollars (\$2,500). 10/31/04; 9/15/06; 9/15/10

A person who holds a license issued pursuant to the Hotel exception and who has been required by law to reduce the number of sleeping rooms in the hotel may continue to hold the license if the hotel has at least seventy-

five (75) sleeping rooms, has been in continuous operation for at least one hundred twenty (120) years in the same building, and is listed in the National Register of Historic Places. 12/01

- c. A minimum bid not to exceed twenty-five thousand (\$25,000.00) dollars plus fifty (\$50.00) dollars per sleeping room may be required for the issuance of a license if the dining facilities of the hotel or motel are regularly and principally used to provide only meals for catered events and breakfast for guests of the hotel or motel. 9/15/10
- d. This shall not be construed to prohibit a municipality from requiring a minimum bid for any license issued under the provisions of this section to a hotel or motel that does not meet the criteria set forth in item c. above. 9/15/10
- e. Theater Exception - #37  
10/31/04; 9/15/10; 9/15/2021

A plenary retail consumption license can be issued by the Director to a nonprofit corporation which conducts performances or concerts on premises as follows:

- (1) With a seating capacity of 50 persons or more, but less than 1,000 persons.
- (2) That is primarily used to conduct musical or theatrical performances or concerts.
- (3) Sale of alcoholic beverages are restricted to consumption on the licensed premises two (2) hours before, at intermission and two (2) hours following performance for not more than 15 performances in a calendar year.
- (4) The fee is fixed by the municipal issuing authority, by ordinance, at not less than two hundred fifty dollars (\$250) nor more than two thousand five hundred dollars (\$2,500).

#### E. SPECIAL PERMITS

- 1. Social Affair Permit.

9/15/2021

Required for the sale or service of alcoholic beverages to those attending an affair at which there is a charge in connection with the affair. Issued only to qualified non-profit organizations. The number of permits per year which can be issued to any one applicant is twelve (12) and for any one premises, twenty-five (25), or fifty-two (52) for designated premises owned by a municipality or for an event sponsored by a municipality. The fee for a social affair permit is one hundred dollars (\$100) for religious, civic and educational organizations. The fee for all other organizations is one hundred fifty dollars (\$150). 10/31/04; 9/15/2021

- 2. Alcoholic Beverage License Holders:

- a. Caterer's Permit - Issued by the Director to plenary retail consumption licensees that wish to serve alcoholic beverages off their licensed premises at special events, such as wedding receptions, fundraising dinners, or similar occasions.
- b. Ad Interim Permit - In the case of license renewal applications, if no action is taken before the expiration of its annual term (June 30), the licensee may apply to the Director for an ad interim temporary permit authorizing the applicant to conduct business until the application has been acted upon. Ad Interim Permits are valid for thirty (30) days.
3. Wine Festival Permits - Under the auspices of the New Jersey Department of Agriculture, New Jersey Wineries may obtain Wine Festival Permits to display, provide samples and sell bottles of their own wine to the public at off-premises events. Wine Festival Permits are issued by the Director. 10/31/04
4. Consumer Tasting by NJ Wholesale Licensee Permit - Authorizes Wholesale Licensees to describe and provide samples of selected alcoholic beverages to the public: 10/31/04
  - a. At the premises of an Alcoholic Beverage Licensee after obtaining a Consumer Tasting Permit issued by the Director. The fee for the Consumer Tasting Permit is two hundred dollars (\$200.00) per solicitor and is valid for one (1) year; or
  - b. At an off-premises event sponsored by a qualified, non-profit organization for which the bona fide non-profit organizations must secure a Social Affairs Permit.
5. Golf Facilities Permit - Authorizes an individual, partnership, corporation or other type of legal entity which owns and operates or leases and operates a golf facility (consisting of a minimum of eighteen (18) holes spaced over at least five thousand (5,000) linear yards) to sell open containers of alcoholic beverages for immediate consumption to members, guests of members and guests of the facility. 10/31/04
  - a. The term of the Golf Facilities Permit is from July 1<sup>st</sup> to June 30<sup>th</sup> unless otherwise noted.
  - b. Application must be made to the Director with a fee of two thousand (\$2,000) dollars.
  - c. All applicants must be qualified to hold an alcoholic beverage license as provided in the Alcoholic Beverage Control Act. The application must be supported by documentation on the proposed operation under the permit; plan or sketch of the premises; copies of the applicant's certificate of incorporation or charter, if applicable; evidence of the filing of a copy of the application with the municipal issuing authority; affidavit of publication of a notice of application and any other information or documents required by the Director.



- d. Hours of sale shall not exceed those permitted in the municipality in which the golf facility is located.
  - e. Permittee may serve alcoholic beverages during a social gathering only if the social gathering is directly related to playing golf on the golf course on the same day. A list of each scheduled golf-related social gathering shall be filed with the Division and the municipality where the facility is located at least seventy-two (72) hours before the event.
- F. ISSUANCE OF A NEW LICENSE [N.J.S.A. 33:1-19] - Upon authorization by the Director, the municipal issuing authority must determine which of two (2) ways to award new license. The options are:
  - 1. Historical Issuance Procedure - License is issued upon payment of the annual license fee only.
  - 2. Public Sale Option - License is issued to the highest qualified bidder.

## G. RENEWAL OF LICENSES

1. Term - The license term is July 1 until June 30, inclusive. If the license is not renewed by July 1, the licensee must secure an ad-interim temporary permit from the Director to operate.
  - a. Until July 30 the municipality may receive renewal applications. In the event the application is not filed and the fee not paid by July 30, the applicant must petition the Director to allow the municipality to reissue the license. 10/31/05
  - b. The applicant has sixty (60) days beyond July 30 (September 28) to file a Verified Petition, including a one hundred dollar (\$100) processing fee, to the Director, or the license cannot be renewed. 10/31/05
2. Application Process
  - a. Application filed - an application is filed with the municipal issuing authority, on forms prescribed by the Director, together with the full annual license fee and an additional two hundred dollar (\$200) non-refundable filing fee payable to the Division of Alcoholic Beverage Control. 10/31/05
  - b. An "Alcoholic Beverage Retail License Clearance Certificate," issued by the Director of the New Jersey Division of Taxation, must be provided to the Municipal Clerk prior to approval of the application by the municipal issuing authority.
  - c. Publication of notice of application - renewal applications are not required to be advertised by applicants.
  - d. Public hearing required only when a timely written objection, duly signed, is received or if the municipal issuing authority shall disapprove the application.
3. Issuance of new license permitted to applicants filing within one (1) year of expiration. 10/1/11
  - a. Except as provided in subsection d. of this section, in any case in which a timely renewal was not filed, nothing shall be deemed to prevent the issuance of a new license to a person who files an application therefor within one (1) year following the expiration of the license renewal period, but who pays the municipal and State renewal fees for the year for which a timely renewal application was not filed, if the Director shall determine in writing that the applicant's failure to apply for a renewal of this license was due to circumstances beyond his control or other extraordinary circumstances.
  - b. Any request for relief under this section shall be filed not later than one (1) year following the expiration of the license renewal period for the license which was not renewed in a timely manner and shall be accompanied by a nonreturnable filing fee of \$100 payable to the Director for each license term.

- c. A new license issued pursuant to this section shall be assigned the same license number as the license which was not renewed in a timely manner.
- d. Notwithstanding subsection a. of this section, a person with an expired license which was not renewed within five (5) years immediately preceding the enactment of P.L. 2010, c.14, but who pays the municipal and State renewal fees for each year for which a timely renewal application was not filed, may file for issuance of a new license in accordance with subsection a. of this section within six (6) months of the effective date of P.L. 2010, c.14.

H. TRANSFER OF STATE AND MUNICIPAL LICENSES - any license issued under *Title 33* may be transferred from person-to-person, place-to-place or both.

- 1. Person-to-person transfer - required when a license passes from one ownership entity to another.
- 2. Place-to-place transfer is required for change in location from one site to another, new construction, expansion of licensed premises, reduction of premises - voluntary reduction of the premises or de-licensure of all or a portion of the premises. 12/99
- 3. Fees
  - a. Municipal - ten percent (10%) of the annual license renewal fee for a person-to-person transfer; ten percent (10%) of the annual license renewal fee for a place-to-place transfer; twenty percent (20%) of the annual license renewal fee for a person-to-person and a place-to-place transfer occurring at the same time.
  - b. State - two hundred dollars (\$200) payable to the Division of Alcoholic Beverage Control regardless of whether the transfer is person-to-person, place-to-place, or both. 10/31/04
- 4. Application Process
  - a. An application in triplicate is filed with the municipal issuing authority, in forms prescribed by the Director, at or before the first insertion of advertisement. A complete application consists of:
    - (1) Application;
    - (2) Appropriate municipal fee and an additional two hundred dollar (\$200) non-refundable filing fee payable to the Division of Alcoholic Beverage Control; 10/31/04
    - (3) Bulk Sale Permit Application:
      - (a) If transferee is purchasing existing stock from seller, a seventy-five dollar (\$75) fee payable to the Division of Alcoholic Beverage Control must accompany the application. 10/31/05

- (b) If transferee is not purchasing existing stock from the seller, no fee is payable to the Division but the Permit application is still required.
    - (4) Financial Disclosure Statement;
    - (5) Written and notarized consent to transfer signed by the current owner of the licensee, including the price of the license being purchased;
    - (6) Written statement of the current licensee of the effective date for which the transfer is being sought.
  - b. Publication of notice of application - outlines the purchase intentions of the buyer and offers an opportunity for objection. Objections must be in writing and submitted to the Municipal Clerk. Notice must be published once a week for two (2) weeks successively in a newspaper printed in the English language published and circulated in the municipality in which the licensed premises is located. If not available, then in a newspaper published in the county in which the licensed premises is located.
5. Public Hearing 9/15/15
- a. Required when a timely written objection, duly signed, is received.
  - b. Not required if no timely written objection is received.
  - c. Mandatory if the municipal issuing authority shall disapprove the application.
6. For person-to-person transfers, an "Alcoholic Beverage Retail License Clearance Certificate" issued by the Director of the New Jersey Division of Taxation must be provided by the Seller to the Municipal Clerk prior to approval of the application by the municipal authority. 9/15/15
- I. CHANGE IN FACTS - ANY LICENSEE AND/OR CORPORATE STRUCTURE AND LIMITED PARTNERSHIP 10/31/05
- 1. Amendment to the application is submitted to the municipal issuing authority not later than ten (10) days after the occurrence.
  - 2. More than one percent (1%) but less than thirty-three and one third percent (33 1/3%) - submit amendment to pages that reflect the change in information in addition to a newly executed affidavit (last page of application).
  - 3. More than thirty three and one-third percent (33 1/3%) - a full application is required.
    - a. Notice of change must be published not later than ten (10) days after the occurrence whenever a stockholder change involves a new individual.
    - b. Proof of publication to be provided to the Municipal Clerk within ten (10) days after publication with copy of dated advertisement.
  - 4. No fee for change in corporate structure or limited partnership.

5. No municipal resolution of approval is required.

J. **CONFLICT OF INTEREST** - If a member of the municipal issuing authority has an interest directly or indirectly in a license, application for issuance, renewal and transfers must be made to the Director. Governing Body adopts a resolution approving issuance, renewal or transfer of license by Director.

K. **INACTIVE LICENSES OR POCKET LICENSES** - a license that is not being actively used. It may still cover a licensed location or it may not have any approved licensed premises. The municipal issuing authority or board may renew for two (2) full license terms after the date it became inactive. After expiration of the two year period, a special ruling of the Director is necessary before the Governing Body can renew the inactive license. 9/15/06

L. **EXTENSION OF LICENSE**

In the case of death, bankruptcy, receivership or incompetency, or for any reason the operation of the business covered by the licensee shall devolve by operation of law upon a person other than the licensee, the licensed business may not be operated unless the license is extended by the issuing authority which issued the license.

M. **NEW JERSEY BROWN BAG LAW** (Bring Your Own Bottle - BYOB). 9/15/19

1. Unless expressly prohibited by a municipal ordinance, the "Brown Bag" law permits unlicensed restaurants to allow patrons to bring their own wine or beer to be consumed with a meal. Under no circumstances can customers bring in distilled spirits.
2. The restaurant can supply glasses, ice, etc., but a cover, corkage or service charge cannot be imposed.
3. If the municipality prohibits the sale of alcoholic beverages during certain hours, the restaurant cannot permit brown bag consumption during those same hours.

**TIP BOX** - Per case law of United States District Court, District of New Jersey in *GJM Enterprises, LLC, d/b/a STILETTO v. City of Atlantic City, City of Atlantic City Police Department, etc.* (Civil Action No. 17-2492):

Persons who own or operate a restaurant, dining room or other public place where food or liquid refreshments are sold or served to the general public, and for which premises a license or permit for the sale of alcoholic beverages for on-premises consumption has not been issued, may advertise that patrons may bring and consume their own wine or malt alcoholic beverages in a portion of the premises which is open to the public.

N. **WINE, BEER & SPIRITS TASTINGS**

1. Plenary Retail Consumption License holder is permitted to conduct consumer wine, beer and spirit tastings and samplings for a fee or on a complimentary basis. 10/31/04
2. Plenary Retail Distribution license holder is permitted to conduct consumer wine, beer and spirit tastings and samplings for a fee or on a complimentary basis with the following exceptions; 10/31/04



- a. Patrons are limited to four (4) one and one-half (1 1/2) ounce samples in a twenty-four (24) hour period; and
- b. Samples cannot be offered to intoxicated or under-age drinkers; and
- c. Samples cannot be offered when the sale of alcohol is otherwise prohibited; and
- d. Tasting and sampling is confined to licensed premises and all wine used shall be owned by the licensee conducting the tasting and sampling. 10/31/04

**§ 6-3.1. EXHIBIT INSTRUCTIONS FOR SUBMISSION OF APPLICATION FOR TRANSFER OF LIQUOR LICENSE**

10/31/05

1. Submission to Municipal Clerk, (Insert Address) of a complete application for transfer. Complete application consists of:
    - A. Three original signed/notarized copies of Application for Retail Alcoholic Beverage License (copy attached);
    - B. Check made payable to the (Insert name of municipality) in the amount of 10% of the annual renewal fee for the type of license to be transferred; if application is for combined person-to-person and place-to-place transfers, fee of 20% is required;
    - C. Check or Money Order made payable to the Division of Alcoholic Beverage Control in the amount of \$200 - fee is the same for single or combined applications; 12/99; 9/14/07
    - D. For person-to-person transfers only:
      - (a) Financial Disclosure Statement(s) indicating the source of funding for the purchase of the liquor license with documentation attached;
      - (b) All new stockholders owning 10% or more of the stock must be fingerprinted for both State Police and Federal FBI - stockholders must present themselves in person at the local police department to be fingerprinted and present a Certified Check payable to Division of State Police - S.B.I. in the amount of \$49.00 - fee covers both State and FBI prints.
- Should the stockholders wish to have their fingerprints taken in their residence town, applicant must:
- (1) request a set of fingerprint cards for the State Police and FBI from the local police department of the issuing authority;
  - (2) take cards to residence police department, complete personal information and have fingerprints affixed by authorized police department representative;

- (3) attach business card or means of identifying the police officer who took the prints;
    - (4) return print cards, police officer identification and check noted above to the Police Department or Municipal Clerk.
  - (c) Written/notarized Authorization to Transfer from the existing license owner.
  - (d) Copy of purchaser's Certificate of Sales Tax Authority.
  - (e) All applications for person-to-person transfer must be accompanied by Application for Bulk Sale Permit (copy attached). If no alcoholic beverage inventory is being purchased in connection with transfer, no fee is required. If inventory is being purchased, a check payable to Division of Alcoholic Beverage Control in the amount of \$75.00 must accompany application. 9/14/07
  - (f) An "Alcoholic Beverage Retail License Clearance Certificate" issued by the Director of the New Jersey Division of Taxation must be provided by the Seller to the Municipal Clerk prior to approval of the application by the municipal authority. 9/15/15
- E. For place-to-place transfers only:

Sketch of the property and building to which license is to be transferred, indicating the exact area of the premises to be licensed if not the total building and grounds.
- 2. Upon receipt of a complete application:
  - A. The Municipal Clerk will have the application reviewed and premises inspected if necessary by Municipal staff; any problems reported will be brought to the attention of the applicant.
  - B. Reports from State Police and FBI on fingerprints, will be awaited.
- 3. Upon completion of items 2A and 2B:
  - A. The Municipal Clerk will schedule the application for consideration and approval of the Governing Body. Meetings of the Governing Body are held on the (Insert meeting schedule).
  - B. Notice of transfer application (sample attached) must be published in the legal newspaper of the Municipality not less than five nor more than 14 days prior to the date scheduled for Governing Body action. The legal newspaper of the Municipality is (Insert name, address, phone and fax number of legal newspaper and publication deadline).
  - C. Applicant must submit written certification of the date the proposed transfer is to be effective. Applicants are cautioned that once a transfer's effective date as approved by the Governing Body has passed, it cannot be changed. If the effective date approved has not passed, the Governing Body can amend the date by resolution.

- D. If written objections to the transfer are received by the Municipal Clerk, a public hearing must by law be held on the application.
  - E. Ten (10) days prior to taking possession of or paying for a liquor license and by certified mail, the purchaser must file with the State of New Jersey, Department of Treasury, Division of Taxation, Bulk Sale Unit, a Notification of Sale, Transfer or Assignment in Bulk (copy attached). This notification allows the State to insure that all taxes due and owing it have been paid by the current owner. If and when all taxes have been paid, a Certification to that effect will be issued and must be presented to the Municipal Clerk prior to transfer of the license.
4. At the time of hearing/approval:
- A. It is recommended, but not required, that the applicant be represented at the transfer hearing.
  - B. Affidavit of Publication must be provided to the Municipal Clerk at or prior to the scheduled hearing.
  - C. Certification from State Division of Taxation that no taxes are due and owing must be provided to the Municipal Clerk at or prior to the scheduled hearing.
  - D. Upon adoption of the Governing Body resolution authorizing the transfer, notice of same will be given to the applicant and the State Alcoholic Beverage Control. On the effective date of the transfer, the license will be endorsed to reflect the transfer.

#### **§ 6-3.2. EXHIBIT ALCOHOLIC BEVERAGE CONTROL DIVISION - DISCLOSURE POLICY**

10/31/05

- I. LICENSE APPLICANT LEVEL (The Entity that will be Licensed)
- A. This level constitutes the primary interest in the applied-for license. All interest in the license must be accounted for on the license application, including all individuals holding 1% or more interest in the applicant if it is a corporation. Limited Liability Companies must disclose all members. Individuals named at this level are required to be fingerprinted, disclose and document the source of funds used to acquire their license interest and document their age. They may hold no other interest which would constitute a tied-house or two license limitation violation.
  - B. If interest holders are not residents of the United States, they must execute affidavits certifying their qualifications and provide a record (or document lack of record) of their criminal background from their national law enforcement agency. If criminal background information is prepared in a language other than English, a certified English translation must be submitted.
  - C. If the actual operation of a licensed business is delegated to an on-site manager (e.g. in the case of a national restaurant chain), the manager or any other individual who, through performance of their on-site duties act in the capacity of

the licensee, must also be disclosed in the license application, fingerprinted and qualified as described in paragraph IA. These management responsibilities include the hiring and firing of employees, placing orders for alcoholic beverages and making business decisions concerning pricing or marketing.

## II. LICENSE APPLICANT SHAREHOLDER LEVEL

- A. This level describes removed interests; those with direct or indirect interest in the license applicant. Shareholders of the license applicant, general or limited partners and LLC members who are closely held corporations, partnerships or LLC's in their own right and must be fully identified in the license application. Individuals disclosed at this level must execute an affidavit as to their age and qualifications. Individuals disclosed at this level who exercise significant direct control or influence over the operation of the license applicant, must be fingerprinted and qualified as described in paragraph IA.
- B. The officers, directors and trustees of publicly traded corporations holding an interest in a licensed applicant must be disclosed in the license application, unless the Director or municipal issuing authority determines that an alternate form of disclosure is acceptable. Regardless of the format, individual disclosures must include all information required by the license application. Any individual disclosed at this level who exercises control or direct influence over the operation of the license applicant must be fingerprinted.
- C. Individuals holding 10% or more of the stock of a publicly traded corporation which has an interest in a license applicant must be identified in the license application. The Director or municipal issuing authority may determine to accept appropriate Securities and Exchange Commission Reports or filings in support of the qualifications of such individuals.
- D. Institutional investors (i.e. pension or stock funds), and interests held in trust must qualify through the trustee responsible for administration of the fund or trust. Trustees must be disclosed and execute affidavits as to their qualifications.

## III. SUBMISSION OF RECORDS IN SUPPORT OF APPLICATION

In addition to the business disclosure noted above, the Division of Alcoholic Beverage Control and municipal issuing authorities may require submission of any or all of the following records and documents in support of a license application. This information is to be submitted by the applicant as part of the qualifying investigation procedure. It will be maintained as confidential and will not be available for public review.

### **BUSINESS RECORDS:**

Original letter of business intent - describing the proposed business and method of operation

Partnership Agreement

Limited Liability Company Notice of Formation and Operating Agreement

Corporate Certificate of Incorporation and all subsequent amendments

Proof of Fictitious or Trade Name registration

Certificate of New Jersey Business Authority (non-NJ applicants only)

Copies of all issued Stock Certificates (front and back) or most recent SC Filing Statement containing shareholder information

Certificate of New Jersey Sales Tax Authority (if applicable)

Copy of all applicable BATF Permits issued to applicant

Copy of all other alcoholic beverage licenses issued to applicant by other States

**FINANCIAL RECORDS:**

Agreements of Sale for purchase of license, businesses and or proposed premises

Mortgage or Loan Agreements and Promissory Notes, including any pledge or Escrow Agreement of Corporate Stock Shares

Business and personal Federal Income Tax returns for the past two years

Copies of business and personal checking and savings statements, canceled checks and bank deposit slips to document the funding of the license

Audited Financial Statements

Corporate Annual Reports

Securities and Exchange Commission filing statements

**PREMISES INFORMATION:**

Detailed sketch of the proposed premises, identifying all entrances, exits, exterior areas to be covered under the license, indicating dimensions of the premises in square feet. If any adjacent grounds are to be licensed, these areas must also be included in the sketch

Copy of Lease Agreement, Title or Mortgage Agreement(s) and applicable note(s) covering the proposed premises

Certificate of Occupancy and other applicable zoning records associated with the proposed premises

If proposed premises is a boat, copy of the United States Coast Guard Certificate of Documentation issued to the vessel

If proposed premises is a limousine, copy of motor vehicle registration and photograph of the vehicle



**§ 6-3.3. EXHIBIT AFFIDAVIT OF QUALIFICATION FOR OWNERSHIP INTEREST IN OR ASSOCIATION WITH A NEW JERSEY ALCOHOLIC BEVERAGE LICENSE OR PERMIT**

10/31/05

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

I, \_\_\_\_\_ residing \_\_\_\_\_ of full age, being duly sworn according to law, upon my oath depose and say:

1. I am a \_\_\_\_\_ [shareholder/ member/ partner/ sole proprietor] of \_\_\_\_\_ [corporation or partnership entity, if any] holding the office or title of \_\_\_\_\_ and am duly authorized to make this affidavit.

2. An application for a New Jersey

\_\_\_\_\_ [specify type of license or permit] by

\_\_\_\_\_ [name of applicant] has been filed with the New Jersey Division of Alcoholic Beverage Control.

3. This affidavit is submitted in support of my qualification to have an ownership interest in or association with a New Jersey Alcoholic Beverage license or permit issued pursuant to the laws of the State of New Jersey, including Title 33, New Jersey Revised Statutes, entitled "Intoxicating Liquors".

4. I represent that pursuant to N.J.S.A. 33:1-25, I am qualified to hold an interest in or associate with a New Jersey Alcoholic Beverage License or permit according to all standards established by Title 33 of the New Jersey Statutes, regulations promulgated thereunder and any pertinent local ordinances and conditions imposed consistent with Title 33.

5. I represent that I meet all New Jersey mandated qualifications, including that:

- a. I am 18 years of age or older;
- b. I have not been convicted of a crime of moral turpitude;
- c. I am a reputable person who will operate the licensed business in a reputable manner;
- d. I have fully and completely disclosed all beneficial interests in the entity to be licensed;
- e. I have no ownership interest in nor am I an officer or director of any corporation that is a New Jersey alcoholic beverage manufacturer or wholesaler;
- f. I do not have an interest in more than two retail licenses, except as otherwise permitted under N.J.S.A. 33:1-12.32;

- g. I am not ineligible for licensure for 2 years or more because of prior revocation; and
  - h. I am not a peace or police officer or any other person whose powers and duties include the enforcement of the New Jersey Alcoholic Beverage Control laws or regulations, or hold an interest in nor am I an officer in a for-profit corporation in which any peace or police officer has a direct or indirect interest.
6. I understand that if I do not meet with the qualification requirements of Title 33 of the New Jersey Statutes and regulations promulgated thereunder, after a criminal background investigation is conducted on me, I cannot hold an interest in any New Jersey liquor license or permit. I also understand that if I am disqualified, I must divest myself of an interest in or association with any New Jersey liquor license or permit within a time frame specified by the Director.
  7. I make the foregoing statements realizing that the Division of Alcoholic Beverage Control will rely on them. I am also aware that any misstatements or omissions of material facts that are made by me are grounds for suspension or revocation of any New Jersey Alcoholic Beverage license or permit that I may have an interest in or association with.
  8. I make the foregoing statements and represent that under penalty of perjury, the foregoing statements are true and correct.

Signed and Sworn to \_\_\_\_\_

By: \_\_\_\_\_

before me this \_\_\_\_\_

Name: \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_ 9/14/07

Title: \_\_\_\_\_

Notary Public

#### **§ 6-3.4. EXHIBIT SAMPLE ALCOHOLIC BEVERAGE RESOLUTION - PERSON-TO-PERSON TRANSFER**

10/31/05; 9/14/07

WHEREAS, an application has been filed for a person-to-person transfer of Plenary Retail (Consumption) (Distribution) License (insert license number), heretofore issued to (insert name of current owner) for premises located at (insert address of licensed premises); and

WHEREAS, the submitted application form is complete in all respects, the transfer fees have been paid, and the license has been properly renewed for the current license term; and

WHEREAS, the applicant is qualified to be licensed according to all standards established by Title 33 of the New Jersey Statutes, regulations promulgated thereunder, as well as pertinent local ordinances and conditions consistent with Title 33; and

WHEREAS, the applicant has disclosed and the issuing authority reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business;

NOW, THEREFORE, BE IT RESOLVED that the (insert name of Governing Body) does hereby approve, effective (insert effective date), the transfer of the aforesaid Plenary Retail (Consumption) (Distribution) License to (insert name of purchaser), and does hereby direct the Municipal Clerk to endorse the license certificate to the new ownership as follows: "This license, subject to all its terms and conditions, is hereby transferred to (insert name of purchaser), effective (insert effective date)."

#### **§ 6-3.5. EXHIBIT SAMPLE ALCOHOLIC BEVERAGE RESOLUTION - PLACE-TO-PLACE TRANSFER**

10/31/05

WHEREAS, an application has been filed for a place-to-place transfer of Plenary Retail (Consumption) (Distribution) License (insert license number), heretofore issued to (insert name of current owner) for premises located at (insert address of licensed premises or, if applicable, for an inactive license with a mailing address of (insert mailing address)); and

WHEREAS, the submitted application form is complete in all respects, the transfer fees have been paid, and the license has been properly renewed for the current license term; and

NOW, THEREFORE, BE IT RESOLVED that the (insert name of Governing Body) does hereby approve, effective (insert effective date), the place-to-place transfer of the aforesaid Plenary Retail (Consumption) (Distribution) License from its former location at (insert former location) to (insert new location), and does hereby direct the Municipal Clerk to endorse the license certificate to the new ownership as follows: "This license, subject to all its terms and conditions, is hereby transferred to premises located at (insert new location), effective (insert effective date)."

#### **§ 6-3.6. EXHIBIT PLACE-TO-PLACE TRANSFER - EXTENSION OF PREMISES**

10/31/05; 9/14/07

WHEREAS, an application has been filed for a place-to-place transfer of Plenary Retail (Consumption) (Distribution) License (insert license number), for the purpose of expanding the premises under license wherein the sale, service and storage of alcoholic beverages are authorized; and

WHEREAS, the submitted application form is complete in all respects, the transfer fees have been paid, and the license has been properly renewed for the current license term; and

NOW, THEREFORE, BE IT RESOLVED that the (insert name of Governing Body) does hereby approve, effective (insert effective date), the expansion of the aforesaid Plenary Retail (Consumption) (Distribution) Licensed premises located at (insert location) to place under license the area delineated in the application form and the sketch of the licensed premises attached thereto.

#### **§ 6-3.7. EXHIBIT EXTENSION OF LICENSE TO EXECUTOR/EXECUTRIX**

10/31/05

WHEREAS, an application has been filed for an extension of Plenary Retail (Consumption) (Distribution) License (insert license number), to the Executor (Executrix) of the Estate of (insert name of deceased owner), sole proprietor owner of the license; and

WHEREAS, the submitted application form is complete in all respects, including proof of appointment to act as Executor (Executrix);

NOW, THEREFORE BE IT RESOLVED that the (insert name of Governing Body) does hereby approve, effective (insert effective date) the extension of the aforesaid Plenary Retail (Consumption) (Distribution) license to (insert name of executor/executrix) to conduct business under the privileges, terms and conditions of the license as Executor (Executrix) of the estate of (insert name of deceased owner) for the benefit of the estate until such time as the will is probated and the license may be transferred in compliance therewith and directs the Municipal Clerk to endorse the License Certificate as follows: "This license is hereby extended, subject to all its terms and conditions to (insert name of executor/executrix) until June 30, 20\_\_.

#### § 6-3.8. EXHIBIT FORM OF ADVERTISEMENT - TRANSFER APPLICATIONS

10/31/05

1. Take notice that application has been made to (insert name of Governing Body) of (insert name of Municipality) to transfer to (insert name of transferee), trading as (insert trade name if any) for premises located at (insert address of premises to which transfer is sought), the (insert Plenary Retail (Consumption)(Distribution) license and number) heretofore issued to (insert full name of licensee), trading as (insert trade name if any) for the premises located at (insert number, street and municipality).
2. The person(s) who will hold an interest in this license is/are:  
(insert name(s)) See \* and \*\* for additional information if applicable
3. Objections, if any, should be made immediately in writing to:  
(insert name of Municipal Clerk and name and address of municipality)  
(in the case of State issued license, insert "Director, Division of Alcoholic Beverage Control")

Insert name and address of Applicant

- \* If the applicant is an individual, insert the name and residence address of that individual.
- \* If the applicant is a corporation, insert the names and residences of all officers and directors and the names and residences of all stockholders holding one percent or more of any of the stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.
- \* If the applicant is a partnership, insert the names and residence addresses of all partners and any limited partners holding an interest of one percent or more.



- \* If the applicant is a club, insert the names and residence addresses of all officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.
- \*\* If the application is for transfer of a municipal license for a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Municipal Clerk."
- \*\* If the application is for a State license for a building not yet constructed, insert "Plans of building to be constructed may be examined at the office of the Division of Alcoholic Beverage Control."
- \*\* If the application intends to conduct retail sales of alcoholic beverages as may be authorized under a State issued license, insert in the Notice the following: "The applicant intends to engage in the retail sale of (insert alcoholic beverage type) at (insert number, street and municipality) under the terms and conditions allowed by law."

#### **§ 6-4. LEGALIZED GAMES OF CHANCE CONTROL COMMISSION**

##### **A. GENERAL INFORMATION**

1. The legal voters of each municipality must vote their approval or rejection before the Bingo Licensing Law and/or the Raffles License Law shall become operative within the municipality.
2. No games of chance shall be conducted on Sundays unless an ordinance has been adopted by the Governing Body of the licensing municipality authorizing the conduct of such games of chance on this day.
3. Municipal Ordinance 9/15/13
  - a. Each municipality shall file with the Commission a copy of each ordinance enacted related to the Bingo/Raffles Licensing Law within ten (10) days after adoption.
  - b. By this ordinance, the Municipal Clerk can be appointed as the issuing authority so that the applications do not have to be approved by the Governing Body.

##### **B. REGISTRATION AND IDENTIFICATION**

1. In accordance with N.J.A.C. 13:45-2.1, every non-profit organization desiring to apply for a license to conduct bingo or raffles or to allow its members to assist a licensed affiliated organization, as described in N.J.A.C. 13:45-6.4 shall, before making any such application or allowing any assistance, register with the Control Commission and secure an identification number. 10/31/04
2. An identification number issued by the Control Commission shall be valid for a period of two (2) years or until modified, suspended or revoked by the Control Commission.
3. Each organization requesting registration shall remit by check or money order a non-refundable biennial fee of one hundred dollars (\$100.00) (new or renewal)



payable to the Legalized Games of Chance Control Commission. New registrations shall provide the proofs as outlined in N.J.A.C. 13:47-2.3. 9/15/10

4. A Senior Citizen Association or club requesting registration shall submit a completed application together with sufficient proof of the organization's eligibility for registration. Qualified senior citizen associations and clubs shall be exempt from the biennial registration fee.

#### C. APPLICATIONS

1. BINGO AND RAFFLE APPLICATIONS shall be filed in quadruplicate with the Municipal Clerk. One copy shall be retained by the Municipal Clerk, the second copy shall be returned to the applicant after a license has been granted or denied by the Governing Body. The third copy shall be forwarded to the Control Commission by the Municipal Clerk and the fourth copy shall be delivered to the Law Enforcement Agency in the municipality.
2. Bingo - Where premises are to be rented, a Certificate of the Landlord shall be obtained from the landlord and attached to the application, such certificate to be on form 10-A.
3. Raffles - Where raffle equipment is to be leased, a Certificate of the Lessor shall be obtained from the raffle equipment supplier and attached to the application, such certificate to be on Form 13.
4. An applicant must present the organization's registration form on which the identification number is shown at the time the license application is filed with the Municipal Clerk.

#### D. FEES [N.J.A.C. 13:47] 3/23/12

1. License fees due to the Control Commission:
  - a. **Agricultural Fairs / 4-H Clubs / Exhibitions License.** Fee shall be an annual fee of \$50.00 per game; except that, any association which is nonprofit shall be exempt from payment of any State license fee if the proceeds from the games are used for charitable purposes. Where the operator of the game at an agricultural fair and exhibition conducted under the auspices of such an association is to be a person holding a concession to operate at the fair and exhibition from the association holding the same, such operator shall pay for the State license an annual fee of \$50.00 for each game to be operated at the fair and exhibition, but if said operator is a licensee under the "Amusement Games Licensing Law" 1 and has paid the annual fee of \$250.00 for a State license, he shall not be required to pay the said fee of \$50.00 for each game to be operated unless he operates more than five games, in which case he shall pay for the State license an additional annual fee of \$50.00 for each game in excess of five.
  - b. **Arcade License.** Fee is an annual fee of \$250.00 payable to the Commission, which allows the licensee to operate up to fifty (50) player positions and \$10.00 for every additional player position over the initial fifty (50) player positions.

- c. **Armchair Race.** Licensing fee payable by law to the Control Commission for this type of license is \$50.00 per licensed day of operation.
- d. **Bingo.** Licensing fee payable by law to the Control Commission for this type of license is \$20.00 for each occasion on which any game or games of bingo are to be conducted under the license.
- e. **Calendar Raffle.** Licensing fee payable by law to the Control Commission for this type of license is \$20.00 for each \$1,000 or part thereof of the total retail value of the prize(s) to be awarded.
- f. **Casino Night.** Licensing fee payable by law to the Control Commission for this type of license is \$100.00 for each day of operation.
- g. **Duck Race.** Licensing fee payable by law to the Control Commission for this type of license is \$20.00 for each \$1,000 or part thereof of the total retail value of the prize(s) to be awarded.
- h. **Golf Hole-in-One Contest.** Licensing fee payable by law to the Control Commission for this type of license is \$20.00 for each \$1,000 or part of the total retail value of the ancillary prize(s) offered.
- i. **Instant Raffle Game.** Licensing fee payable by law to the Control Commission for this type of license is \$20.00 for each day on which instant raffle tickets are sold or offered for sale, or \$750.00 for a one-year license to sell, or to offer for sale, instant raffle tickets during that year.
- j. **Non-Draw Raffle.** Licensing fee payable by law to the Control Commission for this type of license is \$20.00 for each game or wheel held on any one day, or any series of consecutive days not exceeding six at one location.
- k. **Off-Premises 50-50 Raffle.** Licensing fee payable by law to the Control Commission for this type of license is \$20.00 paid at the time the application is filed for each day on which a drawing(s) is to be conducted under the license. In the event the awarded prize exceeds \$1,000, then an additional fee of \$20.00 for each \$1,000 or part thereof in value of the awarded prize(s) in excess of \$1,000 shall be forwarded to the Control Commission by check payable to the Commission together with the Report of Operations as required by N.J.A.C. 13:47-9.
- l. **On-Premises 50/50 Draw Raffle.** Licensing fee payable by law to the Control Commission for this type of license is \$20.00 for each day on which a drawing(s) is to be conducted under the license only if the anticipated prize is in excess of \$400.00. Otherwise, there is no license fee.
- m. **Off-Premises Merchandise Draw Raffle.** Licensing fee payable by law to the Control Commission for this type of license is \$20.00 for each \$1,000 or part thereof of the total retail value of the prize(s) to be awarded.
- n. **On-Premises Merchandise Draw Raffle.** Licensing fee payable by law to the Control Commission for this type of license is \$20.00 for each day on which a drawing(s) is to be conducted under the license only if the



- d. The "Findings and Determination Statement" of the Governing Body is recorded, in duplicate, on form LGCCC 5-A. It shall be signed by a member of the Governing Body or the Municipal Clerk.
2. The license is prepared on form LGCCC 6 B/R, in triplicate, by the Municipal Clerk.
3. Distribution of license, application, and sample tickets if required, after findings and determination of Governing Body, is as follows:
  - a. Original license and a copy of the application is provided to the licensee. At least fourteen (14) calendar days must lapse between the time the municipality forwards the application and licensing fee to the Control Commission and the time the license is issued. 9/15/06; 9/15/14
  - b. Copy of the license, Findings and Determinations and sample ticket, if applicable, is retained by the Municipal Clerk.
  - c. Copy of the license and application is forwarded to the municipal law enforcement agency.
4. The Municipal Clerk shall permanently maintain a docket, with a separate sheet for each licensee. On the sheet will be entered the following information:
  - a. Serial number of all licenses issued to each licensee;
  - b. The date of issue;
  - c. The dates for which the license permits games of chance to be played;
  - d. The retail value of prizes to be awarded by raffles as to raffles subject to an annual limit. 10/31/05
5. The dates for which bingos and raffles are licensed shall be entered in separate columns to permit determination of compliance with limits on the number of games per month. [N.J.A.C. 13:47-3.10] 10/31/05
6. No license for the holding, operation and conduct of any game of chance shall be issued for a period of more than one (1) year. 9/14/07

F. PLAYER AGE LIMITATION [N.J.A.C. 13:47-6.10] 10/31/04

1. No person under the age of eighteen (18) years shall be permitted to participate as a player in any bingo.
2. No person under the age of eighteen (18) years shall be permitted to participate in any draw raffle or in any non-draw raffle and awarding cash or money as a prize.
3. No person under the age of eighteen (18) years shall hold, operate or conduct or assist in the holding, operating or conducting of any game of chance held, operated or conducted under any license issued in accordance with the Bingo and Raffle License Law.
4. Whenever an organization shall conduct any draw raffle or non-draw raffle which offers cash or money as a prize, it shall cause a sign to be displayed adjacent to



the place of the allotment of the prizes by chance as follows: "Persons under the age of 18 years are not permitted to participate in this game of chance." For further reference, see N.J.A.C. 13:47-6-10.

G. FREQUENCY OF GAMES [N.J.A.C. 13:47-6.11]

1. No organization shall conduct any game(s) of chance more often than as set forth in this section:
  - a. Bingo shall not be conducted more often than six (6) days in any calendar month.
  - b. On-premises draw raffles awarding either cash or merchandise as prizes shall not be conducted more often than six (6) days in any one week. 12/02
  - c. Off-premises draw raffles awarding merchandise prizes shall not be conducted more than six (6) days in any one week. 12/02
  - d. Non-draw raffles (wheels and games) shall not be conducted more often than six (6) days in any one week. 12/02
  - e. Off-premises 50/50 cash draw raffles shall not be conducted more often than once in any calendar month.
  - f. A Duck-Race raffle shall not be conducted more often than once in any calendar month.
  - g. A calendar raffle shall not be conducted more than twice in any calendar year. 9-15-08
  - h. Instant raffles may be conducted three hundred-sixty five (365) days per year in any location in the municipality but only from one location at a time. For an additional ten dollar (\$10.00) fee, instant raffles may be at two locations on one day, once during a calendar year. 12/98
  - i. Armchair race events shall not be conducted more than six (6) times in any one week. License is valid from 12:00 a.m. on the date of the occasion to 2:00 a.m. the next day. 12/02
  - j. Casino night shall not be conducted more than six (6) times in any one week. License is valid from 12:00 a.m. on the date of the occasion to 2:00 a.m. the next day. 12/02
2. Only the day upon which a drawing or allotment of prizes takes place shall be considered when determining the frequency of games prescribed by this section.

H. PROHIBITED PRIZES [N.J.A.C. 13:47-6.20] 9/15/06

1. Real estate or an interest therein;
2. Bonds;
3. Shares of stock;
4. Securities or evidences of indebtedness;



5. Weapons;
6. Live Animals (except a gift certificate redeemable for live, edible seafood); 12/02
7. Foreign or domestic coins (except collector pieces or sets that are marketed as such and are clearly not intended for use as legal tender); 12/02, 9/15/06
8. Tobacco products; 9/15/06
9. Motor vehicle leases or any merchandise refundable in any of the above or in money or cash. 9/15/06
10. No prize consisting of cash or money shall be offered or awarded except in the case of: 9/15/06
  - a. A raffle conducted by a drawing with the prize(s) equaling fifty percent (50%) of the amount received for all tickets or right to participate, a calendar raffle with the maximum prize amount not to exceed \$25,000. 9/15/06
  - b. Any bingo game(s) conducted in accordance with the provisions of this chapter and Bingo Licensing Law; or
  - c. Big six wheels and horse race wheels conducted in accordance with the provisions of N.J.A.C. 13:47-8.
  - d. An instant raffle game having a maximum prize amount of \$500 for any one ticket conducted in accordance with the provisions of N.J.A.C. 13:47-8. 9/15/06

#### I. REPORTS OF OPERATIONS

1. The Report of Operations shall be on the form provided by the Control Commission. The report shall contain the following information:
  - a. Gross receipts derived from each game;
  - b. Expenses incurred or paid, to whom paid and a description of the merchandise purchased or the services rendered therefor;
  - c. Net profit from each game and the uses to which the net profit has been or will be applied; and
  - d. A list of prizes offered or given and their respective values.
2. The licensee shall file one copy of the Report of Operations no later than the fifteenth (15th) day of the calendar month immediately following the calendar month in which the licensed activity was held, operated or conducted.
3. NOTE:
  - a. Forms for the Report of Operations shall be supplied upon request to a licensee by the Municipal Clerk.

- b. In the case of raffles, a separate report shall be used for each type of raffle for which a license is issued.

J. ANNUAL REPORT BY MUNICIPALITY

1. The Municipal Clerk of a municipality which has adopted the Bingo and/or Raffles Licensing Law shall submit to the Control Commission annually for the twelve (12) month period ending December 31 of each year on or before January 31 of the following year, a Report containing the following information as to the operation of both bingo and raffles within the municipality for the preceding twelve (12) month period in accordance with N.J.A.C. 13:47-9.7 - 1 through 5:
2. The annual report shall consist of the following information:
  - a. Number of licenses issued;
  - b. Names, addresses and identification number of the licensees;
  - c. Aggregate amount of municipal license fees collected;
  - d. Names and addresses of all persons detected of violation of the laws, rules and regulations, all persons prosecuted, the result of each prosecution and the penalties imposed;
  - e. Recommendations for improvement of laws or the administration thereof, if any, made by the Governing Body.

K. VARIOUS TYPES OF RAFFLES 10/31/05; 9/15/18

1. Armchair Race;
2. Big Six Wheel;
3. Calendar Raffle;
4. Casino Night;
5. Draw Raffle;
6. Duck Race Raffle;
7. Instant Raffle;
8. Non-draw Raffle;
9. Off-Premises Raffle;
10. Off-Premises 50/50 Raffle;
11. On-Premises Draw Raffle;
12. On-Premises 50/50 Raffle;
13. Punch-Board Raffle;
14. Pull-Tab Raffle

## 15. \*Special Door Prize Raffle

\*Special Door Prize Raffle can be conducted without a license if:

- a. The organization is a qualified organization with an identification number;
- b. There is no extra charge made for the raffle;
- c. Only merchandise prizes may be given;
- d. All prizes must be wholly donated;
- e. The total retail value of all prizes must be less than two hundred dollars (\$200.) 9/15/15
- f. No other game of chance is being conducted on the occasion;
- g. Notice of the special door prize raffle has been given to the Municipal Clerk.

Effective 2002, the regulations for Armchair Races and Casino Nights have been adopted and included in this Chapter, and the applications and licenses for these events are handled by the Municipal Clerk in the same manner as other Raffle Licenses. 10/31/05

## L. MISCELLANEOUS

1. Exemptions - Registration Fee - A senior citizen association or club requesting registration shall submit a completed application together with sufficient proof of the organization's eligibility for registration. Qualified senior citizen associations and clubs shall be exempt from the biennial registration fee.
2. No game may be conducted where alcoholic beverages are sold, dispensed or consumed during the period of the commencement of the first and the conclusion of the last bingo game of the occasion.
3. On-Premises Draw Raffle - 50/50 or merchandise in excess of four hundred dollars (\$400) requires the fee as set forth above (twenty dollars (\$20) for each day on which a drawing is to be conducted under the license) - Under four hundred dollars (\$400) does not require a fee payable to the Control Commission or the municipality. 9/15/06
4. Amount of Prize Limitation - No prize having a retail value greater than that set forth below shall be offered or awarded in any raffle:
  - a. The aggregate value of all prizes to be awarded in any one (1) calendar year shall not exceed \$500,000, nor shall a licensee offer a prize or prizes of a value greater than \$100,000 in any one draw raffle.
  - b. No prizes having a retail value greater than \$500,000 shall be awarded in any raffle except a draw raffle. No such prize can be offered for non-draw raffles (i.e. carnival wheels and games, instant raffle tickets, calendar raffles, hole-in-one contests, etc.)

- c. The \$500,000/\$100,000 limit shall not apply to On-Premises raffles or where all the prizes are wholly donated.

Off-Premises Draw Raffles	\$100,000 per raffle \$500,000 annually
Non-Draw Raffles (Carnival Wheels & Games)	\$500 per prize
Instant Raffle Tickets	\$500 per prize
Calendar Raffles	\$25,000 per calendar
Golf Hole-In-One Contest	\$1,000,000 for grand prize hole in one \$500 per ancillary prize (Wholly donated prizes exempt from \$500 limit)

5. Statute only permits the use of proceeds from bingos and raffles for capital improvements except by organizations and for capital improvements meeting certain criteria. 10/31/05
6. Advertising of Bingos and Raffles
- a. The Legalized Games of Chance Control Commission shall promulgate regulations to govern the advertising of games of chance.
- b. The regulations shall prohibit:
- (1) Any advertisement from containing any false, deceptive, misleading or fraudulent statement regarding the holding, operation or conduct of a game of chance;
  - (2) Any advertisement from causing undue or unfair competition between organizations registered with the control commission that are holding competing games of chance; and
  - (3) The use, to an extent deemed excessive, of the proceeds derived from the conduct of any individual game of chance for advertising subsequent games of chance.
7. It shall be lawful for an organization eligible to conduct raffles and registered and licensed with the Legalized Games of Chance Control Commission to conduct, whether in person at any time or remotely whenever a Public Health Emergency is declared by the Governor and is in effect, raffles in a large sporting venue located in a municipality where the provisions of the "Raffles Licensing Law" are operative, provided that all other requirements to conduct raffles are met. 9/15/2021

#### § 6-4.1. EXHIBIT: BINGO CHECKLIST

10/31/05

\_\_\_\_\_ Enter organization information into Application Register and apply next available number.

- \_\_\_\_\_ Check to see if we have copy of ID Certificate on file.
- \_\_\_\_\_ Is it current (unexpired)?
- \_\_\_\_\_ Compare ID number, name of organization and address on the application with the ID certificate.
- \_\_\_\_\_ Check Dates (compare day of week and the dates with calendar)
- \_\_\_\_\_ More than six dates per month?
- \_\_\_\_\_ Does the total number of occasions exceed 72?
- \_\_\_\_\_ Does length of time for license exceed one year?
- \_\_\_\_\_ Do checks for Legalized Games of Chance Control Commission (LGCCC) and municipal fees accompany the application?
- \_\_\_\_\_ Are the amounts correct?
- \_\_\_\_\_ Print bingo license number on checks.
- \_\_\_\_\_ Are there more than 35 games listed on Schedule of Prizes?
- \_\_\_\_\_ Except for progressive and 50/50 bingo games, does any single game prize exceed \$1,000? 9/15/14
- \_\_\_\_\_ Is statement on schedule regarding compulsive gambling?
- \_\_\_\_\_ Is a listing of the members working the bingo attached?
- \_\_\_\_\_ Is a listing of members of other organizations working the bingo attached?
- \_\_\_\_\_ If so, does that organization have an ID #?

#### PROBLEMS/ACTION TAKEN

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#### § 6-4.2. EXHIBIT: RAFFLE CHECKLIST

10/31/05

- \_\_\_\_\_ Enter organization information into Application Register and apply next available number.
- \_\_\_\_\_ Check to see if ID Certificate is presented or copy on file. Is it current (unexpired)?
- \_\_\_\_\_ Compare ID number, name of organization and address on the application with the ID certificate.
- \_\_\_\_\_ Check date(s), more than six dates per month?
- \_\_\_\_\_ Does the total number of occasions for the year exceed 72?
- \_\_\_\_\_ Does the length of time for license exceed one year?



- \_\_\_\_\_ Do Checks for Legalized Games of Chance Control Commission (LGCCC) and municipal fees accompany the application?
- \_\_\_\_\_ Are the amounts correct?
- \_\_\_\_\_ Print license number on checks.
- \_\_\_\_\_ If application is for an off-premises raffle, are two copies of sample ticket attached? Are raffle license and identification number on samples?
- \_\_\_\_\_ If a non-draw carnival raffle, is form LGCCC 8R-A1 attached?
- \_\_\_\_\_ If 50/50, does one-half of proceeds go to winner?

- \_\_\_\_\_ If merchandise, is it a legal prize? No liquor, no personal service, no land, no currency [N.J.A.C. 13:47-6-19]
- \_\_\_\_\_ Is a listing of the members working the raffle attached?
- \_\_\_\_\_ Is a listing of members of other organizations working the raffle attached?
- \_\_\_\_\_ If so does that organization have an ID #?

#### PROBLEMS/ACTION TAKEN

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### § 6-4.3. EXHIBIT: APPLICATION PROCEDURE - BINGO/RAFFLE LICENSES

10/31/05

#### 1. ELIGIBILITY

Applicants must have a current State Legalized Games of Chance Control Identification number. ID numbers expire every two (2) years. If you have not renewed your identification number in the past two (2) years, or if you are applying for the first time, you must obtain a LGCCC Identification number by applying to:

Legalized Games of Chance Control Commission  
P.O. Box 46000, Newark New Jersey 07101

Please submit original certificate (to be returned) or copy thereof for our files.

#### 2. GENERAL REQUIREMENTS 9/15/13

- (A) The Officers of a licensee shall designate an officer or member to be in full charge of, and responsible for, the proper utilization of the entire net proceeds of the games of chance in accordance with the law and the rules and regulations of this Chapter.
- (B) The member in charge shall supervise all activities on the occasions for which he/she is in charge and shall be responsible for making the required Report of Operations thereon.
- (C) Each registered organization shall establish, keep and maintain a bank account in a State or Federal chartered banking institution in which only the proceeds derived from the conduct of games of chance shall be deposited and from which only payments for authorized expenses and utilization of net proceeds for authorized purposes shall be made.

#### 3. SUBMISSION REQUIREMENTS

- (A) Four completed, notarized Applications for Bingo/Raffle License. The type of license noted on top of Page 1 and indication on Page 1 of the name and address of the person to whom license should be sent;
- (B) No fee shall be charged for a qualified Senior Citizen Organization conducting a raffle solely for its bona fide active members.
- (C) Fee - On premises merchandise or 50/50:
  - (1) For raffles anticipating more than \$400.00 in prizes:  
Check payable to "Municipality" in the amount of \$20.00 for each day upon which a drawing is held. 9/14/07
  - (2) Check payable to "Legalized Games of Chance Control Commission" in the same amount noted above for municipality.
  - (3) For raffles anticipating less than \$400.00 in prizes, there is no fee. If, in fact, the prizes exceed \$400, the fee noted in (1) above must be submitted at the time the Report of Raffle Operations is filed.
- (D) Fee - Off premises merchandise or 50/50 and Calendar Raffle:
  - (1) Check payable to "Municipality" in the amount of \$20.00 for each thousand dollars, or part thereof, of prizes awarded. 9/15/06
  - (2) Check payable to "Legalized Games of Chance Control Commission" in the same amount noted above for municipality.
- (E) Fee - Non-Draw Raffle (Carnival Games and Wheels)
  - (1) Check payable to "Municipality" in the amount of \$20.00 for each game or wheel, held on any one (1) day or any series of consecutive days not exceeding six (6) in any one (1) week at one (1) location. 9/15/06
  - (2) Check payable to "Legalized Games of Chance Control Commission" in the same amount noted above for municipality.
- (F) Fee - Instant Raffle
  - (1) Check payable to "Municipality" in the amount of \$20.00 per day that raffle will be conducted or \$750.00 for a one (1) year period to sell or offer for sale instant raffle tickets during the year. 9/15/06; 9/15/08
  - (2) Check payable to "Legalized Games of Chance Control Commission" in the same amount above for municipality.
- (G) Fee - Bingo
  - (1) Check payable to "Municipality" in the amount of \$20.00 per day that bingo will be conducted. 9/15/06
  - (2) Check payable to "Legalized Games of Chance Control Commission" in the same amount above for municipality.

## 4. SUBMISSION DEADLINE

- (A) Applications must be approved by the Governing Body prior to the bingo/raffle. Applications must be received by Municipal Clerk at least 7 days prior to Governing Body meeting at which approval is sought. 9/14/07
- (B) Governing Body meetings are held as follows:  
(INSERT SCHEDULE).

## 5. PROCEDURE AFTER GOVERNING BODY ACTION

- (A) The Municipal Clerk's Office must send application to Legalized Games of Chance Control Commission and allow fourteen (14) calendar days for LGCCC to raise any objections before license can be issued. 9/14/07; 9/15/14
- (B) License number cannot be issued to applicant until the fourteen (14) calendar day period has transpired. 9/15/06; 9/15/14
- (C) After fourteen (14) days, license will be issued and transmitted to applicant. The license must be conspicuously displayed at the time and place of the drawing. 9/14/07; 9/15/14
- (D) Sign as follows must be posted at the time and place of drawing - "Is gambling a problem for you or someone in your family? Dial 1/800-GAMBLER". The sign will be provided to you by the Legalized Games of Chance Control Commission.
- (E) Sign must be posted stating that persons under the age of 18 are prohibited from purchasing tickets.

## 6. BINGO/RAFFLE REPORT

- (A) Three Bingo/Raffle Report Forms will be transmitted to you by Legalized Games of Chance Control Commission. Two completed, signed and notarized reports must be filed with the Legalized Games of Chance Control Commission, P.O. Box 46000, Newark NJ 07101 by the 15th day of the month following the bingo/raffle. One copy should be retained for your files.
- (B) The Bingo/Raffles License must be returned to Legalized Games of Chance Control Commission with the report for the last day covered by the license.
- (C) Failure to submit a Report of Bingo/Raffles Operations will result in LGCCC denial of future licenses for your organization.

## 7. RECREATIONAL BINGO LICENSES 9/15/13

Any person, group, or organization desiring to hold, operate and conduct games of chance solely for amusement and recreation may do so, without licensure and without complying with the provisions of the "Bingo Licensing Law," provided that:

- (A) No player or other person furnishes something of value for the opportunity to participate. ("Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of

any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game without charge.)

(B) The prize(s) to be awarded are of nominal retail value;

(C) No person is paid for conducting or assisting in the conduct of the game(s).

The holding, operating and conducting of games of chance solely for amusement and recreation pursuant to this section shall not involve the use of any device into which currency, coins or tokens may be inserted or from which currency, coins or tokens, or any receipt for monetary value, can be dispensed or which, once provided to a person participating in bingo, is capable of communicating with other such devices.

[REFERENCE - P.L. 2012, c.63]



# Application for a Bingo License

Application No. **BA** \_\_\_\_\_

Identification No. \_\_\_\_\_

**Submit four (4) copies of this application to the Municipal Clerk's office in the municipality where the games will be conducted.**

Please print clearly.

Name of municipality: \_\_\_\_\_

## Part A - General

1. Name of applying organization: \_\_\_\_\_

2a. Street address of headquarters: \_\_\_\_\_

b. Mailing address (if different): \_\_\_\_\_

3. List date(s) and hours for games:

Date	Hours	Date	Hours
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Address of place where bingo will be played: \_\_\_\_\_

a. Does the applicant own the premises or regularly occupy them for its general purposes? ☐ Yes ☐ No

b. If "No," from whom will the applicant rent the premises?

Name \_\_\_\_\_ Address \_\_\_\_\_

c. If premises are to be rented, attach Form 10, "Statement of Landlord."

## Part B - Schedule of Expenses

The items of expense intended to be incurred or paid in connection with the games listed in this application, the names and addresses of the persons to whom each item is to be paid, and the purpose for which each item is to be paid, are:

Item of Expense	Name and address of supplier	Purpose
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



**Part E - Officers of Applicant**

Office	Name of officer	Residence address	Age

**Part F - Members of Applicant who will be in charge of the games**

Name of member in charge	Residence address	Telephone No. (include area code)	Age

**Part G - Members of Applicant who will assist in conducting the games**

Name of member	Residence address	Age

**Part H - Names of other organizations whose members will assist in conducting the games**

Name and address of organization	How related	Identification No.

If more space is needed in any section of this application, insert extra sheets of paper.

**continue** ➡

**Part I - Statement of Applicant and member(s) in charge**

State of New Jersey

) ss.

County of \_\_\_\_\_

We do hereby each make the following statement, under oath, with respect to the foregoing application:

1. The applicant (is) (is not) limited in its activities to the furtherance of one or more authorized purposes as defined in the Bingo Licensing Law.
2. Prior to the issuance of any license to it to conduct games of chance, the applicant was actively engaged in serving one or more "authorized purposes."
3. The applicant has received and used, and in good faith expects to continue to receive and use, to further one or more authorized purposes, funds from sources other than games of chance.
4. The conduct of the games on the occasion or occasions for which this application is made will be to raise and devote the entire net proceeds to the authorized purpose described in the application.
5. For each occasion for which a license is sought, one or more of the members listed who are familiar with the Bingo Licensing Law and the Rules and Regulations, will be in full charge of, and primarily responsible for, the conduct of the games.
6. No commission, salary, compensation, reward or recompense will be paid to any person for holding, operating or conducting or assisting in the holding, operation or conducting, of the games, except to bookkeepers or accountants for professional services not exceeding the amounts fixed by the Schedule of Fees, as well as the compensation for the Licensed Compensated Workers pursuant to N.J.A.C. 13:47-6A. All prizes offered for games conducted on a single occasion will not exceed the limit on the sum or retail value of prizes as provided by the Bingo Licensing Law (N.J.S.A. 5:8-25 et seq.) and N.J.A.C. 13:47-6.16 and 13:47-7.2.
7. All statements in the foregoing application are true.

Sworn and subscribed to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public (Print name)\_\_\_\_\_  
Signature of Notary Public\_\_\_\_\_  
Signature of Officer and Title\_\_\_\_\_  
Signature of Member-in-Charge\_\_\_\_\_  
Signature of Member-in-Charge\_\_\_\_\_  
Signature of Member-in-Charge\_\_\_\_\_  
Signature of Member-in-Charge

If more space is needed in any section of this application, insert extra sheets of paper.

Applicant's registration slip from the *Legalized Games of Chance Control Commission* must be presented to the Municipal Clerk with this application.

## Identification No. \_\_\_\_\_

Name of municipality: \_\_\_\_\_

[illegible]

5. If raffles equipment is to be rented, attach a statement by the raffles equipment lessor to this application on Form 13.

## This image shows a single page from a notebook or ledger. The page is white with faint, evenly spaced horizontal lines running across it. At the top center, there is a small, circular embossed stamp or seal, which appears to contain some illegible text or a logo. The overall appearance is that of a clean, unused page from a bound volume.



**Part C - Schedule of Purposes**

1. The specific purpose(s) to which the entire net proceeds of the games listed in this application are to be devoted, and the manner in which they are to be so devoted, are:

2. If any part of the net proceeds are to be devoted to a purpose allowed by the Raffles Licensing Law by turning the same over to another organization which is exclusively devoted to such purposes, secure the signature of its president or other executive officer to the following certificate:

"It is hereby certified that \_\_\_\_\_  
Name of organization

will accept from the licensee any part of the net proceeds of the games listed in this application to be turned over to it."

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Part D - Schedule of Prizes**

A description of all prizes to be offered and given in all of the games listed in this application is as follows. For merchandise, describe the article and state the retail value; if prizes are to be donated, indicate that fact and estimate as accurately as possible the information requested below.

Description of Prize	Donated (Yes or No)	Retail value
_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
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_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

**Part E - Officers of Applicant**

(1) Office	Name of officer	Age
_____	_____	_____
Residence address	Telephone No. <i>(include area code)</i>	
_____	Day _____ Evening _____	
(2) Office	Name of officer	Age
_____	_____	_____
Residence address	Telephone No. <i>(include area code)</i>	
_____	Day _____ Evening _____	
(3) Office	Name of officer	Age
_____	_____	_____
Residence address	Telephone No. <i>(include area code)</i>	
_____	Day _____ Evening _____	
(4) Office	Name of officer	Age
_____	_____	_____
Residence address	Telephone No. <i>(include area code)</i>	
_____	Day _____ Evening _____	

**Part F - Members of Applicant who will be in charge of the games**

Name of member in charge	Residence address	Telephone No. <i>(include area code)</i> Day / Evening	Age
_____	_____	_____ / _____	_____
_____	_____	_____ / _____	_____
_____	_____	_____ / _____	_____
_____	_____	_____ / _____	_____
_____	_____	_____ / _____	_____

**Part G - Members of Applicant who will assist in conducting the games**

Name of member	Residence address	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Part H - Names of other organizations whose members will assist in conducting the games**

Name and address of organization	How related	Identification No.
_____	_____	_____
_____	_____	_____
_____	_____	_____

If more space is needed in any section of this application, insert extra sheets of paper.

**Part I - Statement of Applicant and member(s) in charge**

State of New Jersey

) ss.

County of \_\_\_\_\_

We do hereby each make the following statement, under oath, with respect to the foregoing application:

1. The applicant (is) (is not) limited in its activities to the furtherance of one or more authorized purposes as defined in the Raffles Licensing Law.
2. Prior to the issuance of any license to it to conduct games of chance, the applicant was actively engaged in serving one or more "authorized purposes."
3. The applicant has received and used, and in good faith expects to continue to receive and use, to further one or more authorized purposes, funds from sources other than games of chance.
4. The conduct of the games on the occasion or occasions for which this application is made will be to raise and devote the entire net proceeds to the authorized purpose described in the application.
5. For each occasion for which a license is sought, one or more of the members listed who are familiar with the Raffles Licensing Law and the Rules and Regulations, will be in full charge of, and primarily responsible for, the conduct of the games.
6. No commission, salary, compensation, reward or recompense will be paid to any person for holding, operating or conducting or assisting in the holding, operation or conducting, of the games, except to bookkeepers or accountants for professional services not exceeding the amounts fixed by the Schedule of Fees, as well as the compensation for the Licensed Compensated Workers pursuant to N.J.A.C. 13:47-6A. No prize may be offered and given in cash, except as otherwise provided by the Raffles Licensing Law (N.J.S.A. 5:8-50 et seq.). If a cash prize under certain circumstances is permitted by the law, the amount of the cash prize may not exceed the limits prescribed by the Raffles Licensing Law.
7. All statements in the foregoing application are true.

Sworn and subscribed to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public (Print name)

Signature of Notary Public



Signature of Officer and Title

Signature of Member-in-Charge

Signature of Member-in-Charge

Signature of Member-in-Charge

Signature of Member-in-Charge

If more space is needed in any section of this application, insert extra sheets of paper.

Applicant's registration slip from the *Legalized Games of Chance Control Commission* must be presented to the Municipal Clerk with this application.

**§ 6-5. CERTIFICATION OF INSURANCE - LIMOUSINES, TAXICABS, AUTOBUSES/JITNEYS**

10/31/05

Municipalities have the power to license limousines, taxicabs, autobuses (jitneys) as set forth in Chapter 6. If the municipality does not license these activities, the Municipal Clerk is still required to perform certain services for the State Motor Vehicle Commission as follows:

**A. LIMOUSINES**

Means and includes any automobile or motor car used in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, non-scheduled, charter basis that is not conducted on a regular route and with a seating capacity in no event of more than fourteen (14) passengers, not including the driver, provided that such a vehicle shall not have a seating capacity in excess of four (4) passengers, not including the driver, beyond the maximum passenger seating capacity of the vehicle, not including the driver, at the time of manufacture. Nothing in this article contained shall be construed to include taxicabs; hotel buses; buses employed solely in transporting school children or teachers; vehicles owned and operated directly or indirectly by businesses engaged in the practice of mortuary science when those vehicles are used exclusively for providing transportation related to the provision of funeral services; autobuses which are subject to the jurisdiction of the Department of Transportation or interstate autobuses required by federal or state law or regulations of the Department of Transportation to carry insurance against loss from liability imposed by law on account of bodily injury or death. [N.J.S.A. 48:16-13]

1. Owner to file with the Municipal Clerk of the municipality in which the owner has his principal place of business (the location of the main place of business of the limousine service in the municipality where limousine service is conducted, where limousines are dispatched, or where limousine drivers report for duty [N.J.S.A. 48:16-31]) an insurance policy of a company duly licensed to transact business under the business laws of the state providing insurance in the amount of \$1,500,000 to satisfy any claims for damages by reason of bodily injury or death of any person as a result of an accident occurring by reason of the ownership, maintenance or use of the limousine upon a public street. The insurance company shall notify the Director of the Motor Vehicle Commission monthly of the cancellation for non-payment and new policies issued. [N.J.S.A. 48:16-14]
2. Owner to file with the Director of the Motor Vehicle Commission, wherein and whereby the owner shall appoint the Director of the Motor Vehicle Commission, as true and lawful attorney for the purpose of acknowledging service of any process out of a court of competent jurisdiction to be served against the insured by virtue of the indemnity granted under the insurance policy; [N.J.S.A. 48:16-14]
3. Municipal Clerk of the municipality in which the owner has his principal place of business shall, upon filing of the required insurance policy and the payment of a fee which shall not exceed fifty dollars (\$50.00), issue a license to operate in

duplicate showing that the owner of the limousine has complied with the above provisions.

The license shall state the name of the insurance company, number and expiration date of the insurance policy, description and registration number of the limousine, or a notarized letter from an insurance company containing such information may be affixed to the license.

The duplicate must be filed with the NJ Motor Vehicle Commission. The original license shall be retained within the limousine and shall be available for inspection by any police officer in the State.

#### B. TAXICABS

Means and includes automobile or motor car, commonly called taxi, engaged in the business of carrying passengers for hire which is held out, announced or advertised to operate or run or which is operated or run over any of the streets or public highways of this state, and particularly accepts and discharges such persons as may offer themselves for transportation from points or places within or without the state. [N.J.S.A.48:16-1 et seq.]

1. Consent of the Governing Body or member thereof having control of public streets;
2. Owner to file with the Municipal Clerk an insurance policy of a company duly licensed to transact business in the state providing insurance in the amount of ten thousand (\$10,000) dollars to satisfy all claims for damages by reason of bodily injury or death of any one (1) person, and not less than twenty thousand (\$20,000) dollars to satisfy all claims of bodily injury or death in any one accident, and not less than five thousand (\$5,000.00) dollars to satisfy any claims for property damage;
3. Owner to file with the Municipal Clerk a power of attorney, wherein and whereby the owner shall appoint the Chief Fiscal Officer of the municipality as his true and lawful attorney for the purpose of acknowledging service of any process out of a court of competent jurisdiction to be served against the insured;
4. Municipal Clerk to, upon filing of the required insurance policy and power of attorney, issue a certificate in duplicate showing that the owner of the autocab has complied with the above provisions and stating the name of the insurance company, number and expiration date of the insurance policy, description and registration number of the autocab. The duplicate must be filed with NJ Motor Vehicle Commission; the original displayed conspicuously in the autocab.
5. Consent of the Governing Body may be revoked after notice and hearing whenever it shall appear that the person to whom the Consent was granted has failed to furnish or maintain the insurance and power of attorney required above.
6. A municipality shall determine by ordinance the number of taxi licenses available for issuance [P.L. 2011, c. 135]. 9/15/12



## C. AUTOBUSES (JITNEYS)

Means and includes any automobile or motor bus, commonly called a jitney, with a carrying capacity of not more than thirteen (13) passengers, operated under municipal consent upon a route established wholly within the limits of a single municipality or with a carrying capacity of not more than twenty (20) passengers operated under municipal consent upon a route established wholly within the limits of not more than four (4) contiguous municipalities within any county of the fifth or sixth class, which route in either case does not, in whole or in part, parallel upon the same street the line of any street railway or traction railway of any other autobus route. [N.J.S.A. 48:16-23 et seq.]

1. Consent of the Governing Body or member thereof having control of public streets;
2. Owner to file with the Chief Fiscal Officer an insurance policy of a company duly licensed to transact business in the state providing insurance in the amount of ten thousand (\$10,000) dollars to satisfy all claims for damages by reason of bodily injury or death of any one (1) person, and not less than one hundred thousand (\$100,000) dollars to satisfy all claims of bodily injury or death in any one accident, and not less than five thousand (\$5,000.00) dollars to satisfy any claims for property damage;
3. Owner to file with the Chief Fiscal Officer a power of attorney, wherein and whereby the owner shall appoint the chief fiscal officer of the municipality as his true and lawful attorney for the purpose of acknowledging service of any process out of a court of competent jurisdiction to be served against the insured;
4. Consent of the Governing Body may be revoked after notice and hearing whenever it shall appear that the person to whom the Consent was granted has failed to furnish or maintain the insurance and power of attorney required above.

## **Chapter 7**

### **MUNICIPAL LAND USE LAW & THE ROLE OF THE MUNICIPAL CLERK**

#### **§ 7-1. ADMINISTRATIVE OFFICER.**

#### **§ 7-2. ZONING/DEVELOPMENT ORDINANCES.**

#### **§ 7-2.1. EXHIBIT - ORDINANCE ACTIVITY CHART**

#### **§ 7-2.2. EXHIBIT - SAMPLE NOTICES FOR PUBLICATION OF ORDINANCES**

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The Municipal Land Use Law [N.J.S.A. 40:55D-1 et seq.] governs the planning, zoning, subdivision, and site plan powers of the municipality.

#### **§ 7-1. ADMINISTRATIVE OFFICER.**

9/15/10; 9/15/18

The Municipal Land Use Law [N.J.S.A. 40:55D-1 et seq.] governs the planning, zoning, subdivision, and site plan powers of the municipality. Municipalities possess no inherent zoning power; all authority regarding zoning and land use is exclusively derived from the authority vested in municipal government per the MLUL.

Pursuant to N.J.S.A. 40:55D-3, the term "Administrative Officer" means the clerk of the municipality unless a different municipal official or officials are designated by ordinance or statute. According to William M. Cox in his seminal book "New Jersey Land Use Zoning and Administration," this provision cause considerable concern among clerks, who felt already overburdened. Those concerns have been alleviated by the fact that land use procedures portions of ordinances now virtually always specify other officials, such as the secretary of the planning or zoning board of adjustment, the zoning officer, or other such officials with respect to specific duties. Accordingly, the clerk has become largely divorced from duties relative to development applications and are now mainly confined to those imposed in connection with the enactment of ordinances or adoption of a master plan, official map, or capital improvement program. See New Jersey Land Use Zoning and Administration, 2018, Section 2-2.

#### **§ 7-2. ZONING/DEVELOPMENT ORDINANCES.**

10/31/05; 9/15/10

##### **A. FIRST READING/INTRODUCTION**

1. The Governing Body prepares the draft ordinance or accepts a proposed ordinance from the Planning Board.

2. The Governing Body shall read the proposed ordinance by title only at first reading. Roll call vote required with affirmative vote of a majority of the members present.
3. The Governing Body sets the second reading the Public Hearing at least ten (10) days after first reading.

#### B. REFERRAL TO PLANNING BOARD

1. In municipalities having a Master Plan (the Master Plan and the Housing Element of the Master Plan are adopted by the Planning Board), the zoning ordinance or an amendment thereto must be referred to the municipal Planning Board for review. This review is based on whether the proposal is substantially consistent with the Master Plan. The Planning Board has a period of thirty-five (35) days after referral to report to the Governing Body. Failure to report within the 35-day period shall relieve the Governing Body from the requirements of this section with regard to the proposed development regulation, revision or amendment thereto referred to the Planning Board. If the Governing Body chooses to disapprove or change any recommendation made in the report, the Governing Body must act by a majority of its full authorized membership. [N.J.S.A. 40:55D-26] 9/15/14
2. The Governing Body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element and the housing plan element, but only by affirmative vote of a majority of the full authorized membership of the Governing Body, with the reasons of the Governing Body for so acting set forth in a resolution and recorded in its minutes when adopting such a zoning ordinance or amendment. [N.J.S.A. 40:55D-62] 9/15/19

#### C. LEGAL ADVERTISING

1. The Municipal Clerk publishes the proposed ordinance in the legal newspaper of the municipality at least ten (10) days prior to the scheduled hearing date.
2. When calculating advertising date, the date of publication is not counted, and the date of hearing is counted.
3. Pursuant to N.J.S.A. 40:49-2.1: In the case of any ordinance adopted pursuant to the "Municipal Land Use Law," P.L.1975, c. 291 (N.J.S.A. 40:55D-1 et seq.), including any amendments or supplements thereto, or revisions or codifications thereof, which is in length six (6) or more octavo pages of ordinary print, the Governing Body of any municipality may, notwithstanding the provisions of N.J.S.A. 40:49-2, satisfy the newspaper publication requirements for the introduction and passage of such ordinance in the following manner:
  - a. The publication of a notice citing such proposed ordinance by title, giving a brief summary of the main objectives or provisions of the ordinance, stating that copies are on file for public examination and acquisition at the office of the Municipal Clerk, and setting forth the time and place for the further consideration of the proposed ordinance;

- b. The placing on file, in the office of the Clerk, three (3) copies of the proposed ordinance, which copies shall be available for public inspection until final action is taken on said ordinance; and
- c. The publication or arranging for the publication of the proposed ordinance in pamphlet or other similar form, which may be sold by the municipality at a price not to exceed the cost of publication and distribution.

If any amendment be adopted to any such proposed ordinance substantially altering the substance of the proposed ordinance, there shall be caused to be published a notice of the title of the ordinance, the introduction and time and place that the amended ordinance will be further considered and a summary of the objectives or provisions of the amendment or amendments, which notice shall be published at least two (2) days prior to the time so fixed therefor in accordance with subsection c. of N.J.S.A. 40:49-2. Copies of the amended ordinance shall be on file and available for public examination and duplication, in the office of the Municipal Clerk, until final action is taken on said ordinance. If said ordinance is again amended, the same publication requirements herein set forth for amended ordinances shall be followed.

Upon passage of any such ordinance, notice of passage or approval shall be published in accordance with subsection d. of N.J.S.A. 40:49-2. A copy of the ordinance and of any summary or summaries published in connection with its adoption pursuant to subsection a. or c. of this section above shall be forthwith transmitted to the tax assessor of the municipality.

[7/21/11; N.J.S.A. 40:49-2.1]

NOTE: Weigh costs for Municipal Attorney to prepare ordinance summary against the publication cost for the ordinance published in full.

#### D. NOTICES [N.J.S.A. 40:55D-15]

1. Notice by personal service, certified mail, or e-mail with confirmation that the e-mail was delivered, shall be made to the clerk(s) of an adjoining municipality of all hearings on the adoption, revision or amendment of a development regulation involving property situated within 200 feet of such adjoin municipality at least 10 days prior to the date of such hearing. Include copy of proposed development regulation. 9/15/16
2. Notice by personal service, certified mail, or e-mail with confirmation that the e-mail was delivered, shall be made to the county planning board of (1) all hearings on the adoption, revision, or amendment of any development regulation as least ten days prior to the date of the hearing, and (2) the adoption, revision, amendment of the municipal capital improvement program or municipal official map not more than 30 days after the date of such adoption, revision or amendment. Any notice provided hereunder shall include a copy of the proposed development regulation, the municipal official map or the municipal capital program, or any proposed revision or amendment thereto, as the case may be. 9/15/16

3. Notice of hearing to be held pursuant to this section shall state the date, time and place of the hearing and the nature of the matters to be considered. Any notice by certified mail or e-mail pursuant to this section shall be deemed complete upon mailing or when e-mailing upon confirmation that the e-mail was delivered as appropriate. 9/15/16

For the purposes of this section, proof that an e-mail was sent to the correct e-mail address within the required time frame shall constitute a rebuttable presumption of confirmation that the e-mail was delivered. 9/15/16

#### E. ZONING DISTRICT CLASSIFICATION OR BOUNDARY CHANGE—NOTICE

In addition to the notice requirements in "D" above:

1. Notice of a hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district, exclusive of classification or boundary changes recommended in a periodic general reexamination of the Master Plan by the Planning Board, shall be given at least ten (10) days prior to the hearing by the Municipal Clerk **to the owners of all real property as shown on the current tax duplicates who are, located, in the case of a classification change, within the district and within the State within two hundred (200') feet in all directions of the boundaries of the district, and located, in the case of a boundary change, in the State within two hundred (200') feet in all directions of the proposed new boundaries of the district which is the subject of the hearing.** [N.J.S.A. 40:55D- 62.1]. If this provision involves municipalities outside your boundaries, certified lists of property owners must be obtained from the Tax Assessor or other Administrative Officer in the adjoining municipality for use in giving notice to property owners. 9/15/18
2. See N.J.S.A. 40:55D-62.1 for notice requirements to any military facility commander is the facility is located in the district or within three thousand (3,000') feet of the district.
3. Notice shall state the date, time and place of the hearing, the nature of the matter to be considered, and an identification of the affected zoning districts and proposed boundary changes, if any by street names, common names or other identifiable landmarks, and by reference to lot and block numbers shown on the current tax duplicate in the municipal Tax Assessor's office.
4. Notice shall be given by (1) personal service or (2) certified mail **and** regular mail to the owners of all real property as shown on the current tax duplicate.
5. See N.J.S.A. 40:55D-62.1 for notice requirements to partnerships, corporations, condominium associations, horizontal property regimes, community trusts, or homeowners' associations in addition to notice to unit/home owners.

#### F. ORDINANCE POSTING

1. Post the proposed ordinance on the public bulletin board or whatever area is designated for the posting of public notices.
2. Provide copies to the public upon request. Fee for copies may be charged pursuant to municipal policy.



G. AFFIDAVITS/INTRODUCTION

1. The Municipal Clerk prepares a notarized Affidavit of Proof of Publication of the notice of the required public hearing on the proposed zoning ordinance change in the legal newspaper of the municipality or obtains a notarized Affidavit of Proof of Publication from the newspaper.
2. The Municipal Clerk shall execute an Affidavit of Proof of Service of the notices required by subsection D (and subsection E if applicable) and shall keep the Affidavit on file along with the Affidavit of Proof of Publication.
3. The Municipal Clerk attaches the white certified mail receipts to the Affidavit of Proof of Service. The green return receipt post cards do not need to be received to prove service has been made, but retain the post cards returned to the municipality.
4. The costs of the notice provision shall be the responsibility of the proponent of the amendment.

H. AMENDMENT OF ORDINANCE PRIOR TO FINAL ADOPTION [N.J.S.A. 40:49-2c]

If there is any amendment to the published ordinance which substantially alters the substance of the ordinance:

1. Ordinance as amended must be read by title at the previously scheduled hearing date, amended by resolution setting forth the amendment.
2. The ordinance as amended must be published with a notice of introduction and including the time and place when the ordinance as amended will be further considered, which consideration (hearing) must be at least one (1) week thereafter.
3. Publication must be at least two (2) days prior to the hearing date of the amended ordinance.
4. An amendment to a Zoning/Development ordinance that is six (6) or more pages does not need not be advertised in full, but notice by title and summary of contents, along with hearing date, time and place may be published. When such option is utilized, three (3) copies of the full document must be on file with the Municipal Clerk and available for public inspection. Copies in pamphlet or similar form must be available for sale to the public at a price not to exceed the cost of publication and distribution.

I. PUBLIC HEARING

1. At the second reading and public hearing, the proposed ordinance is read by title if it was properly posted. Read the ordinance in full if not properly posted. [N.J.S.A. 40:49-2c]
2. The Affidavit of Proof of Publication and Affidavit of Service of Notice are reviewed by the Municipal Attorney and approved for filing.

3. The public hearing is opened for public discussion on the ordinance by voice vote of the Governing Body. Public comment is received. The names and addresses of speakers and an indication of their views, whether for or against ordinance, are noted in the minutes. The public hearing on the ordinance is closed by voice vote of the Governing Body.
4. The hearing can be adjourned to another specified date and time by announcement without publication of ordinance or notice. [N.J.S.A. 40:49-2b]
5. The recommendation from the Planning Board is reviewed and approved for filing.

J. FINAL ADOPTION

1. Final adoption must be at least ten (10) days after first reading by roll call vote;
2. Required vote to adopt:
  - a. Affirmative vote of majority of the Governing Body present in most municipalities - affirmative vote of majority of the full authorized membership of the Governing Body in Faulkner Act municipalities.
  - b. Two-thirds (2/3) majority of the full authorized membership of the Governing Body if any of the following occurs during the process for adoption of a zoning ordinance or amendment:
    - (1) Thirty-five (35) days have elapsed and the recommendation from the Planning Board has not been received; or
    - (2) The Planning Board finds that the ordinance is not consistent with the Master Plan or not designed to effectuate the land use plan and housing plan element of the Master Plan; or
    - (3) A petition signed by the property owners of twenty percent (20%) of the area affected by a proposed zone change or the property owners of twenty percent (20%) zone change is filed with the Municipal Clerk.
3. Notice of Final Adoption must be published in the municipality's official newspaper within ten (10) days of adoption. The Municipal Clerk prepares a notarized Affidavit of Publication in legal newspaper of the municipality or obtains a notarized Affidavit of Proof of Publication from the newspaper.

K. EFFECTIVE DATE.

1. The effective date depends on municipality's form of government:
  - a. Upon publication of the notice of final adoption in most municipalities but twenty (20) days after adoption (assuming notice of final adoption was published as required above) in Faulkner Act Municipalities. [N.J.S.A. 40:69A-181b]
  - b. After signature by Mayor if required by municipality's form of government.

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- c. In Faulkner Act municipalities, the twenty (20) day waiting period for ordinance effectiveness (except bond/assessment ordinances) can be waived by resolution of the Governing Body by declaring the situation an "emergency" [N.J.S.A. 40:69A-181b]. Resolution declaring an emergency requires the affirmative vote of two-thirds (2/3) of the full authorized membership of the Governing Body.
2. A certified copy must be filed with the County Planning Board within thirty (30) days of adoption. The ordinance not effective until filed with the County Planning Board. Send by personal service or certified mail. Retail proof of mailing and green post card receipt.
3. A copy of the ordinance must be filed with Municipal Tax Assessor.
4. The Municipal Clerk sends a notice of adoption to the Planning Board, Board of Adjustment, Zoning Officer, Municipal Attorney, Municipal Court, and anyone else on usual municipal circulation list.

**§ 7-2.1. EXHIBIT - ORDINANCE ACTIVITY CHART**

9/15/10

<b>ORDINANCE TYPE</b>	<b>ZONING/DEVELOPMENT</b>
INTRODUCTION	In writing, read by title, introduce by motion, requires affirmative vote of a majority of members present
LEGAL ADVERTISING	Publish at least 10 days before hearing. If more than 6 pages long, consider publishing by title and summary
OTHER NOTICES AND POSTING	Refer to Municipal Planning Board; Post on bulletin board; Notice to adjoining municipalities and County Planning Board at least 10 days before hearing by certified mail, personal service or e-mail; Copies for public at municipal fee. 9/15/16
CHANGE IN CLASSIFICATION OR BOUNDARIES OF A ZONING DISTRICT (EXCEPT WHEN RECOMMENDED IN PERIODIC GENERAL MASTER PLAN REVIEW BY PLANNING BOARD)	Notice to property owners within zone and within 200 feet by certified mail and regular mail; notice to military commander if required
AFFIDAVITS	Affidavit of Publication; Affidavit of Service of Notice
AMEND PRIOR TO HEARING	Read by title amended by Resolution; Consider at least 1 week later; Publish at least two days prior to hearing

ORDINANCE TYPE	ZONING/DEVELOPMENT
SUPPLEMENTS TO HEARING	Planning Board report, if provided; Affidavits of Publication and Service
FINAL ADOPTION	At least 10 days after introduction. Affirmative vote of majority members Present EXCEPT Faulkner municipalities that require an affirmative vote of majority of full membership. Upon signature of Mayor if required by form of government
SPECIAL PROCEDURES FOR LACK OF PLANNING BOARD APPROVAL OR FILING OF PETITION	2/3 vote of full membership
NOTICE OF FINAL ADOPTION	Publish Notice of Final Adoption
AFFIDAVIT	Affidavit of Publication
EFFECTIVE DATE	Upon publication of Notice of Final Adoption. If Faulkner municipality, 20 days after adoption unless emergency declared.
AFTER ADOPTION	File with County Planning Board by certified mail or personal service within 30 days; Copy Tax Assessor and municipal staff

### § 7-2.2. EXHIBIT - SAMPLE NOTICES FOR PUBLICATION OF ORDINANCES

9/15/10

#### HEARING NOTICE:

The foregoing (or following depending on whether this notice appears above or below the ordinance) Ordinance was introduced at a Regular/Special Meeting of the (insert name of Governing Body) of the (insert name of municipality) held on (insert date) and was read for the first time. This ordinance will be further considered for final passage by the said (insert name of Governing Body) at the (insert place/address of hearing location) at a meeting beginning at (insert time) p.m. to be held on (insert date) or at any time and place to which such meeting may be adjourned. All persons interested will be given the opportunity to be heard concerning such ordinance. Copies of this Ordinance are available at the (insert name and address of the Municipality/Municipal Building). Signed by (insert name of Municipal Clerk).

#### NOTICE OF FINAL ADOPTION:

Ordinance No. ---/Title of Ordinance.

Notice is hereby given that the foregoing ordinance was approved for final adoption by the (insert name of Governing Body) of the (insert name of municipality) at a Regular/Special Meeting held on (insert date). Signed by (insert name of Municipal Clerk).

## **Chapter 8**

### **LOCAL PUBLIC CONTRACTS LAW**

§ 8-1. GENERAL INFORMATION	§ 8-15. RECEIPT OF FORMAL BIDS
§ 8-2. APPLICABILITY OF THE CONTRACTS LAW AND CORRESPONDING RULES	§ 8-16. OPENING OF FORMAL BIDS
§ 8-3. DEFINITIONS	§ 8-17. AWARD OF A CONTRACT IN EXCESS OF THE BID THRESHOLD
§ 8-4. THE ESTABLISHMENT AND AUTHORITY OF A PURCHASING AGENT	§ 8-18. REJECTION OF ALL BIDS
§ 8-5. BID THRESHOLD	§ 8-19. DISQUALIFICATION OF BIDDERS
§ 8-6. COMPETITIVE BIDDING REQUIREMENTS	§ 8-20. BID GUARANTEES AND SURETY REQUIREMENTS
§ 8-7. LOWEST RESPONSIBLE BIDDER	§ 8-21. AWARD AND SIGNING OF A CONTRACT AND RETURN OF BID SECURITY
§ 8-8. COMPETITIVE CONTRACTING	§ 8-22. ALL CONTRACTS IN WRITING
§ 8-9. CONTRACTS LAW AUTHORIZED EXCEPTIONS TO THE RECEIPT OF FORMAL BIDS	§ 8-23. SALE OR DISPOSITION OF PUBLIC PERSONAL PROPERTY
§ 8-10. LOCAL COOPERATIVE PURCHASING SYSTEMS	§ 8-24. CHANGE ORDERS
§ 8-11. AWARD OF EXTRAORDINARY UNSPECIFIABLE SERVICES (EUS) CONTRACTS	§ 8-25. BUSINESS REGISTRATION OF PUBLIC CONTRACTORS CERTIFICATE 9/15/08; 9/15/10; 9/15/12
§ 8-12. SOLICITATION OF COMPETITIVE QUOTATIONS	§ 8-26. THE NEW JERSEY LOCAL UNIT PAY-TO-PLAY LAW
§ 8-13. DURATION OF CONTRACTS	§ 8-26.1. EXHIBIT - SAMPLE STANDARD CERTIFICATION DECLARATION FOR AN EXTRAORDINARY UNSPECIFIABLE SERVICE
§ 8-14. CERTAIN ASPECTS CONCERNING THE STATUTORY BID PROCESS OF INTEREST TO MUNICIPAL CLERKS	

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#### **§ 8-1. GENERAL INFORMATION**

##### **A. INTRODUCTION**

1. The basic scheme the Local Public Contracts Law (Contracts Law) envisions is a system of competitive bidding, with certain exceptions, and procedures fostering openness in local governmental activities.



2. This chapter examines those provisions of law that require a Municipal Clerk's involvement in some aspects of the public purchasing process. 9/15/10; 9/15/12
3. This chapter also examines the basic relationship between some of the more pertinent provisions of the Contracts Law and those Municipal Clerks who serve in a dual capacity of Municipal Clerk-Purchasing Agent. 9/15/10

#### B. TECHNICAL ASSISTANCE

The Division of Local Government Services (DLGS) in the Department of Community Affairs is authorized by Statute to assist local contracting units in matters affecting the administration of the Local Public Contracts Law. [N.J.S.A. 40A:11-37] Guidance concerning the Contracts Law can be obtained by viewing the Division's Contracts Law Website at <https://www.state.nj.us/dca/divisions/dlgs/about/>. 10/31/05; 9/15/08; 9/15/10; 9/15/12

### § 8-2. APPLICABILITY OF THE CONTRACTS LAW AND CORRESPONDING RULES

The Local Public Contracts Law at N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts Law Rules at N.J.A.C. 5:30-5.1 et seq., N.J.A.C. 5:30-11.1 et seq. and N.J.A.C. 5:34-1 et seq. are the controlling law and rules. 9/15/12

### § 8-3. DEFINITIONS

[N.J.S.A. 40A:11-2] 12/02; 9/15/08; 9/15/10; 10/1/2011]

"Aggregate" means the sums expended or to be expended for the purchase of any goods or services dealing with the same immediate purpose or task, or the furnishing of similar goods or services, over the course of a contract awarded by a contracting agent. 9/15/08; 10/1/11

"Bid threshold" means the dollar amount set by law, above which a contracting unit shall advertise for and receive sealed bids in accordance with procedures set forth in law. 10/1/11

"Contract" means any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide goods or perform services and a contracting unit which agrees to compensate a vendor. A contract also may include an arrangement whereby a vendor compensates a contracting unit for the vendor's right to perform a service, such as, but not limited to, a concession. 10/1/11

"Contract year" means the period of twelve (12) consecutive months following the award of a contract.

"Contracting agent" means the governing body of the contracting unit or its authorized designee which has the power to prepare the advertisements, to advertise for and receive bids and, as permitted by this Act, to make awards for the contracting unit in connection with purchases, contracts or agreements. 10/31/04; 9/15/08

"Contracting unit" means any county, any municipality, any board, commission, committee, authority or agency which is not a State board, commission, authority or agency and which has administrative jurisdiction over any district other than a school district, and which has statutory power to make purchases and enter into contracts awarded by a contracting agent for providing goods or performing services. 10/31/04; 9/15/08; 10/1/11; 9/15/12

"Goods and services" means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real property or any interest therein, provided or performed through a contract awarded by a contracting agent, including goods and property subject to the Uniform Commercial Code. 10/1/11

"Lowest price" means the least possible amount that meets all requirements of the request of a contracting agent.

"Professional services" means services performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the performance of work that is original and creative in character in a recognized field of artistic endeavor. 9/15/08

"Proprietary" means goods or services of a specialized nature, that may be made or marketed by a person having the exclusive right to make or sell them, when the need for such goods or services has been certified in writing by the Governing Body of the contracting unit to be necessary for the conduct of its affairs. 10/1/11

"Purchase" means a transaction for a valuable consideration, creating or acquiring an interest in goods, services and property, except real property or any interest therein. 10/31/04; 9/15/08

"Purchase order" means a document issued by the contracting agent authorizing a purchase with a vendor to provide goods or perform services, which, when fulfilled in accordance with the terms and conditions of a request of a contracting agent will result in payment by the contracting unit. 10/1/11

"Purchasing agent" means the individual duly assigned the authority, responsibility, and accountability for the purchasing activity and who has such duties as are defined by an authority appropriate to the form and structure of the contracting unit and who possesses a qualified purchasing agent certificate. [N.J.S.A. 40A:11-2(30)] 9/15/10; 10/1/11

"Quotation" means the response, to a formal or informal request made by a contracting agent, by a vendor for the purchase of goods or services, when the aggregate cost is less than the bid threshold. Quotations may be in writing, or taken verbally if a record is kept by the contracting agent. 10/1/11; 9/15/12

"Responsible" means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.

"Responsive" means conforming in all material respects to the terms and conditions, specifications, legal requirements, and other provisions of the request.

"Service or services" means the performance of work, or the furnishing of labor or time, or any combination thereof, not involving the delivery or ownership of a specified end product or a manufacturing process. Service or services may also include an arrangement in which a vendor compensates the contracting unit for the right to operate a concession. 10/1/11

#### **§ 8-4. THE ESTABLISHMENT AND AUTHORITY OF A PURCHASING AGENT**

- A. The primary duties and responsibilities of a Municipal Clerk are imposed by statute and generally outlined by specific municipal ordinances and/or administrative codes. In addition to statutory duties, additional ones have been assigned by custom or tradition. In some municipalities, public purchasing is one such responsibility.
- B. A Municipal Clerk should be aware, unless otherwise specifically delegated, the responsibility for authorizing all contracts, (remember, purchase orders are contracts) of whatever cost or kind, rests with a Governing Body. [N.J.S.A. 40A:11-3a]
- C. ESTABLISHMENT OF PURCHASING AGENT [N.J.S.A. 40A:11-9] 12/00; 9/15/10
  - 1. The Governing Body of any contracting unit may by ordinance, in the case of a municipality, designate an individual to serve as the contracting unit's purchasing agent. The individual designated as the purchasing agent shall be assigned the authority, responsibility and accountability for the purchasing activities for the contracting unit. The purchasing agent may:
    - a. Prepare advertisements for receipt of bids.
    - b. Receive bids on behalf of the contracting unit and to award contracts as permitted by N.J.S.A. 40A:11-3a in the name of the contracting unit.
    - c. Conduct any activity necessary or appropriate to the purchasing function.

#### **§ 8-5. BID THRESHOLD**

- A. When the cost or price of any contract awarded by the contracting agent in the aggregate does not exceed in a contract year the total sum of seventeen thousand five hundred dollars (\$17,500), the contract may be awarded by a Purchasing Agent or other employee so designated by the Governing Body when so authorized by ordinance or resolution, as appropriate to the contracting unit, of the Governing Body of the contracting unit without public advertising for bids, except that the Governing Body of any contracting unit may adopt an ordinance or resolution to set a lower threshold for the receipt of public bids or the solicitation of competitive quotations. [N.J.S.A. 40A:11-4] 10/31/05; 9/15/10
- B. If the Purchasing Agent is qualified, the Governing Body of the contracting unit may establish that the bid threshold may be up to, but not exceeding forty-four thousand dollars (\$44,000). Such authorization may be granted for each contract individually, or by a general delegation of authority by the Governing Body to the Qualified Purchasing

Agent to negotiate and award contract. [N.J.S.A. 40A:11-3] 10/31/05; 9/15/08; 9/15/10; 10/1/11; 9/15/17; 9/15/2021

- C. The Governor, in consultation with the Department of the Treasury, shall, no later than March 1 of every fifth (5th) year (from the year 2000), adjust the bid threshold amounts, for local contracting units. The Governor shall, no later than June 1 of every fifth (5th) year, notify each Governing Body of the adjustment. The adjustment shall become effective on July 1 of the year in which it is made.
- D. Only a Governing Body, by resolution, may award contracts exceeding the bid threshold. Only a Governing Body, by resolution, can award a fair and open contract in excess of seventeen thousand five hundred (\$17,500) dollars. It is the Division of Local Government Services' position that non-fair and open contracts may be awarded up to a local contracting unit's bid threshold by the purchasing agent if properly authorized by the Governing Body. [N.J.S.A. 40A:11-4] 9/15/08; 9/15/10
- E. Municipal Clerks/Purchasing Agents should verify that their purchasing duties have been legally delegated by a Governing Body. [N.J.S.A. 40A:11-3a]
- F. Assignment and delegation of such responsibilities must be in the form of a written policy, and included in a purchasing ordinance. Without such delegated authority, a Municipal Clerk cannot, in accordance with law, direct or perform public purchasing activities. It is important to remember that a Purchasing Agent's authority and establishment of a department must be spelled out by ordinance in the case of a municipality. [N.J.S.A. 40A:11-9] When required by form of government, such matters must also be addressed in an administrative code.

#### **§ 8-6. COMPETITIVE BIDDING REQUIREMENTS**

- A. Competitive bids are required for expenditures in excess of the bid threshold to be paid with, or out of, public funds. [N.J.S.A. 40A:11-4] Competitive bids and competitive contracting proposals are considered acceptable methods to use in a fair and open process. 9/15/08; 9/15/10
- B. Similar goods and services must be aggregated and contracts must not be split for the purpose of staying under the bid threshold. 10/1/11
- C. The Contracts Law [N.J.S.A. 40A:11-3 and 40A:11-7] requires ... periodic purchases of goods and services which are "single in character" and ... total over the formal bid threshold for a given year be bid in accordance with formal bid requirements.
- D. Purchasing needs must be consolidated into bulk purchasing specifications which must be periodically advertised instead of buying goods and services on an as-needed basis throughout the year. Purchases should be added according to what they are spent for rather than who they will be bought from or the individual nature of various components. The concept of aggregation also applies to Pay-to-Play purchase activities. [N.J.S.A. 40A:11-7] 9/15/08; 9/15/12
- E. Circumventing requirements of the law by utilizing the informal quotation method for periodic purchases of similar goods and services which total over the bid threshold for any given year is prohibited.



1. If the cumulative dollar amount to be expended during the duration of a multi-year contract period exceeds the formal bid threshold, then advertisement for and receipt of formal bids are required.
2. For example, if a responsible vendor offers a low firm price of twenty-two thousand (\$22,000) dollars for the first year and eighteen thousand (\$18,000) dollars for the second year of a two-year contract, the solicitation of informal quotations satisfies present statutory requirements (bid threshold at forty-four thousand [\$44,000] dollars). 10/31/05; 9/15/10; 9/15/15; 9/15/2021
3. If a cumulative dollar amount or any combination of total dollars to be expended in the first and second contract year period exceeds the present bid threshold, then advertisement for and receipt of formal bids are required.

### § 8-7. LOWEST RESPONSIBLE BIDDER

9/15/12

- A. Contracts Law requires all contracts or purchases in excess of the formal bid threshold be awarded to the lowest responsible bidder. [N.J.S.A. 40A:11-6.1]
- B. Decisions concerning whether a bidder is responsible should include but not be limited to consideration of experience, financial ability, moral integrity, availability of facilities and equipment necessary to fulfill the terms and conditions and perform the services required in a specification. 12/02
- C. Decisions concerning whether a bidder's response to a request for receipt of bids is responsive should include if a bid meets all specification requirements and applicable statutory/regulatory provisions.
- D. It is not only the lowest offered price! [N.J.S.A. 40:A11-2(27)] 10/31/04

### § 8-8. COMPETITIVE CONTRACTING

[N.J.S.A. 40A:11-4.1 to 4.5] 10/31/05; 9/15/10

#### A. PURPOSE AND PERMITTED CONTRACTS 9/15/12

1. Competitive contracting may be used by local contracting units in lieu of public bidding for the procurement of specialized goods and services that are hard to specify and the price exceeds the bid threshold for the following purposes: 12/02
  - a. The purchase or licensing of proprietary computer software and hardware related to the proprietary software designed for contracting unit purposes.
  - b. The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes for the purpose of:
    - (1) the operation and management of a wastewater treatment system or a water supply or distribution facility (with certain exceptions).



- (2) the operation, management or administration of recreation of social service facilities or programs not including the administration of benefits under the Work First New Jersey program or under General Assistance; or
  - (3) the operation, management or administration of data processing services.
- c. Services performed by an energy services company.
  - d. Homemaker-home health services.
  - e. Laboratory testing services.
  - f. Emergency medical services.
  - g. Contracted food services.
  - h. Performance of patient care services by contracted medical staff at county hospitals, correctional facilities and long-term care facilities.
  - i. At the option of the Governing Body, any good or service that is exempt from bidding pursuant to N.J.S.A. 40A:11-5.
  - j. Concessions.
  - k. The operation, management or administration of other services, with the approval of the Director of the Division of Local Government Services.
  - l. If the goods and/or services are not listed, pursuant to N.J.S.A. 40A:11-4.1, you must seek the Director's approval. If you do not, the proposed services are subject to receipt of bids.

9/15/14

2. Any of the above listed specialized goods and services shall not be considered by a contracting unit to be an extraordinary unspecifiable service. A contracting unit can either use competitive bidding or competitive contracting.
3. Unless an exception is granted by N.J.S.A. 40A:11-15 allowing a longer contract duration, contracts awarded under competitive contracting shall not be for longer than five (5) years.
4. In order to initiate competitive contracting, a Governing Body shall pass a resolution authorizing its use each time specialized goods or services are needed. If the desired goods and services have previously been contracted for using the competitive contracting process, then the original authorizing resolution shall suffice.

#### B. ADMINISTRATION

1. Competitive contracting shall be administered by a Qualified Purchasing Agent or by Legal Counsel of the contracting unit, or by an Administrator of the contracting unit. Any contracts awarded by competitive contracting shall be made by resolution of the Governing Body of the contracting unit.

2. All competitive contracting purchases shall utilize request for proposals (RFP) documentation.

9/15/08; 9/15/10

C. REQUEST FOR PROPOSALS 9/15/10

1. A notice that RFP documentation is available shall be published in an official newspaper of the contracting unit at least twenty (20) days prior to the date for submission of proposals.
2. The contracting unit may charge a fee for the RFP documentation that shall not exceed fifty (\$50.00) dollars or the cost of reproducing the documentation, whichever is greater.

D. EVALUATION OF PROPOSALS 9/15/10

1. All proposals shall be evaluated by the Qualified Purchasing Agent, or Legal Counsel, or Administrator and proposals which are most advantageous, price and other factors may be considered. 10/31/04; 9/15/10
2. Under no circumstances shall the provisions of a proposal be subject to negotiation by the contracting unit with the vendor. 10/31/04; 9/15/10
3. The RFP may provide for interviews or presentations by vendors of its choice, and the Qualified Purchasing Agent, Legal Counsel or Administrator may appoint a committee as set forth in the statute to assist in evaluating the proposals.
4. After evaluating the proposals, the Qualified Purchasing Agent, or Legal Counsel, or Administrator shall prepare a report evaluating and recommending the award of a contract or contracts pursuant to N.J.S.A. 40A:11-4.5d. 9/15/10
5. The report shall be made public at least forty-eight (48) hours prior to the awarding of the contract, or when it is made available to the Governing Body, whichever is sooner.
6. The Governing Body shall have the right to reject all proposals for any reason set forth in N.J.S.A. 40A:11-13.2.

E. AWARD OF CONTRACT 9/15/10

1. Award of a contract shall be:
  - a. By resolution of the Governing Body of the contracting unit.
  - b. Within sixty (60) days of the receipt of the proposals or such longer time as may be agreed upon.
  - c. The competitive contracting report shall become part of the public record and must reflect the final action of the Governing Body.
  - d. The Municipal Clerk of the contracting unit shall publish a notice in the official newspaper of the contracting unit summarizing the award of the contract, which shall include, but not be limited to:

- (1) The nature, duration, and amount of the contract;
- (2) The name of the vendor; and
- (3) A statement that the resolution and written contract are on file and available for public inspection in the office of the Municipal Clerk of the contracting unit.

## **§ 8-9. CONTRACTS LAW AUTHORIZED EXCEPTIONS TO THE RECEIPT OF FORMAL BIDS**

9/15/10; 9/15/12

- A. Prior to January 1, 2006, contracts subject to N.J.S.A. 40A:11-5 that exceeded the bid threshold could have been negotiated and awarded by the Governing Body without public advertising for receipt of bids. 9/15/10
1. Some exceptions that should be of special interest to municipal clerks are the following:
    - a. Professional Services. [N.J.S.A. 40A:11-5(1)(a)(i)]
    - b. The printing of legal briefs, records and appendices. [N.J.S.A. 40A:11-5(1)(c)]
    - c. The printing of bonds and documents necessary to the issuance and sale of bonds. [N.J.S.A. 40A:11-5(1)(h)]
    - d. The printing of legal notices in newspapers as required by law. [N.J.S.A. 40A:11-5(1)(j)]
    - e. Those goods and services necessary or required to prepare and conduct an election. [N.J.S.A. 40A:11-5(1)(l)]
    - f. The printing of municipal ordinances or other services necessarily incurred in connection with the revision and codification of municipal ordinances. [N.J.S.A. 40A:11-5(1)(x)]
    - g. Expenses for travel and conferences. [N.J.S.A. 40A:11-5(1)(cc)]
  2. Since the effective enactment (1/1/06) of the Local Unit Pay-to-Play Law, certain contracts must be awarded through a "fair and open" or "non-fair and open" process. The Local Unit Pay-to-Play Law will be discussed in the context of the Contracts Law in a separate section of this chapter. 9/15/12
- B. Contracts that are entered into with the United States of America, the State of New Jersey, county or municipality or any board, agency or authority thereof or any other state or subdivision of that state. [N.J.S.A. 40A:11-5(2)]
- C. NO BIDS, HIGH BIDS, NEGOTIATED CONTRACTS 9/15/10
1. A Governing Body, acting by two-thirds (2/3rds) vote of its full membership, may enter into a negotiated contract if:

- a. On two (2) occasions, no bids were received; or
  - b. On two (2) occasions it rejected bids because they were too high or not independently arrived at; or
  - c. A combination of one (1) instance of each situation. [N.J.S.A. 40A:11-5(3)] 9/15/10
2. Before a contract can be negotiated, certain statutory requirements must be satisfied. [N.J.S.A. 40A:11-5(3)(i)(ii)(iii)]

D. EMERGENCY PURCHASES 9/15/10

An event which the law [N.J.S.A. 40A:11-6] defines as a situation affecting the public health, safety and welfare requiring the immediate delivery of supplies, and goods and/or performance of work or services. Emergency purchasing procedures are as follows: 12/01

1. The official in charge of the agency wherein the emergency occurred or such other officer or employee as may be authorized to act in place of that official, shall notify the purchasing agent, a supervisor of the purchasing agent, or a designated representative of the Governing Body, of: 10/31/04; 10/31/05
  - a. The need for the performance of a contract;
  - b. The nature of the emergency;
  - c. The time of its occurrence; and
  - d. The need for invoking an emergency purchase.
2. If that person is satisfied that an emergency exists, that person shall be authorized to award a contract or contracts for such purposes as may be necessary to respond to the emergent needs. It cannot be emphasized enough that a **formal chain of command** with designated backups is an absolute requirement. [N.J.A.C. 5:34-6.1(b)] Such notification shall be reduced to writing and filed with the Purchasing Agent as soon as practicable. 12/02
3. Upon the furnishing of goods or services in accordance with the terms of the contract, the contractor shall be entitled to be paid, and the contracting unit shall be obligated for said payment. The Governing Body of the contracting unit shall take such action as shall be required to provide for the payment of the contract price. 12/02
4. A waiver of Chapter 19 (Pay-to-Play Law) is automatically granted as long as the emergency requirements of the LPCL, specifically N.J.S.A. 40A:11-6 and the rules of N.J.A.C. 5:34-6.1, are met.

Within thirty (30) days after the declaration of an emergency, a municipality must file an Emergency Procurement Report with the DLGS. A copy of the Report can be obtained by viewing the Division's Website at <https://www.state.nj.us/dca/divisions/dlgs/about/> under Model Procurement Forms. 9/15/12

## E. RESPONSES OFFERING EQUAL PRICES (TIE BIDS) 9/15/10

Whenever two (2) or more responses offer equal prices and are the lowest responsible bids or proposals, the contracting unit may award the contract to a vendor whose response, in the discretion of the contracting unit, is the most advantageous, price and other factors considered. In such a case, the award resolution or purchase order documentation shall explain why the vendor selected is the most advantageous. [N.J.S.A. 40A:11-6.1d] 9/15/10

## F. PURCHASES THROUGH THE STATE'S DIVISION OF PURCHASE AND PROPERTY 9/15/10

1. Any local contracting unit may, without advertising for bids, or having rejected all bids obtained pursuant to advertising, purchase any goods or services under any contract or contracts entered into on behalf of the State by the Division of Purchase and Property in the Department of the Treasury. [N.J.S.A. 40A:11-12(a) and N.J.A.C. 5:34—7.29]
2. Purchases made under a contract awarded under this program shall be for a term not exceeding the term of a State contract. 12/02; 9/15/12
3. Any local contracting unit using this program must authorize award of a contract by resolution of a Governing Body unless a contract is awarded by a Purchasing Agent pursuant to N.J.S.A. 40A:11-3 (below the bid threshold). 10/31/04

## G. PURCHASES FROM THE U.S. GENERAL SERVICES ADMINISTRATION - FEDERAL SUPPLY SCHEDULES 9/15/08; 9/15/10

A local contracting unit may also use, without advertising for bids, or having rejected all bids obtained pursuant to advertising, the Federal Supply Schedules of the General Services Administration. Only those Federal General Services Administration Contracts as authorized in writing by the Director of the Division of Purchase and Property are exempt from bidding.

## H. NATIONALLY-RECOGNIZED AND ACCEPTED COOPERATIVE PURCHASING AGREEMENTS 9/15/12

1. Any municipality may award contracts for goods and services through the use of such national agreements that have been developed utilizing a competitive bidding process by another contracting unit within the State of New Jersey, or within any other state, when available. [N.J.S.A. 52:34-6.2(b)2] 9/15/16; 9/15/19
2. Municipal clerks should be aware of the legal advertising requirements for using such agreements. Please see LFN 2012-10, 5/14/12, pp. 7-8, and Appendix A. 9/15/16

## I. QUOTATIONS TEN PERCENT (10%) LESS THAN THE STATE CONTRACT PRICE [N.J.S.A. 40A:11-5(4)] 12/00; 9/15/08; 9/15/10; 9/15/12

1. A contracting unit shall, by resolution adopted by an affirmative vote of two-thirds (2/3) of the full membership of the Governing Body, award a contract without advertising whenever the contracting unit has solicited and received at least three (3) quotations on materials, supplies or equipment for which a State



contract has been issued pursuant to N.J.S.A. 40A:11-12, and the lowest responsible quotation is at least ten percent (10%) less than the price the contracting unit would be charged for the identical items, in the same quantities, under the State contract. The phrase "if practicable" does not apply. 10/31/04

2. Quotations for the contract item shall not be received from any vendor to whom the State contract has been awarded, and where such vendor has agreed to extend the contract pricing for the item to local contracting units pursuant to N.J.S.A. 52:25-16.1. [N.J.A.C. 5:34-7.30(a)1]
3. The contracting unit must file copies of the purchase order relating to any such contract; the requisition for purchase order, if applicable; documentation identifying the price of the materials, supplies or equipment under the State contract; and the State contract number with the Director of the Division of Local Government Services within five (5) working days of the award of the contract by the contracting unit.

**J. GOODS OR SERVICES PURCHASED FROM A BEQUEST, LEGACY OR GIFT 9/15/10; 9/15/12**

Goods or services, the payment for which utilizes only funds received by a contracting unit from a bequest, legacy or gift, shall not be subject to the provisions of the Contracts Law if such bequest, legacy or gift contain written instructions as to the specifications, manufacturer or source of supply. [N.J.S.A. 40A:11-13.1]

**§ 8-10. LOCAL COOPERATIVE PURCHASING SYSTEMS**

9/15/10

**A. TYPES OF LOCAL COOPERATIVE PURCHASING SYSTEMS 9/15/10**

All of these systems are required to be registered with the DLGS. In addition, cooperative pricing, joint purchasing, county cooperative contract purchasing, regional cooperative pricing and commodity resale systems require a resolution of the Governing Body for establishing or participating in such a system, and a resolution for a formal contract. System approval is for a period of five (5) years. Contact the DLGS for further information.

**1. Cooperative Pricing System [N.J.S.A. 40A:11-11(5)]**

This system is different inasmuch as one (1) government agency performs the advertising and awarding of the lowest responsible bid, but separate contracts or purchase orders are executed between each participating government agency and a vendor. [N.J.A.C. 5:34-7.3]

**2. Joint Purchasing System**

In a joint purchasing arrangement [N.J.S.A. 40A:11-10], two (2) or more local contracting units contractually agree that one of them will serve as purchasing agent for the group, at least with respect to certain specified categories of purchases. [N.J.A.C. 5:34-7.3]

3. County Cooperative Contract Purchasing System
  - a. The Governing Body of a county government may establish a cooperative pricing system for the voluntary use of contracting units within the county. [N.J.S.A. 40A:11-11(6) and N.J.A.C. 5:34-7.21 to 7.26]
  - b. A county government cooperative purchasing system works like the State's cooperative contracts where estimates do not have to be provided by local contracting units.
  - c. A county must offer potential bidders an option of participating in the program. 9/15/12
4. Regional Cooperative Pricing System
  - a. Two (2) or more registered cooperative pricing systems may join together for the provision and performance of goods and services, including the purchasing of energy. 9/15/12
5. Commodity Resale System
  - a. Under the commodity resale system [N.J.A.C. 5:34-7.15 et seq.], a local contracting unit (lead agency) may purchase gasoline, diesel fuel or snow removal chemicals, public works materials and supplies, including road and roadway construction materials or any other such materials as may be approved by the Director of the Division of Local Government Services. 10/31/04
  - b. The lead agency may then resell a portion of such commodity to another local contracting unit as a participating member.

#### § 8-11. AWARD OF EXTRAORDINARY UNSPECIFIABLE SERVICES (EUS) CONTRACTS

- A. "Extraordinary unspecifiable services" (EUS) means services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor. [N.J.S.A. 40A:11-2(7)] An example is the purchase of insurance coverage and consultant services. [N.J.S.A. 40A:11-5(m)] 9/15/12
  1. Application of this exception must be construed narrowly in favor of open competitive bidding, where possible.
  2. Before a Governing Body awards an EUS contract which exceeds the bid threshold, a designated administrative official of a local contracting unit must file a certificate with the Governing Body clearly describing the nature of the work/service to be done, stating it is not reasonably possible to draft specifications, describing the informal solicitation of quotations and describing in detail why the contract meets the provisions of the statute and rules [N.J.A.C. 5:34-2.3b] **Please refer to sample EUS certification form at the end of this Chapter.** 12/02

3. A contract for EUS may be awarded upon determination in writing by the contracting agent that the solicitation of competitive quotations is impracticable. A mere recitation of the statutory language shall not be acceptable.
4. EUS contracts shall be awarded by resolution of the Governing Body. [N.J.S.A. 40A:11-6.1(b)]

## **§ 8-12. SOLICITATION OF COMPETITIVE QUOTATIONS**

9/15/10

### **A. CONTRACTS BELOW THE BID THRESHOLD BUT FIFTEEN PERCENT (15%) OR MORE OF THAT AMOUNT**

1. Contract in the aggregate below the bid threshold — two thousand six hundred twenty-five (\$2,625) dollars for the seventeen thousand five hundred (\$17,500) dollars threshold and six thousand six-hundred (\$6,600) dollars threshold for the forty-four thousand (\$44,000) dollars threshold with a Qualified Purchasing Agent, and 10/1/11; 9/15/15; 9/15/2021
2. Contracts that are exempt from public advertising, and the receipt of bids require the contracting agent to actively solicit at least two (2) competitive quotations, if practicable.
3. Such contracts in excess of seventeen thousand five hundred (\$17,500) dollars are subject to Pay-to-Play requirements.

### **B. CONTRACT AWARD PROCEDURES**

1. Work by employees of the contracting unit, are exempt from both competitive bidding and competitive quotations.
2. Contracts awarded by competitive quotations shall be awarded to the vendor whose response is most advantageous, price and other factors considered.
3. The contracting agent must retain the record of the quotations solicited and shall include a copy of the record with the voucher used to pay the vendor.
4. If authorized by a Governing Body's resolution or ordinance, all contracts that are in the aggregate less than fifteen percent (15%) of the bid threshold may be awarded by the contracting agent without soliciting competitive quotations by using sound business judgment.
5. Sound business practices mean employing such judgment that the price charged to the contracting unit reflects current market conditions and the quantity and delivery needs of the contracting unit. 2/02 [N.J.A.C. 5:34-9.5(b)] 9/15/12

## **§ 8-13. DURATION OF CONTRACTS**

9/15/08; 9/15/10

## STATUTORY AUTHORIZATION

- A. For any period not to exceed twenty-four (24) consecutive months.
- B. Exceptions are specifically permitted pursuant to N.J.S.A. 40A:11-15.
- C. Professional services contracts can only be awarded for a period not to exceed twelve (12) consecutive months.
- D. Contracts exceeding the statutory limits of N.J.S.A. 40A:11-15 are beyond the powers conferred upon local contracting units by law. The courts have ruled that such contracts are null and void.

**§ 8-14. CERTAIN ASPECTS CONCERNING THE STATUTORY BID PROCESS OF INTEREST TO MUNICIPAL CLERKS**

12/02; 9/15/08; 9/15/10

**A. PUBLICATION FOR RECEIPT OF BIDS**

- 1. Published in the official newspaper stating:
  - a. The manner of submitting and receiving bids;
  - b. The date, time and place at which bids will be received. 10/1/11
- 2. In no event less than ten (10) days prior to date fixed for receiving bids. [N.J.S.A. 40A:11-23] Do not count the day of the receipt of bids. 9/15/08
- 3. Exception - receipt of bids for collection and disposal of municipal solid waste must be published in an official newspaper circulating in a county or municipality and in at least one (1) newspaper of general circulation published in the state. Advertisement cannot be less than sixty (60) days prior to date fixed for receiving bids. 10/31/04
- 4. Publication of detailed specifications is not necessary. A brief description of what a local contracting unit needs is acceptable.

**B. AFFIRMATIVE ACTION 10/31/05**

- 1. All legal advertising must include as part of an advertisement the following language:
- 2. "Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27." 10/31/05

**C. LIMITS ON BID ACCEPTANCE DATES**

- 1. For all contracts, the date fixed for receiving bids shall not fall on a Monday, or any day directly following a State or federal holiday. [N.J.S.A. 40A:11-23(a)]
- 2. Currently, all federal holidays are also State holidays, and many of them fall on Monday.

3. The law applies whether or not the contracting unit observes a given holiday. The law supersedes local holiday observance.
4. It is the Division of Local Government Services' view that the law also applies to competitive contracting.
5. Annual updates are posted on the Division's website, <https://www.state.nj.us/dca/divisions/dlgs/about/> 9/15/12

D. NOTICE OF REVISIONS 9/15/08

1. Construction Contracts:

Notice must be provided to any person who has submitted a bid or has received a bid package. Notice shall be provided in any of the following ways no later than seven (7) days, Saturdays, Sundays or holidays excepted, prior to the date on which the bids are to be submitted:

- a. In writing by certified mail; or
- b. By certified fax transmission where the sender's fax machine produces a receipt showing the date and time of transmission and verification that the transmission was successful; or
- c. By a delivery service that provides certification of delivery to the sender.

2. Solid Waste Disposal and Collection Contracts: 10/31/05

- a. A notice must be published in an official newspaper of the contracting unit and in at least one newspaper of general circulation published in the State not later than seven (7) days, Saturdays, Sundays and holidays excepted, prior to date for acceptance of bids. [N.J.S.A. 40A:11-23c(3)] 10/31/05; 9/15/08
- b. While the Local Public Contracts Law does not specifically provide for the three (3) methods (certified mail, certified facsimile transmission or by delivery service) for these contracts, it may be a best practice to use any one of the three (3) methods. 10/31/04

3. All Other Contracts: 9/15/12

A notice must be published not later than seven (7) days, Saturdays, Sundays and holidays excepted, prior to date for acceptance of bids in an official newspaper of the contracting unit and be provided to any person who has submitted a bid or has received a bid package, using one of the following means: 10/31/05

- a. In writing by certified mail; or
- b. By certified fax transmission where the sender's fax machine produces a receipt showing the date and time of transmission and verification that the transmission was successful; or
- c. By a delivery service that provides certification of delivery to the sender. [N.J.S.A. 40A:11-23]



4. Failure to fully comply with requirements for notice of revision(s) or addenda will render the receipt of bids null and void and require a rebid. 12/02

### § 8-15. RECEIPT OF FORMAL BIDS

9/15/08; 9/15/10

- A. As a general rule, state law does not allow bids to be received after the time designated in an advertisement. [N.J.S.A. 40A:11-23] This issue has been litigated on several occasions.

#### B. RECEIPT OF BIDS BY MAIL: [N.J.S.A. 40A:11-23]

1. Procedures should be established to prevent abusive practices.
2. Bids, especially those received by mail, must be properly safeguarded. Avoid any possibility or allegation of early opening or improper handling of bids.
3. An individual who handles the received mail and hand delivered bids should not be the same individual who will officially receive and open them at the designated time. This should be avoided if at all possible. 9/15/08
4. All bids should be submitted in properly labeled, sealed envelopes to be opened only at the designated time and location.

#### C. RETURN OF REJECTED BIDS

Bids rejected for failing to comply with procedural requirements should not be returned to a bidder until an official action has been taken by a Governing Body. Only a Governing Body has the power to formally award a contract or reject all bids. [N.J.S.A. 40A:11-4]

#### D. CANCELLATION OR POSTPONEMENT OF RECEIPT OF BIDS OR PROPOSALS

A concern from time to time is what to do with the pending receipt of bids when some event or situation causes the advertised date to be postponed or canceled.

1. This is sometimes further complicated when there is not sufficient time to place a notice in a legal newspaper to publicly reach as many potential bidders as possible. Does one send a fax, or use a telephone to notify everyone who may have specifications? This may not be a solution since one might not know how many vendors have specifications. Local contracting units should maintain a record of names and contact information for potential bidders or proposers who have received a set of specifications or proposals. 9/15/08; 10/1/11
2. A worse scenario is when vendors appear for a bid opening and no local official is there to inform them of a change in date for receipt of bids. 9/15/12
3. The Contracts Law is silent on this point. Changing a date for receipt of bids should be avoided. However, if there is no other choice, the new date selected must comply with the requirements of the Contracts Law, the Open Public Meetings Act, and any other formal action that a Governing Body may wish to pursue.

4. While the Contracts Law is silent on this issue, your attention is called to N.J.A.C. 5:34-9.3(a) concerning the cancellation or N.J.A.C. 5:34-9.3(b) regarding the postponement of receipt of bids or proposals. A careful review of this rule should be helpful in resolving such issues. 10/31/04; 9/15/08; 9/15/12

### § 8-16. OPENING OF FORMAL BIDS

9/15/08; 9/15/10

- A. At stated time and place, a properly designated Purchasing Agent must publicly receive bids, immediately proceed to unseal them and publicly announce the contents. [N.J.S.A. 40A:11-23] If there is no properly designated Purchasing Agent, either a Municipal Administrator/Manager, Municipal Clerk, or Chief Financial Officer can be designated to receive and open bids.
- B. Announcement of a bid's contents must be made in the presence of any parties bidding or their agents who are present.
- C. A proper record of the prices and terms of an award to be made by resolution of a Governing Body must be recorded in the minutes of said Governing Body.
- D. If an award is to be made by other than a Governing Body, a record must be kept in an appropriate book for such purpose. Such an award would apply to a quotation or an emergency pursuant to N.J.S.A. 40A:11-6. 9/15/08
- E. WITHDRAWAL OF BIDS FOR PUBLIC WORKS CONTRACTS 10/1/11
  1. The amendment at N.J.S.A. 40A:11-23.3, authorizes bidders on public works projects to request withdrawal of a bid due to a "mistake" on the part of the bidder after the receipt and public opening of the bids. This provision applies only to public works projects. Public works means building, altering, repairing, improving or demolishing any public structure or facility constructed or acquired by a contracting unit to house local government functions or provide water, waste disposal, power, transportation, and other public infrastructures. [N.J.S.A. 40A:11-2(34)] 10/1/11
  2. A "mistake" means: "for a public works project, a clerical error that is an unintentional and substantial computational error or an unintentional omission of a substantial quantity of labor, material, or both, from the final bid computation." [N.J.S.A. 40A:11-2(42)] 10/1/11
  3. If a bidder determines that their bid includes a mistake that meets the definition under the law, a bidder can make a request to withdraw the bid. To do so a bidder shall submit the withdrawal request in writing by certified or registered mail to the proper name and title of the local official at the complete address to which the bid was submitted. 10/1/11
  4. The bidder shall request withdrawal of a bid within five (5) business days after the opening of the bids. Since the bid withdrawal request shall be effective as of the postmark of the certified or registered mailing, if a contracting unit plans to award a public works contract before the five-day time period expires, the

appropriate local official should contact the apparent lowest responsible bidder prior to the contract award to ascertain if the bidder is going to request a bid withdrawal. If the bidder indicates a plan to withdraw, the award should be held off pending receipt of the request. 10/1/11

5. For further information and guidance regarding N.J.S.A. 40A:11-23.3, please refer to Local Finance Notice, LFN 2011-12, dated 3/18/11. 10/1/11

#### **§ 8-17. AWARD OF A CONTRACT IN EXCESS OF THE BID THRESHOLD**

12/02; 9/15/08; 9/15/10

- A. Guidelines should encompass a determination of who submitted the lowest bid, whether the low bidder is responsible, and if the low bid is responsive to a set of specifications.
- B. Openness, impartiality and reasonableness are standards in any competitive process.
- C. Bids rejected for failing to comply with certain statutory or procedural requirements and/or are determined to be non-responsive should not be returned to a bidder(s) until an official action has been taken by the Governing Body.

#### **§ 8-18. REJECTION OF ALL BIDS**

[N.J.S.A. 40A:11-13.2] 9/15/10

- A. A local contracting unit may reject all bids for any of the following reasons:
  1. The lowest bid substantially exceeds the cost estimates for the goods and services.
  2. The lowest bid substantially exceeds the contracting unit's appropriation for the goods or services.
  3. The Governing Body of the contracting unit decides to abandon the project for provision or performance of the goods or services.
  4. The contracting unit wants to substantially revise the specifications for the goods and services.
  5. The purposes or provisions or both of the Local Public Contracts Law are being violated.
  6. The Governing Body of the contracting unit decides to use a State authorized contract as allowed by the Local Public Contracts Law.

The process has more accountability. A local contracting unit cannot reject all bids because it simply did not like the price of a bidder or the ranking of a certain bidder or bidders. 12/02

**§ 8-19. DISQUALIFICATION OF BIDDERS**

[N.J.S.A. 40A:11-4b] 10/31/04; 9/15/10; 9/15/18

- A. Consult with the municipal attorney;
- B. The Governing Body of a contracting unit may, by resolution approved by a majority of the Governing Body, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder, if the Governing Body finds that it has had **prior negative experience** with the bidder. 9/15/12
- C. There are certain conditions that apply if a Governing Body is contemplating a disqualification based on prior negative experience [N.J.S.A. 40A:11-4c(1) through (6)].
- D. Disqualification shall be for a reasonable, defined period of time which shall not exceed five (5) years. [N.J.S.A. 40A:11-4c (4)] 9/15/12

**§ 8-20. BID GUARANTEES AND SURETY REQUIREMENTS**

12/02; 9/15/08; 9/15/10

**A. BID GUARANTEES**

- 1. A guarantee, payable to a local contracting unit for the faithful signing and execution of a contract.
- 2. A bid guarantee shall be in an amount of ten percent (10%) of a bid, but not in excess of twenty thousand (\$20,000) dollars. 10/31/04; 10/31/05; 9/15/08
- 3. If a bid guarantee is required, it may be given at the option of a bidder by certified check, cashier's check or bid bond. [N.J.S.A. 40A:11-21]

- B. A Consent of Surety is given at the time bids are received that a performance bond will be given upon contract signing, if required. 12/02

- C. Performance Bond - A bond provided by a surety company for a contractor's faithful performance of all provisions of the contract specification(s). [N.J.S.A. 40A:11-22] It is suggested that the form and contents of all bonds be reviewed by a Municipal Attorney. 12/02

**D. MAINTENANCE BOND**

- 1. Serves as security after acceptance of work performed pursuant to a contract.
- 2. The bond cannot be longer than two (2) years and no more than one hundred percent (100%) of project costs. [N.J.S.A. 40A:11-16.3b]

- E. All bond requirements are at the option of a local contracting unit. The Contracts Law statutes are permissive. However, a contractor bidding on a construction, public works or utilities project in excess of one hundred thousand (\$100,000) dollars shall furnish a bid guarantee and a certificate (consent of surety) from a surety company. [N.J.S.A. 40A:11-21 and 22] 9/15/08; 9/15/12

**§ 8-21. AWARD AND SIGNING OF A CONTRACT AND RETURN OF BID SECURITY**

12/02; 9/15/08; 9/15/10

- A. A Governing Body must award a contract or reject all bids within a specified time, but it cannot exceed sixty (60) calendar days. [N.J.S.A. 40A:11-24a]
- B. A Governing Body may extend beyond the sixtieth (60th) day. A local contracting unit can request that the bids of any bidders who consent, be held for consideration for such longer period as may be agreed.
- C. A local contracting unit is required to return bid security of those bidders not among the lowest three (3) bids within ten (10) days after opening of bids (Sundays and holidays excepted). [N.J.S.A. 40A:11-24a] 9/15/08
- D. Within three (3) days, (Sundays and holidays excepted) after an award and signing of a contract, and approval of a contractor's performance bond, the bid security of any remaining unsuccessful bidders must be returned. [N.J.S.A. 40A:11-24a]
- E. All parties within the time limit set forth in specifications must sign a contract. [N.J.S.A. 40A:11-24b]
  - 1. The time limit must not exceed twenty one (21) days (Sundays and holidays excepted) after award of a contract.
  - 2. All parties to a contract may agree to extend the time limit set forth in specifications beyond the twenty-one (21) day limit.
  - 3. A contractor, upon written request to a local contracting unit, is entitled to receive, within seven (7) days of the request, an authorization to proceed pursuant to terms of the contract on the date set forth in a contract for work to commence.
  - 4. If no date is set forth in the contract, then work proceeds upon receipt of authorization from the contracting unit.

**§ 8-22. ALL CONTRACTS IN WRITING**

9/15/08; 9/15/10

- A. The Contracts Law specifically requires all contracts to be in writing. [N.J.S.A. 40A:11-14]
- B. The form in which contracts may be made and executed may be prescribed by the Governing Body.
- C. For purchases over and under the formal bid threshold, a purchase order may serve as a contract if properly designed, signed and executed.



**§ 8-23. SALE OR DISPOSITION OF PUBLIC PERSONAL PROPERTY**

[N.J.S.A. 40A:11-36] 9/15/08; 9/15/10

A. A Governing Body by resolution may authorize by sealed bids or public auction the: 9/15/08

1. Sale of public personal property no longer needed for public use. [N.J.S.A. 40A:11-36]
2. If the estimated fair value of the personal property to be sold exceeds fifteen percent (15%) of the bid threshold in any one (1) sale and it is neither livestock nor perishable goods, it shall be sold at public sale to the highest bidder.
3. Sold at public sale to highest bidder except when a sale is made to certain other governmental agencies. [N.J.S.A. 40A:11-36(2)]
4. A public advertisement must include a notice of the date, time and place of a public sale, together with a description of items to be sold and terms and conditions of a sale. [N.J.S.A. 40A:11-36(3)]
5. A sale must be held not less than seven (7) nor more than fourteen (14) days after latest publication of a notice. [N.J.S.A. 40A:11-36(3)]
6. If no bids are received, the personal property may then be sold at private sale without further publication or notice, but in no event for less than the estimated fair value; or the contracting unit may, if it so chooses, reoffer the property at a public sale.
7. A contracting unit may reject all bids if it determines such rejection to be in the public interest. Where all bids have been rejected at a second public sale, then the personal property can be sold, without further publication or notice at a private sale. In no event shall the negotiated price at private sale be less than the highest price of any bid rejected at the preceding two public sales and provided further that in no event the terms or conditions of sale be changed or amended.
8. By resolution of the Governing Body, a contracting agent may include the sale of personal property no longer needed for public use as part of specifications to offset the price of a new purchase. This is the trade-in provision. [N.J.S.A. 40A:11-36(7)] 10/1/11
9. "Estimated fair value" means the market value of the property between a willing seller and a willing buyer less the cost to the contracting unit to continue storage or maintenance of any personal property not needed for public use.
10. These provisions of law does not govern public (real) property transactions. The Local Lands and Buildings Law [N.J.S.A. 40A:12-1 et seq.] is covered in the Miscellaneous Duties Chapter.

**§ 8-24. CHANGE ORDERS**

9/15/10

**A. APPLICATION OF CHANGE ORDERS 9/15/08**

1. A Change Order is a properly prepared document that must be authorized by a Governing Body.
2. It authorizes a contractor, consultant or vendor performing work to change the quantity or character of work, service, materials and supplies to be performed or delivered from that originally specified or estimated.
3. There will be a corresponding change in payment(s) due.
4. Quantities of items or work shall not be changed in such a manner as to nullify the effect of a competitive bid or the determination of lowest responsible price which was made at the time of contract award, if at such time changes could have been reasonably foreseen.
5. The rules also apply to Change Orders for construction, reconstruction and major repair contracts. [N.J.A.C. 5:30-11.8] 10/31/04
6. Change Orders can only be used to change the numbers of units or items originally advertised and contracted for provided that:
  - a. Unit prices or a price methodology were sought in an original set of specifications and included in a contract; and
  - b. An original set of specifications and a contract included a provision that unit prices could be used.
  - c. If a. and b. above were not included in an original set of specifications, a change order cannot be issued.
7. Before authorizing any Change Orders resulting in additional expenditures, availability of funds shall be certified in writing by a Chief Financial Officer in accordance with N.J.A.C. 5:30-5.1 et seq.
8. Change Order authorizations shall not be withheld until completion of an entire project.

**B. TWENTY PERCENT (20%) CHANGE ORDER LIMITATION:**

1. Total number of Change Orders executed for a particular contract shall not cause an originally awarded contract price to be exceeded by more than twenty percent (20%) unless otherwise authorized by the Change Order rules.
2. If proposed Change Orders do exceed the twenty percent (20%) limitation, no work shall be performed or purchases made until the procedures of N.J.A.C. 5:30-11.1 et seq. have been completed. If a Governing Body determines issuance of a Change Order is not justifiable, a new contract shall be executed in accordance with the procedures of the Contracts Law.

3. The twenty percent (20%) limitation shall not apply to emergency situations as defined within N.J.S.A. 40A:11-6.
4. A Governing Body shall pass a resolution authorizing a written amended contract to be entered into covering change(s) to be made.
  - a. A resolution shall be passed before execution of a Change Order.
  - b. Governing Body shall cause to be printed once, in an official newspaper, a brief notice indicating the additional amount to be expended, the original contract price, the nature of the original and additional work, and why it is necessary to expend the additional funds. A copy of the advertisement shall also be filed with the Municipal Clerk and be available for inspection by the public. 12/01 [N.J.A.C. 5:30-11.9(c)6]
  - c. The Municipal Clerk of the Governing Body shall report to the Director, on an appendix to the contracting unit's annual budget, all change orders from the previous fiscal year which exceeded the twenty percent (20%) limitation. This report shall be made on a form provided by the Director. A summary of the report shall be included as supplemental materials in the annual audit of the contracting unit. [N.J.A.C. 5:30-11.9(d)]

**§ 8-25. BUSINESS REGISTRATION OF PUBLIC CONTRACTORS CERTIFICATE 9/15/08; 9/15/10; 9/15/12**

**A. INTRODUCTION**

1. All business organizations that do business with a local contracting unit are required to be registered with the State and provide proof of that registration to the local contracting unit before it may enter into a contract with the business.

**B. APPLICATION OF THE LAW**

1. A contractor shall provide the local contracting unit with the business registration certificate of the contractor and that of any named subcontractor (construction contracts) prior to the time a contract, purchase order, or other contract document is awarded or authorized.
2. For bids and requests for proposals, the local contracting unit must retain the proof of business registration in the file where documents relating to the contract are maintained. For all other contracts, proofs of business registration shall be maintained in an alphabetical order.

**C. NON-BID CONTRACTS**

1. Proof of registration for non-bid contracts (i.e. purchase orders under the bid threshold) must be received before the contract is issued.
2. In situations of an emergent nature, a local contracting unit may enter into a contract with a business organization, provided the contractor agrees to provide the BRC within two (2) weeks of the execution of the contract.

**D. IMPORTANT INFORMATION CONCERNING THE LAW**

1. Individual contractors or vendors must also obtain a certificate and submit it in order to receive a contract. Contracts with a value of less than fifteen percent (15%) of the contracting agency's bid threshold do not have to comply with the law.

**§ 8-26. THE NEW JERSEY LOCAL UNIT PAY-TO-PLAY LAW**

9/15/10

**A. BACKGROUND OF P.L. 2004, c.19**

1. On January 1, 2006, N.J.S.A. 19:44A-20.4 et seq. took effect. The Law affects all "municipalities and counties and their agencies and instrumentalities," concerning certain business entities and county political party committees.
  - a. The law affects all contracting units subject to the Local Public Contracts Law that enter into contracts with an anticipated value in excess of seventeen thousand five hundred (\$17,500) dollars.
  - b. Contracts in excess of seventeen thousand five hundred (\$17,500) dollars that are exempt from the receipt of bids are covered. Therefore, those exceptions, N.J.S.A. 40A:11-5(1)(a) through 40A:11-5(1)(hh), are subject to the statutory requirements of the "fair and open" or "non-fair and open" (The Alternate) process. 9/15/12
  - c. Contracts with a value over seventeen thousand five hundred (\$17,500) dollars are not linked to a public agency's bid threshold. 9/15/12
2. Contracts Covered by the Law
  - a. Contracts covered are those awarded by formal public bidding, competitive contracting, cooperative purchasing, informal quotations and contracts that are exempt from the bidding process or for professional or extraordinary unspecifiable services.
  - b. Contracts issued by purchase orders, as well as by more formal contractual agreements are covered, and are subject to the concept of aggregation. Also, the Law applies to multi-year contracts.

**B. THE FAIR AND OPEN PROCESS**

1. The minimum requirements of a fair and open process are:
  - a. Publicly advertised (a minimum of ten (10) calendar days) either conventionally in newspapers or on the internet website maintained by the public entity, in sufficient time to give notice in advance of the contract; 10/1/11; 9/15/12
  - b. Awarded under a process that provides for public solicitation of proposals or qualifications; 10/1/11

- c. Established on the basis of an award and disclosure process under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications; and 10/1/11
- d. Publicly opened and announced when awarded by the Governing Body. 10/1/11

Note: The decision of a public entity as to what constitutes a fair and open process shall be final. 10/1/11

- 2. Awards of fair and open contracts will be approved by resolution of the Governing Body.
- 3. All resolutions awarding contracts over the seventeen thousand five hundred (\$17,500) dollars threshold should include wording indicating that the contract is awarded pursuant to a fair and open process or to an "alternative" process, i.e. non-fair and open process. 10/1/11
- 4. The requirement of "sufficient time to give notice" is met, at a minimum, by the standard for newspaper publication of bids—ten (10) calendar days. This applies for either newspaper or website advertising.
- 5. The following guidance supersedes any prior guidance to the contrary regarding the placement of a "Notice of Award" in the newspaper when professional services or EUS contracts are awarded:
  - a. "Window Contracts." A professional services or EUS "window" contract is a contract between seventeen thousand five hundred (\$17,500) dollars and a contracting unit's bid threshold (not to exceed forty thousand (\$40,000) dollars). In these cases, there is no requirement to publish a notice of award because the value is less than the contracting unit's bid threshold and the professional services bid exception is not used. Window contracts, however, are still subject to the provisions of political contribution disclosure requirements as they are contracts over seventeen thousand five hundred (\$17,500) dollars. 10/1/11; 9/15/17
  - b. Over the bid threshold. If a professional services or EUS contract is over the contracting unit's bid threshold, regardless of whether a fair and open or the "alternate" (non-fair and open) process is used, the contract must be awarded by Governing Body resolution. A notice of award must be published as the amount of the contract exceeds the bid threshold and the professional services bid exception is used. Please refer to N.J.S.A. 40A:11-5(1)(a)(i) for the statutory requirements for publication.
  - c. Less than \$17,500. Professional services contracts that are less than seventeen thousand five hundred (\$17,500) dollars are not subject to the requirement of a published notice of contract award.

C. THE "NON-FAIR AND OPEN" (ALTERNATE) PROCESS 9/15/12

- 1. An "alternate " process can only be used when goods and services are exempt from public bidding [N.J.S.A. 40A:11-5].



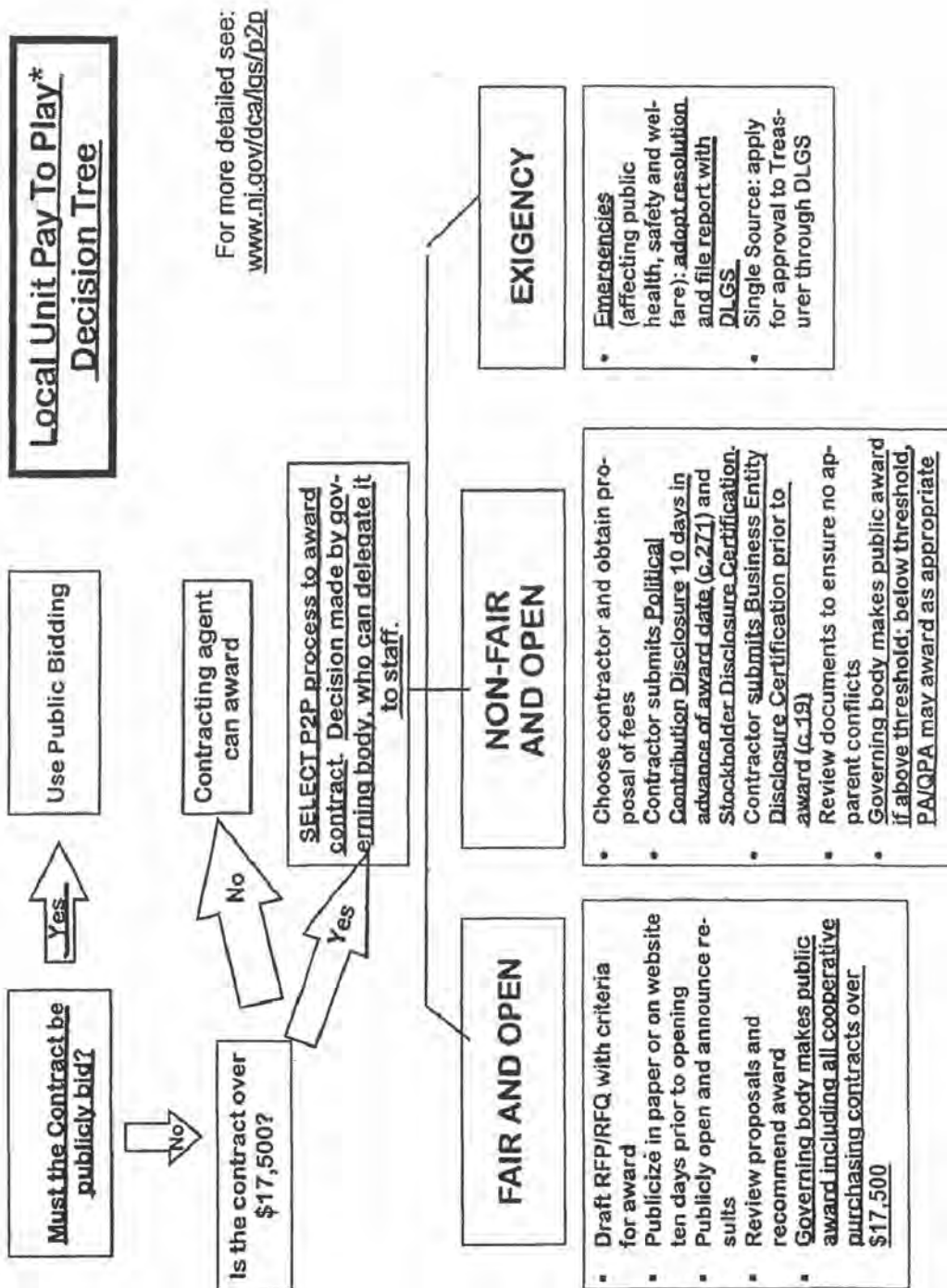
2. The non-fair and open process does not require the competitive elements of the fair and open process.
3. The Law requires that for a non-fair and open contract to be awarded:
  - a. The contractor must certify that no reportable contributions exceeding three hundred (\$300) dollars per election cycle were made during the one year preceding the award of the contract [N.J.S.A. 19:44A-20.5]. 9/15/12
  - b. The contractor may not make a reportable contribution during the term of the contract.
4. A model Business Entity Disclosure Certification (BED-C) has been developed by the DLGS for use by municipalities. It contains the information necessary to comply with the statutory requirements of certifying that no reportable contributions were made in the year prior to the award of contract.
  - a. The governing body cannot award a contract without having the completed certification on file.
  - b. The Municipal Clerk must obtain the names of the political party and candidate committees and individual officials from the elected officials of the municipality, and provide the information to the individual responsible for the contract.

#### D. BACKGROUND OF P.L. 2005, C.271

1. On January 1, 2006, P.L. 2005, c.271 was signed into law. Key elements of the law are:
  - a. Permits municipalities and their agencies to formally adopt local pay-to-play restrictions. All local pay-to-play policies must be filed with the Secretary of State.
  - b. Requires that businesses receiving non-fair and open contracts submit a list of contributions made to a broader range of elected officials.
  - c. Requires that businesses awarded contracts in excess of fifty thousand (\$50,000) dollars a year file an annual disclosure of contributions with ELEC.
2. Disclosure of contributions to local units
  - a. P.L. 2005, c.271 created a new disclosure requirement for businesses and public contracts with a value exceeding seventeen thousand five hundred (\$17,500) dollars awarded pursuant to a non-fair and open process.
  - b. Businesses receiving these contracts must submit a "Chapter 271 Political Contribution Disclosure" to the municipality no later than ten (10) days prior to the contract being awarded. (Disclosure Form has been developed by DLGS).
  - c. This disclosure is in addition to the BED-C required under Chapter 19 that must be on file prior to award.

- d. The business must disclose all reportable political contributions that exceed three hundred (\$300) dollars (per election cycle) made during the twelve-month period preceding the award of the contract.
- e. Both disclosure forms shall be kept on file with other documents related to the contract.

NOTE: For a basic understanding of the Pay-to-Play Law, please review the "Local Unit Pay-to-Play Decision Tree," at the end of this section and consult with the municipal attorney. 9/15/12; 9/15/18



DLGS-9/2006

\*N.J.S.A. 19:44A-20.4 et seq. (P.L. 2004, c.19) and N.J.S.A. 19:44A-20.26 (P.L. 2005, c.271, s.2)

**§ 8-26.1. EXHIBIT - SAMPLE STANDARD CERTIFICATION DECLARATION FOR AN EXTRAORDINARY UNSPECIFIABLE SERVICE**

TO: Members of the Governing Body  
FROM: *Name and Title of the Contracting Unit's  
Designated Administrative Official*

DATE: \_\_\_\_\_

SUBJECT: This is a contract for \_\_\_\_\_

This is to request your approval of a resolution authorizing a contract to be executed as follows:

Firm \_\_\_\_\_  
Cost \_\_\_\_\_  
Duration \_\_\_\_\_  
Purpose \_\_\_\_\_

This is to request an award of a contract without the receipt of formal bids as an Extraordinary Unspecifiable Service [N.J.S.A. 40A:11-5(1)(a)(ii) and N.J.A.C. 5:34-2.3(b)]. I do hereby certify to the following:

1. **Provide a clear description of the nature of the work to be done:**

*(Provide a complete description)*

2. **Describe in detail why the contract meets the provisions of the statute and rules:**

*(Do not just rewrite or paraphrase the statute or rule, or merely state a desire to have a reliable job performed - provide a complete explanation. However, pursuant to N.J.S.A. 40A:11-5(1)(m), it is permissible by law that insurance contracts and/or services can cite the statutory provision)*

3. **The service(s) is of such a specialized and qualitative nature that the performance of the service(s) cannot be reasonably described by written specifications because:**

*(Describe why it is "qualitative in nature requiring the need for expertise, extensive training and proven reputation." Provide a complete explanation of why it is not reasonably possible to draft specifications. Please note this provision does not apply to insurance contracts and/or services and should thus be marked as non-applicable.)*

4. **Describe the informal solicitation of quotations:**

*(List vendors contacted, prices and terms provided. If this has not been done, explain in detail. The lowest quotation is: If no quotation(s) is received, explain why in detail)*

5. **I have reviewed the rules of the Division of Local Government Services pursuant to N.J.A.C. 5:34-2.1 et seq. and certify that the proposed contract may be considered an extraordinary unspecifiable service in accordance with the requirements thereof.**

Respectfully,

Name

(Signature)

Title

*[Original to be retained by Governing Body's Clerk with the affirmed copy of the resolution; signed duplicate to be kept by appropriate official.]*



## **Chapter 9**

### **BOND ORDINANCES**

#### **§ 9-1. GENERAL INFORMATION**

#### **§ 9-2. EXPENDITURE OF FUNDS**

#### **§ 9-3. CONTENTS OF BOND ORDINANCE**

#### **§ 9-4. PROCEDURES FOR ADOPTION**

#### **§ 9-4.1. EXHIBIT - SAMPLE NOTICES FOR PUBLICATION OF ORDINANCES**

#### **§ 9-4.2. EXHIBIT - ORDINANCE ACTIVITY CHART**

#### **§ 9-5. LOCAL ASSESSMENT IMPROVEMENT ORDINANCES**

#### **§ 9-6. SALE OF BONDS/SHORT TERM FINANCING**

#### **§ 9-7. SALE OF BONDS**

#### **§ 9-8. BOND ANTICIPATION NOTES (BANS)**

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#### **§ 9-1. GENERAL INFORMATION**

9/14/07

The authorization of bonds is a method by which municipalities incur debt to finance capital projects over time rather than provide for the total cost of the project in the current annual budget.

The municipality issues bonds or notes in order to borrow, and these are known as municipal obligations.

A bond ordinance authorizes the capital improvement, appropriates money for that purpose, and authorizes the issuance of bonds or notes to finance all or part of the cost.

#### **A. MULTIPURPOSE OR SINGLE PURPOSE 9/15/10**

1. Regular, general BOND ORDINANCE: "ALL" Property owners in the municipality will benefit from the capital improvement.
2. Local Improvement/Assessment Ordinance

A local improvement is one for which the total cost (or a portion of it), may be assessed upon the lands in the vicinity which stand to gain special benefit by the improvement.

#### **§ 9-2. EXPENDITURE OF FUNDS**

9/14/07; 10/1/11

- A. The Local Bond Law provides that any local unit, by bond ordinance, may incur indebtedness, borrow money, authorize and issue negotiable obligations for financing specified items.

- B. Capital Projects may be paid for: 10/1/11
1. By the expenditure of funds from moneys immediately available in the Capital Improvement Fund.
  2. Through the sale of municipal bonds or notes to finance the purchase.

### **§ 9-3. CONTENTS OF BOND ORDINANCE**

9/14/07

- A. An authorization for the issuance of obligations, the purpose for which the bonds are to be issued, an estimate of the maximum amount of the bonds or notes to be issued, and an estimate of the cost of the purpose for which the bonds or notes are to be issued.
- B. The period of usefulness of the purpose for which the bonds or notes are to be issued.
- C. A determination that the supplemental debt statement has been filed, the amount of the subject obligations are within the allowable debt limitation of the municipality, and the specific amount by which the gross debt is increased.
- D. Expenses included in cost (often referred to as Chapter 20 expenses) cover such items as architect's fees, accounting, engineering and inspection costs, legal expenses, publication, etc. About ten percent (10%) of the total amount of the obligations authorized are allocated for these expenses. Interest on the obligations can be included as well. 9/15/10
- E. Every bond ordinance shall contain a statement that allows a twenty (20) day time limit from the date of publication of the ordinance following final adoption for anyone questioning the validity of the ordinance to file a suit, action or proceeding (commonly referred to as "Estoppel").
- F. Provision that the capital portion of the budget is amended if the project was not included in the capital budget to the extent of the authorization included herein. 9/15/10; 10/1/11

### **§ 9-4. PROCEDURES FOR ADOPTION**

9/14/07

- A. FIRST READING/INTRODUCTION
1. Written document;
  2. Read by title only;
  3. Final passage must be at least ten (10) days after the first reading.
  4. Chief Financial Officer must submit to the Municipal Clerk a Supplemental Debt Statement. [N.J.S.A. 40A:2-10] 10/31/05

- (a) Supplemental Debt Statement indicating annual debt, as of the end of the prior calendar or fiscal year, whichever is appropriate, plus cumulative interim debt: [N.J.S.A. 40A:2-10]
- (b) The Supplemental Debt Statement is filed with the Municipal Clerk no later than the day the Bond Ordinance is introduced and electronically with the Director of the Division of Local Government Services. 9/15/13

Helpful tip: See reference material LFN 2013-03; New Jersey Department of Community Affairs, Division of Local Government Services;  
<https://www.state.nj.us/dca/divisions/dlgs/about/#12> 9/15/14

- (1) It is recommended by DLGS that the Chief Financial Officer file with the Clerk and with the Director on the same email; before the Bond Ordinance is introduced. 9/15/13
- (2) A Supplemental Debt Statement cannot be filed until after the Annual Debt Statement has been filed. 9/15/13
- (3) The Clerk should retain the email to the CFO confirming receipt of the Supplemental Debt Statement as there will be no other form of confirmation. 9/15/14

#### B. LEGAL ADVERTISING 10/31/05

- 1. Publish the ordinance in full or summary in the official newspaper of the municipality with notice at least one (1) week prior to the scheduled public hearing date, together with the notice of introduction of the ordinance, which notice shall include the date (which shall be at least ten (10) days after introduction/first reading), time and place of further consideration for final passage. 10/31/04
- 2. The bond ordinance may be published by a summary thereof in a form prescribed by the Local Finance Board. If a summary is published, the summary shall contain a clear and concise statement prepared by the Municipal Clerk of the Governing Body setting forth the purpose of the ordinance, the amount of indebtedness being authorized and the time and place when and where a copy of the ordinance can be obtained, without cost, by any member of the general public. 10/31/04; 10/1/11
- 3. Exception: Local Improvement Ordinances require publication notice ten (10) days prior to the hearing.
- 4. When calculating advertising date, the date of publication is not counted/date of hearing is counted.

#### C. ORDINANCE POSTING

- 1. Post in full or by summary on the bulletin board or other place upon which public notices are customarily posted in the principal municipal building of the municipality.

2. Copies must be made available to the public during the week prior to the hearing and no fee may be charged for providing copies. 10/31/04

D. AFFIDAVITS/INTRODUCTION

Notarized Affidavit of Publication with newspaper tear sheet from official newspaper, or Municipal Clerk, is obtained.

E. AMENDMENT

Must be introduced prior to final adoption;

1. Must be published in full (only introduction and adoption can be published in summary) once at least two (2) days prior to the date set for further consideration, together with notice of the date, time and place at which it will be further considered for final adoption; 10/31/04
2. At the public hearing, it may be read by title only if:
  - a. At least one (1) week prior to such date it shall have been posted on the bulletin board or other place upon which public notices are customarily posted in the principal municipal building of the municipality,
    - (1) A copy of such bond ordinance, and
    - (2) A notice that copies of such bond ordinance will be made available during such week and up to and including the date of such meeting for further consideration to the members of the general public, and
  - b. Such copies of said bond ordinance shall have been made available accordingly. All persons interested shall again be given an opportunity to be heard. Following public hearing, the Governing Body may proceed to reject, finally adopt or further amend such bond ordinance.

F. DOWN PAYMENT REQUIREMENT

No bond ordinance shall be adopted unless it appropriates a sum as a down payment, which sum is not less than five percent (5%) of the amount of the obligations authorized.

The amount must be available prior to final adoption from any one (1) or more of the following sources:

1. By provision in a previously adopted budget for down payment or for capital improvement purposes;
2. From moneys then actually held by the local unit and previously contributed for such purpose other than by the local unit;
3. By emergency appropriation.

G. PUBLIC HEARING 10/31/05

1. Hearing can be adjourned to another specified date and time without publication of ordinance or notice. [N.J.S.A. 40:49-2b]

2. Receipted Supplemental Debt Statement from the Division of Local Government Services is acknowledged. [N.J.S.A. 40A:2-10]

#### H. FINAL ADOPTION

1. Final adoption must be at least ten (10) days after first reading by roll call vote;
2. Affirmative vote of two-thirds (2/3rds) of full membership of the Governing Body is required in all municipalities on all bond ordinances.
3. Publication of bond ordinance in full or by summary together with the estoppel statement which permits anyone aggrieved of the passage of the ordinance to file a petition with the Municipal Clerk questioning its validity within twenty (20) days of publication of adoption of the ordinance. 10/31/04
4. If petition (protest) is filed with Municipal Clerk within the twenty (20) day period, signed by registered voters equal in number to at least fifteen (15%) percent of the number of votes cast in the municipality at the last general election at which members of the General Assembly were elected, ordinance remains inoperable until ratified by referendum of the voters.
5. Affidavit of Publication upon adoption with newspaper tear sheet from official newspaper, or Municipal Clerk, is obtained.

#### I. EFFECTIVE DATE 10/31/05

1. Twenty (20) days after first publication of the notice of final adoption providing no suit or action against the ordinance is filed during the twenty (20) days (referred to as "Estoppel"). [N.J.S.A. 40A:2-18]
2. If protest is filed with Municipal Clerk within the twenty (20) day period signed by registered voters representing fifteen percent (15%) of the number of votes cast at the last general election at which a member of the General Assembly was elected - ordinance remains inoperable until ratified by referendum of the voters. [N.J.S.A. 40:49-27]

#### J. UPON ADOPTION 10/31/05

Bond Counsel will require the Municipal Clerk to submit Affidavits of Publication, certified copies of minutes, Affidavits that no protests have been filed, etc.

### § 9-4.1. EXHIBIT - SAMPLE NOTICES FOR PUBLICATION OF ORDINANCES

NOTICE OF PUBLIC HEARING: 10/31/04

#### NOTICE OF PENDING BOND ORDINANCE AND SUMMARY

The bond ordinance published herewith (*if published in summary - the summary terms of which are included herein*) was introduced and passed on first reading at a meeting of the (insert name of Governing Body) of the (insert name of municipality), in the County of (insert name of county), State of New Jersey on (insert date) It will be further considered for final passage after public hearing at a meeting of said (insert name of Governing Body) to be held at the (insert address of hearing location) on (insert date) beginning at (insert time)p.m.



During the week prior to and including the date of such meeting, copies of the full ordinance will be made available at no cost and during regular business hours at the Clerk's Office for members of the General Public who shall request the same. The summary of the terms of such bond ordinance follows:

Title:

Purpose(s):

Bonds/Notes Authorized:

Grants (if any) Appropriated:

Section 20 Costs:

Useful Life:

\_\_\_\_\_, Municipal Clerk.

This Notice is published pursuant to N.J.S.A. 40A:2-17.

NOTICE OF FINAL ADOPTION: 10/31/04

#### BOND ORDINANCE STATEMENTS AND SUMMARY

Ordinance No. ---/Title of Ordinance.

The bond ordinance published herewith (*if published in summary - the summary terms of which are included herein*) has been finally adopted by the (insert name of governing body) of the (insert name of municipality, in the County of (insert name of County), State of New Jersey on (insert date) and the twenty (20) day period of limitation within which a suit, action or proceeding questioning the validity of such Ordinance can be commenced as provided in the local bond law has begun to run from the date of the first publication of this statement. Copies of the full ordinance are available at no cost and during regular business hours at the Clerk's Office for members of the General Public who shall request the same. The summary of the terms of such bond ordinance follows:

Title:

Purpose(s):

Bonds/Notes Authorized:

Grants (if any) Appropriated:

Section 20 Costs:

Useful Life:

\_\_\_\_\_, Municipal Clerk. Signed by Municipal Clerk.

#### § 9-4.2. EXHIBIT - ORDINANCE ACTIVITY CHART

ORDINANCE TYPE	BOND	IMPROVEMENT ASSESSMENT
INTRODUCTION	In Writing - Read by Title - Introduced by Motion Affirmative Vote of Majority of Members Present Required	
SUPPLEMENTS TO INTRO	Supplemental Debt Statement	Supplemental Debt Statement
LEGAL ADVER SUPPLEMENTS	In full or summary 7 days before hearing 10/31/04; 9/15/10	In full or summary 10 days before hearing 10/31/04; 9/15/10

ORDINANCE TYPE	BOND	IMPROVEMENT ASSESSMENT
OTHER NOTICES & POSTING	Supplemental Debt Statement to Division of Local Government Service; Post; Copies for public at no charge 9/15/10	Supplemental Debt Statement to Division of Local Government Service; Post; Copies for public at no charge; Notice to affected property owners/7 days prior to hearing 9/15/10
AFFIDAVITS 9/15/17	2 Affidavits/Publication — one after introduction and one after adoption	2 Affidavits/Publication — one after introduction and one after adoption 1 Affidavit of Service — proof that each homeowner affected has been sent a copy of the ordinance
AMEND PRIOR TO HEARING	Read by Title - Amended by Resolution - Consideration at least one week later; publish in full 2 days prior to hearing 10/31/04	
SUPPLEMENTS/ HEARING	Received Supplemental Debt Statement acknowledged 9/15/10	Received Supplemental Debt Statement acknowledged 9/15/10
FINAL ADOPTION	At least 10 days after introduction Affirmative vote of 2/3 membership	Affirmative vote of 2/3 membership; Special Procedure if protest filed
NOTICE OF FINAL ADOPTION	Publish in full or summary with Special Notice or Estoppel Statement; 10/31/04; 9/15/10	Publish in full or summary with Special Notice or Estoppel Statement Ordinance becomes unconfirmed assessment 10/31/04; 9/15/10
AFFIDAVITS 9/15/17	2 Affidavits/Publication — one after introduction and one after adoption	2 Affidavits/Publication — one after introduction and one after adoption 1 Affidavit of Service — proof that each homeowner affected has been sent a copy of the ordinance
EFFECTIVE DATE	20 days after notice of final adoption published unless protest filed	20 days after notice of final adoption published unless protest filed
AFTER ADOPTION	File certifications as required by Bond Counsel	File certifications as required by Bond Counsel; Notice to affected property owners

## § 9-5. LOCAL ASSESSMENT IMPROVEMENT ORDINANCES

10/31/05; 9/14/07

### A. FIRST READING/INTRODUCTION

1. Written document; [N.J.S.A. 40A:2-17]
2. Read by title only; [N.J.S.A. 40A:2-17]
3. Final passage must be at least ten (10) days after first reading. [N.J.S.A. 40:49-2b]
4. Roll call vote with affirmative vote of a majority of the members present.

5. Governing Body may undertake installation of an improvement by improvement assessment ordinance when it receives a petition from property owners requesting same and agreement to pay the cost in accordance with specifications set forth in N.J.S.A. 40:56-3.
6. Chief Financial Officer must submit to the Municipal Clerk a Supplemental Debt Statement. [N.J.S.A. 40A:2-10]

B. LEGAL ADVERTISING [N.J.S.A. 40A:2-17]

1. Publish the ordinance in full or summary in the official newspaper of the municipality with Special Notice at least ten (10) days prior to the scheduled public hearing/final adoption date. The notice for a Bond Ordinance differs from the notice for other ordinances.
2. When calculating advertising date, the date of publication is not counted/date of hearing is counted.

C. NOTICES, OTHER

1. Local Improvement Ordinances to all affected property owners by personal service or Certified Mail at least one (1) week prior to hearing. [N.J.S.A. 40:49-6] Failure to notify a property owner does not invalidate the proceeding. [N.J.S.A. 40:45-5.3] 9/15/16; 9/15/18
2. Two (2) certified copies of the proposed ordinance and three (3) original copies of the Supplemental Debt Statement must be sent to the Division of Local Government Services for review, receipting and return to the Municipal Clerk prior to the scheduled public hearing date. [N.J.S.A. 40A:2-10] 9/15/10; 9/15/16; 9/15/18

D. AMENDMENT OF ORDINANCE PRIOR TO FINAL ADOPTION [N.J.S.A. 40A:2-17]

1. Ordinance as amended must be read by title at the hearing date previously scheduled, amended by resolution setting forth the amendment.
2. Published in full with a notice of introduction and time and place when ordinance as amended will be further considered. Amendments must be published in full. Only introduction and adoption can be by summary.
3. Publication must be at least two (2) days prior to the date of consideration of the amended ordinance.

E. PUBLIC HEARING

1. Called up for second reading and final passage (by title if properly posted; read in full if not properly posted). [N.J.S.A. 40:49-2c]
2. Hearing can be adjourned to another specified date and time without publication of ordinance or notice. [N.J.S.A. 40:49-2b]
3. Receipted Supplemental Debt Statement is acknowledged. [N.J.S.A. 40A:2-10]

## F. FINAL ADOPTION [N.J.S.A. 40A:2-17]

1. Final adoption must be at least ten (10) days after first reading [N.J.S.A. 40A:2-17] by roll call vote.
2. Affirmative vote of two-thirds (2/3rds) of the full membership of the Governing Body is required in all municipalities. [N.J.S.A. 40A:2-17]
3. Prior to or after public hearing, ordinance hearing can be adjourned to another specific date. Ordinance need not be readvertised if date of adjourned hearing specified. [N.J.S.A. 40A:2-17]
4. If, prior to final adoption, objections are filed with the Municipal Clerk by the owners of two-thirds (2/3rds) in value of lands proposed to be assessed for benefits derived from ordinance, the Governing Body may adopt the ordinance regardless, subject to the provisions set forth in N.J.S.A. 40:49-8.

## G. EFFECTIVE DATE 9/15/09

Local improvement assessment ordinance, twenty (20) days after publication of the notice of final adoption unless protest is filed with the Municipal Clerk by taxpayers representing ten percent (10%) of assessed value of the municipality. In such case, ordinance remains inoperable until approved by referendum of the voters. [N.J.S.A. 40:49-9]

## H. UPON ADOPTION

1. Bond Counsel will require the Municipal Clerk to submit Affidavits of Publication, certified copies of minutes, Affidavits that no protests have been filed, etc.
2. Local Improvement Assessment Ordinances shall be mailed to all affected property owners. Upon adoption of the local improvement assessment ordinance, the assessments contained therein become unconfirmed assessments on the effective date. 9/15/16

**§ 9-6. SALE OF BONDS/SHORT TERM FINANCING**

10/31/05; 9/14/07

## A. EXPENDITURE OF FUNDS

1. The Local Bond Law provides that any local unit, by bond ordinance, may incur indebtedness, borrow money, authorize and issue negotiable obligations for financing: [N.J.S.A. 40A:2-3]
  - a. Any capital improvement or property which it may lawfully make or acquire, or
  - b. Any purpose for which it is authorized or required by law to make an appropriation, except current expenses and payment of obligations (other than those for temporary financing).

2. Prior to the expenditure of public funds, the project must be included in the municipality's Capital Budget. The Capital Budget projects anticipated expenditures for property, improvements or equipment over a six (6) year period or a three (3) year period for municipalities with population under 10,000, but the actual expenditure of the funds must be authorized by specific ordinances. 10/1/11; 9/15/12
3. Capital projects may be funded as follows: 9/15/10; 9/15/12
  - a. By the expenditure of funds from moneys immediately available in the Capital Improvement Fund (cash):
    - (1) Requires the adoption of a Capital Ordinance;
    - (2) Must be introduced, public hearing set, published and adopted by a majority vote of members present;
    - (3) There is no estoppel (20 day waiting period) requirement.
  - b. Through the sale of municipal bonds or bond anticipation notes to finance the purchase.

B. BASIC REQUIREMENTS FOR EXPENDITURE OF FUNDS FOR CAPITAL PROJECTS THROUGH BONDING:

1. In order to introduce/adopt a bond ordinance, the capital portion of the budget must contain the improvement for the current year or must be amended to include same.
2. There must be available a down payment of five percent (5%) appropriated in the capital budget for the purpose(s) of the bond ordinance. [N.J.S.A. 40A:2-11]
3. Debt Limitations - No bond ordinance may authorize net debt in excess of three and one-half percent (3 1/2%) of the average of the prior three (3) years' equalized assessed real property valuation. [N.J.S.A. 40A:2-6]
  - a. Exceptions to the debt limitation may be approved by the Local Finance Board for reasons set forth in N.J.S.A. 40A:2-7. 9/15/2021
  - b. Permission for the exceptions must be sought and obtained from the Local Finance Board after introduction and before final adoption.
4. Period of Usefulness [N.J.S.A. 40A:2-22]



- a. The improvement(s) for which a bond ordinance is prepared must have a period of usefulness (Reasonable Life). For example:
    - (1) Buildings and structures, depending on whether Class A, B or C, - forty (40) years, thirty (30) years, and twenty (20) years respectively;
    - (2) Bulkheads, jetties if concrete or metal - fifteen (15) years; if wood - ten (10) years;
    - (3) Land acquisition for public purpose - forty (40) years;
    - (4) Sidewalks - ten (10) years;
    - (5) Streets and roads - five (5) years, ten (10) years or twenty (20) years depending on surface composition;
  - b. No local unit shall authorize obligations for any improvement or purpose having a period of usefulness of less than five (5) years. [N.J.S.A. 40A:2-21]
- C. Introduction, Adoption, Publication and Notification requirements for bond ordinance - See § 9-4 of this Chapter.

#### § 9-7. SALE OF BONDS

9/14/07

- A. All bonds must be offered at public sale upon the submission of sealed bids or through the submission of electronic proposals in accordance with N.J.S.A. 40A:2-29 and rules promulgated by the Local Finance Board, unless meeting the exceptions set forth in N.J.S.A. 40A:2-27. 10/31/04; 10/31/05
- B. Each municipality has a bond rating assigned by financial agencies such as Moody's and Standard & Poors (AAA being the highest rating), and these ratings are based upon the stability of the local government, property values and financial status. Ratings will directly affect the sale of bonds.
- C. The municipality must adopt a resolution by the affirmative majority vote of the full authorized membership of the Governing Body to hold a sale. The resolution must indicate:
  - 1. The form of notice of sale;
  - 2. The form of the bonds; and
  - 3. The person who will sell same.
- D. More than one (1) bond ordinance may be combined into a single issue for purposes of a bond sale.
- E. The notice of sale must be published in two (2) newspapers at least one (1) week prior to the sale, one (1) newspaper must be the newspaper designated by the municipality and the other in a New York or New Jersey based newspaper carrying bond notices. [N.J.S.A. 40A:2-30] Contents for the notice are set forth in N.J.S.A. 40A:2-31.

**F. RECEIPT OF BIDS [N.J.S.A. 40A:2-32]**

1. Bids must be received in accordance with the date, time and place set by notice with an indication provided that the bids will be opened on a precise date and time and none will be accepted after the time designated;
2. Each bid submitted and then opened by the Municipal Clerk or designated person, must be submitted with a cashier's check in an amount equaling two percent (2%) of the principal amount of the bonds;
3. The Governing Body awards to the lowest responsible bidder by resolution with the affirmative vote of two-thirds (2/3) of the full membership.

**§ 9-8. BOND ANTICIPATION NOTES (BANS)**

9/15/12

Pending the sale of bonds, the municipality may raise money on a temporary basis through the issuance of temporary notes (bond anticipation notes - Sometimes referred to as BANS). BANS are issued to obtain financing for projects that will eventually be financed through the sale of long-term bonds. These may be sold at private sale and the C.F.O. is given the authority to conduct these private sales. The process followed by the C.F.O. is as follows:

Quotes are solicited from local banks;

A determination is made as to which is the lowest proposal and an award is made by the C.F.O.;

The Municipal Clerk may execute documents to authorize the sale;

The C.F.O. is required to prepare a written report to the Governing Body which is listed on the agenda at the next meeting. The report must include the principal amount, interest rate, and maturities of the notes sold, the price obtained and the name of the purchaser.

Bans are issued for one (1) year and can be renewed for nine (9) more years for a total of ten (10) years.

## **Chapter 10**

### **LOCAL BUDGET AND FISCAL AFFAIRS**

- § 10-1. THE MUNICIPAL FINANCE ORGANIZATION
- § 10-2. STATE SUPERVISION AND REQUIREMENTS (Including the Budget Manual)
- § 10-3. ACCOUNTING SYSTEM
- § 10-4. ESSENTIALS OF BUDGET PREPARATION
- § 10-5. MUNICIPAL BUDGET
- § 10-6. OFFICIAL BUDGET DOCUMENT
- § 10-7. ANNUAL BUDGET CALENDAR
- § 10-8. BUDGET PROCEDURE
- § 10-9. CAPITAL BUDGET
- § 10-10. COST OF LIVING ADJUSTMENT (COLA)
- § 10-11. REFERENDUM TO EXCEED LIMITATIONS
- § 10-12. BUDGET ADJUSTMENTS
- § 10-13. AMENDMENTS AFTER ADOPTION OF THE BUDGET
- § 10-14. SELF-LIQUIDATING MUNICIPAL UTILITIES
- § 10-15. SPECIAL DISTRICTS
- § 10-16. SCHOOL FINANCES
- § 10-17. UNIFORM SHARED SERVICES AND CONSOLIDATION ACT
- § 10-18. LOCAL FISCAL AFFAIRS LAW
- § 10-18.1. EXHIBIT - LOCAL BUDGET VOTE, FILING & TIME INFORMATION
- § 10-18.2. EXHIBIT - BUDGET PUBLICATION BY SUMMARY FORM
- § 10-18.3. EXHIBIT - GOVERNING BODY APPROVAL OF LOCAL BUDGET EXAMINATION
- § 10-18.4. EXHIBIT - STATE FISCAL YEAR MODEL CAP ORDINANCE
- § 10-18.5. EXHIBIT - RESOLUTION - EMERGENCY APPROPRIATIONS LESS THAN 3 PERCENT TOTAL OPERATING APPROPRIATIONS
- § 10-18.6. EXHIBIT - RESOLUTION - EMERGENCY APPROPRIATIONS MORE THAN 3 PERCENT TOTAL OPERATING APPROPRIATIONS
- § 10-18.7. EXHIBIT - ORDINANCE - SPECIAL EMERGENCY
- § 10-18.8. EXHIBIT - RESOLUTION - SPECIAL ITEMS OF REVENUE AND APPROPRIATION
- § 10-18.9. EXHIBIT - CERTIFICATION - GRANTS/SPECIAL ITEM OF REVENUE AND APPROPRIATION
- § 10-18.10. EXHIBIT - RESOLUTION - CHANGE OF TITLE, TEXT OR AMOUNT OF APPROPRIATION
- § 10-18.11. EXHIBIT - SAMPLE RESOLUTION - SCHOOL BOARD BUDGET RESOLUTION CERTIFYING THE GENERAL FUND TAX LEVY FOR THE (MUNICIPALITY) BOARD OF EDUCATION FOR THE SCHOOL YEAR

(YEARS), BY THE  
GOVERNING BODY OF  
THE (MUNICIPALITY)  
(COUNTY), STATE OF  
NEW JERSEY

§ 10-18.12. EXHIBIT - CORRECTIVE  
ACTION PLANS - NEW  
REQUIREMENTS FOR  
LOCAL UNITS

§ 10-18.13. EXHIBIT - GROUP  
AFFIDAVIT FORM

## § 10-1. THE MUNICIPAL FINANCE ORGANIZATION

10/1/07; 9/15/10

Among the options available for the organization of municipal finance activities is a centralized or decentralized format. The finance function is centralized when one department is responsible for all major financial functions including, but not limited to, tax assessment, tax collection, accounting, budgeting, purchasing, and treasury management. In most cases, the head of such a department, typically the Chief Financial Officer, reports directly to the Mayor, Manager, or Administrator. It is generally agreed that a centralized finance department provides for better coordination of financial activities and simplified financial procedures. A centralized finance department is particularly necessary in larger municipalities.

A decentralized municipal finance activity exists when the fiscal responsibilities are shared by a number of departments or officials. For example, the Tax Collector may be fully responsible for his or her office while reporting directly to the Mayor, Manager or Business Administrator or other chief administrative officer (C.A.O.). The same would hold true for the Treasurer, who may or may not be the Chief Financial Officer.

Each municipality is required to have a C. F. O. and that individual may not be a member of the Governing Body.

Regardless of the type of local finance organization, it must be understood that finance is a staff activity. The Finance Officer continually advises the Mayor, Governing Body, Manager, Administrator, and departments on financial matters. He or she plays an important role in helping to define a community's fiscal policy and in providing services to operating departments.

### A. MUNICIPAL CHIEF FINANCIAL OFFICER 10/1/11

Generally, the Chief Financial Officer (C.F.O.) is the Director of Finance, Municipal Comptroller or Treasurer who is not a member of the municipal Governing Body. A designation of Certified Municipal Finance Officer (C.M.F.O.) is required for permanent appointment. Reference should be made to N.J.S.A. 40A:9-140.1 and 40A:9-140.2.

The C.F.O. is responsible for the preparation of the Annual Financial Statement, Annual Debt Statement and Balance Sheet. The C.F.O. is also responsible for all general financial matters such as budget execution, bond issuance, investments, and revenue analysis. The person holding this position also prepares the official municipal budget based on spending decisions made by the Business Administrator, Manager,

Mayor, and ultimately the Governing Body. The position of Comptroller is used to denote the C.F.O. in the town form of government (and in some cities). The functions are similar to the C.F.O. in other forms of government, including budget control and all other general fiscal functions.

Although the C.F.O. may continue, in many municipalities, to have the title of Treasurer, their responsibilities include such differing activities as capital budgeting, inventory control, and salary and benefit costing for collective bargaining negotiations. The C.F.O. may also assist the Administrator of Manager in streamlining procedures and making departmental operations more efficient.

**B. MUNICIPAL TAX COLLECTOR [N.J.S.A. 40A:9-142] 10/1/07**

The Tax Collector is appointed by the Municipal Governing Body for a four (4) year term beginning January 1st. Subsequent appointments are made by the Governing Body or Chief Executive as appropriate to the form of government. The office of the Municipal Tax Collector and Chief Financial Officer or Municipal Clerk may be held by the same person. However, no member of the municipal Governing Body may hold any of these positions.

The primary responsibilities of a Municipal Tax Collector include:

1. Receive and collect all moneys assessed or raised by taxation or assessment for any purpose;
2. Tax Collector must prepare monthly reports to the Governing Body on all receipts, deposits, and cash on hand belonging to the municipality. 10/1/07

**C. MUNICIPAL TAX ASSESSOR [N.J.S.A. 40A:9-148] 10/1/07**

Each county has a Board of Taxation, which directly supervises, on behalf of the Division of Taxation, the local Tax Assessor and the assessing process. The County Board of Taxation has the responsibility, pursuant to N.J.S.A. 54:3-13, to assure the value of all taxable property bears its "full, equal and joint share of taxes."

The primary functions of the Municipal Tax Assessor include:

1. Ascertaining the names of the owners of all real property situated in the Assessor's taxing district.
2. After examination and inquiry, determining the full and fair value of each parcel of real property at such price as, in the assessor's judgment, it would sell at a fair and bona fide sale by private contract, on October 1 next preceding the date on which the assessment was completed.

**§ 10-2. STATE SUPERVISION AND REQUIREMENTS (Including the Budget Manual)**

9/15/10

To ensure compliance with the Local Budget Law (N.J.S.A. 40A:4-1 et. seq.) the Division of Local Government Services issues a budget manual which serves as a guide for municipal



officials in preparing their budgets. The manual contains the budget calendar, information on appropriations and revenues, and instructions pertaining to other aspects of the budget.

In addition to the budget manual, the DLGS also annually issues uniform budget forms which prescribe the format of annual appropriations and accounts for all municipalities, counties, and local public authorities.

### § 10-3. ACCOUNTING SYSTEM

10/1/07; 9/15/10

Every organization, whether a profit-making business or a government agency, must have an adequate accounting system for recording financial transactions. The purpose of an accounting system is to record all financial transactions including income, expenses and the status of assets, liabilities, and equity, or in the case of municipalities - Fund balance. These accounts must be self-balancing, that is assets must equal liabilities together with fund balance. 10/1/07

Prior to examining the specific nature of municipal accounting it is important to consider that two related financial systems play an important role in the efficiency and accuracy of municipal accounting systems. The first is the budgeting system which records expenditure of funds against legally made appropriations. The second is the accounts receivable system where money owed the municipality by taxpayers, state agencies, and municipal departmental agencies, among others, is recorded. The most important aspect of the accounts receivable system is the property tax collection system. The tax collection system is responsible for the billing and receiving of property taxes. The two systems are critical for keeping track of the expenditure and receipt of funds and are the basis for the "original books of entry" used to collate transactions into the accounting system.

The New Jersey Division of Local Government Services - Department of Community Affairs together with the Local Finance Board establishes accounting principles and practices, to be followed by New Jersey municipalities with N.J.S.A. 40A:2,4,5, and 11 as the statutory foundation.

#### A. FUND STRUCTURE 10/1/07

The fund structure is a set of self-balancing accounts that provides for the separate reporting of income and expenditures by type of function or operation of the organization. The following is a description of the funds used by New Jersey municipalities:

1. Current Fund - This is the general fund of a municipality for the current year. Included as income are property tax collections and anticipated revenues.
2. General Capital Fund - All "general" capital improvements, equipment acquisition (only bondable items), and facility acquisition or major facility improvements not attributed to the Current or Utility Funds are recorded in the general capital funds. Income received to support general capital spending is derived from either budgetary appropriations or duly and legally approved bond ordinances.

3. Trust Fund(s) - Records specific receipts that may be used solely for the purpose for which they are intended. An example would be the "dog license" trust fund that allows for the receipt and disbursement of dog license revenues.
4. Dedication of Revenues by Rider - Dedication by Rider resolution adopted pursuant to N.J.S.A. 40A:4-39 is a request to the Director to approve in the budget of a local unit dedicated revenues anticipated to be received during the fiscal year, which are not subject to a reasonably accurate estimate in advance. Upon approval, the Rider by title is annexed to the operating budget of the current year and subsequent year, as riders are deemed to have an indefinite life to continue their function until rescinded by any respective governing body. Thus, a non-lapsing revolving fund must be set up, in a separate Trust Fund to accomplish the purposes of the dedicated revenue provided that cash is on hand for the expenditure to be made. There must be statutory or regulatory law authorizing the purpose of a dedicated by Rider Trust Fund. 10/31/04
5. Utility Operating and Capital Funds - These funds account for the operation and acquisition of capital facilities of municipal owned and operated utilities. The most common types of utilities are water, sewer and swimming pool utilities, although utilities may also be established for other purposes. Income is derived from user fees based upon consumption or other reliable measurement of utility use by customers. Expenditures are recorded against budget appropriations. Utility capital acquisition is recorded as part of the utility capital fund.
6. Grant Fund 9/15/12

B. BASIS OF ACCOUNTING 10/1/07

In general, current fund revenues are recorded on a "cash basis," that is in the year the cash is received. When revenue accounts receivable are established they are offset by a "reserve for revenue accounts receivable" and are realized in cash in the succeeding year(s) when payment is made. However, utility funds utilize an accrual accounting whereby interfund receivables are not offset by a reserve for receivables.

C. CHART OF ACCOUNTS 10/1/07

Every fund (current, utility, capital, etc.) must contain an identification of all accounts and such accounts must be classified according to assets, liabilities, reserves, and fund balance (surplus). Each municipality must maintain a written chart of accounts that identifies each account.

The DLGS promulgated a Flexible Chart of Accounts to provide a standardized method of budget reporting which may ultimately lead to a standardized method of reporting fund and trial balance account information. In the future, the use of the FCOA will help facilitate electronic filing of budgets and financial statements.

The Flexible Chart of Accounts (FCOA) recommended for use by municipalities and counties in New Jersey is described in the FCOA manual. A thirteen-digit account code is used to identify all accounts included in the financial records of the locality. The account code sequence of thirteen digits is used to identify the level of the financial account as follows:

Digit	Level of Account
XX	Fund (current, general capital, etc.)
XXX	General Ledger/Trial Balance Account (asset accounts, liability accounts, fund balance, etc.)
XX	Appropriation/NJCAFR — General Ledger and Budget Category (Budget Categories and Comprehensive Annual Financial Report account categories such as anticipated revenue)
XXX	Subsidiary Accounts for Revenue and Appropriation/Expenditure Reporting (miscellaneous revenues, budget expenditures including department appropriation, trust fund reserve accounts, etc.)
XXX	Detail Line Items (salaries and wages and other expenses budget categories). Due to the diverse needs of municipalities there will be a need for some municipalities and counties to design their own unique coding sequence. As such the accounts recommended in this manual may be modified locally.

The difference between assets and liabilities (when total liabilities includes the reserve for receivables) is fund balance. This is commonly referred to as the accounting equation. Additionally, fund balance is often referred to as surplus.

#### D. GENERAL FIXED ASSETS

There is also a "general fixed asset account group" which records the value of fixed assets at original cost. Fixed assets are land, buildings, vehicular equipment, and general equipment owned by the municipality, except for utility owned assets. All fixed assets with a cost in excess of five thousand dollars (\$5,000) individually, must be recorded in the fixed asset account group. The purpose of the account group is to record the investment by a municipality in fixed assets.

Municipalities are initially required to perform an inventory to account for the fixed assets. Thereafter the changes in fixed assets, such as sales of equipment or acquisition of property must be recorded. Additionally, a description of the asset including acquisition date, cost, etc. should be recorded.

#### E. GENERAL LEDGER

The general ledger is the official financial permanent record of the municipality that contains a summary of all financial transactions as recorded on the original books of entry (i.e. budget, cash disbursements register, cash receipts register, etc.). The general ledger contains the funds, accounts and transactions in "double-entry" form; that is utilizing the debit and credit system of accounting. Accordingly, each fund included in the general ledger will be self-balancing and will be used to prepare the annual financial statements, determine the financial position of the municipality, and provide an audit trail for testing compliance with laws and regulations.

## F. FINANCIAL CONTROLS 10/1/07

Cash receipts should be recorded by date, category of revenue, amount, and payee as well as other pertinent information. This type of information is contained on the source documents, such as an invoice, cash receipt forms, check stubs, etc.

**§ 10-4. ESSENTIALS OF BUDGET PREPARATION**

9/15/10

Because of the importance of the municipal budget, every effort should be made to provide for a systematic approach to budget preparation. The following are some general guidelines which will assist municipal officials in achieving such an approach.

- A. It is suggested that a budget calendar, supplementing the one provided by the DLGS be established. Such a calendar would set dates by which local officials and other agencies are required to submit their budget estimates. It is important that such deadlines be scheduled early in the year, with department requests being submitted by November 15th, so that budget preparation can begin early. This will allow adequate time for the preparation of budget requests and for effective review. Dates should also be established for department hearings by the Chief Administrative Officer or the Governing Body.
- B. Standard budget forms should be prepared for use by the various departments and agencies. These forms, accompanied by instructions, should be made available to all officials responsible for preparing budget requests. The forms will provide uniformity by which requests are presented and will clearly pinpoint the type of information which should be submitted. Provision should be made on the forms for the justification of all budget requests. These forms will also provide the supplemental budget detail that State regulation requires be made available to interested citizens upon request.
  1. Comparative fiscal data should be made available to the department. This would include prior and current year expenditures and personnel information such as the number of positions authorized and filled, salary ranges, and job specifications. Information on the prices of equipment and supplies and potential price increases or decreases should also be made available.
  2. Meetings should be held with the individual responsible for budget preparation, in order to answer any questions regarding the use of the forms and to discuss overall budget policy.
  3. If possible, the Mayor, Administrator, or Manager should establish guidelines regarding the budget policy to be established for the budget year. Such guidelines should define any limitations on new and expanded programs, the creation of new positions, or other budgetary restrictions. They should set forth the policy on wage increases and employee benefits and the financing of capital items.
  4. Operating officials such as department heads and agency directors should be instructed to identify work programs and to develop work load data. Wherever possible, performance data should be supplied to support budget requests. Services that are funded by the municipality or county should be allocated



resources on the basis of the scope of activities. Realistic units of measurement should be developed wherever possible.

5. Goals for services should be developed and stated in units of time and accomplishment expedited by the Governing Body.

### C. REVENUES

An essential part of municipal budget is the revenue section which indicates the amount of revenues anticipated including property tax collections for the budget year. The individual responsible for preparing the municipal budget should carefully analyze all previous year receipts. The annual financial statement contains information on revenues, appropriations, surplus, tax collections, deferred charges, capital improvement fund, and debt service as well as other pertinent financial information.

In preparing the revenue section of the budget, it must be remembered that municipal revenues may not normally be anticipated above the amount collected the previous year for each type of revenue. The major revenue items in the budget include:

- anticipated revenues; 10/1/07
- surplus;
- state aid; 10/1/07
- grants; 10/1/07
- miscellaneous revenues;
- delinquent taxes;
- and current taxes.

The amount of anticipated revenues is subtracted from the amount of appropriations for the budget year with the difference being the amount to be raised by taxation.

## § 10-5. MUNICIPAL BUDGET

9/15/10

The Director of the Division of Local Government Services within the Department of Community Affairs (hereafter referred to as "Director") and the policy-making Local Finance Board possess very broad powers over local government finance. The Local Budget Law [N.J.S.A. 40A:4-1 et seq.] deals with state regulation of local budget matters.

This chapter provides an overview of the fundamental regulations pertaining to the budget process as it relates to the Municipal Clerk. Working hand in hand with the Municipal Financial Officer, the Municipal Clerk is responsible for the advertisement, execution and filing of the budget resolution as well as any other resolutions and ordinances amending the budget. Most of the documents submitted to the Division by a municipality are required by statute to have the proper certification of the Municipal Clerk in order to be considered legal.

The primary purpose of the official budget is to provide an orderly system of financial control. It is the basis for limitations and controls on local government financial operations. New Jersey statutes mandate a "cash basis" budget; that is, every municipality must budget sufficient income (revenue) to meet the total authorized expenditures (appropriations).



Every public entity accounting system has as its foundation the annual budget. As previously mentioned the budget system is an integral part of the accounting system of a municipality and is used to control and monitor expenditures made against duly and legally made appropriations. Additionally, budget revenue sources must be similarly controlled and monitored. 10/31/04

Although the main focus of budgeting is on setting appropriations, there is the revenue aspect of the budget as well. Various revenues (e.g. franchise and gross receipts taxes, construction fees and permits, federal and state grants, etc.) are examined and estimated for the ensuing budget. These revenues are used to support spending.

**The difference between the total appropriations and revenues represents the amount to be raised through taxation for municipal purposes. Adoption of the budget constitutes the legal authorization to levy taxes and to spend funds. These taxes shall be assessed and levied by the municipality. The municipality collects taxes for the school boards (local and regional), all county taxes, special districts, as well as municipal taxes. 10/1/07**

#### A. TEMPORARY BUDGET APPROPRIATIONS

1. **ADOPTION OF TEMPORARY BUDGET** - Since the official budget for the fiscal year is not adopted prior to the beginning of the year, a temporary budget must be adopted covering the first quarter of the fiscal year.
  - a. Provides for the period between the beginning of the fiscal year and the adoption of the budget. Municipalities cannot make any commitments or payments prior to the adoption of a temporary budget.
  - b. Adopted by resolution within the first thirty (30) days of the budget year. It may be amended by resolution up to and including the 30th day of the month.
  - c. Requires the affirmative vote of a majority of the full membership of the Governing Body.
  - d. Shall not exceed twenty-six and twenty-five one hundredths percent (26.25%) of the total appropriations made in the budget for the preceding fiscal year (excluding certain exceptions). The Director may permit additional temporary budget appropriations where budget dates are extended.
2. **EMERGENCY TEMPORARY APPROPRIATIONS [N.J.S.A. 40A:4-20]** - In addition to the ordinary temporary appropriations required for the day-to-day operation, emergency temporary appropriations can be made, for lawful purposes, for the period between the beginning of the budget year and the date of the adoption of the budget (which may extend beyond the first quarter of the fiscal year). The amount must be included by amendment under the current fiscal year budget as finally adopted.
  - a. Resolution is adopted by a two-thirds (2/3rds) vote of the full membership of the Governing Body and filed with the Director.

- b. If adopted after the introduction and approval of the budget, it shall be included by amendment in the budget. See § 10-8 of this Chapter. 10/1/07

## **§ 10-6. OFFICIAL BUDGET DOCUMENT**

10/1/07; 9/15/10

The Official Budget document is provided by the Division of Local Government Services. The document outlines the revenues and appropriations for the municipality's fiscal year as approved by the Governing Body.

Sheet 1 requires the Municipal Clerk, Chief Financial Officer and Municipal Auditor to sign certifications that budget was approved by resolution of the Governing Body, is an exact copy of the original filed in the Municipal Clerk's Office, that all statements contained in the budget document are proof and the total of anticipated revenues equals to the total appropriations and the budget is in full compliance with the Local Budget Law.

In addition, once the budget is adopted the Director of the Division of Local Government Services certifies the adopted budget.

Sheet 2 is the Municipal Budget Notice. The Municipal Clerk must insert the recorded vote of the introduction of the budget and the adoption of the budget. In addition the municipal budget notice includes the name of the paper and date the budget notice was published in the official newspaper as well as the date and location of the public hearing.

Sheet 3 and 3A is the Explanatory Statement. The budget must contain an explanatory statement and consist of a tabulation of all anticipated revenues and appropriations to be made. The total of anticipated revenues must equal the total of appropriations (known as a "balanced budget"). A mandatory minimum budget message must include a summary of how the CAP was calculated and a summary, by function, of the appropriations that are spread among more than one (1) official line item. 10/31/04

Sheet 4 through Sheet 11 list the anticipated revenues.

Sheet 12 through 30 list the appropriations. Certain appropriations are within the CAP and others are excluded from the CAP. The appropriations will show each individual departments Salary and Wages appropriation and total other expenses.

## **§ 10-7. ANNUAL BUDGET CALENDAR**

12/01; 10/1/07; 9/15/10

- A. CALENDAR FISCAL YEAR (CY) - January 1 through December 31. Municipalities with a population of less than 35,000 generally follow this calendar. 10/31/04
- B. STATE FISCAL YEAR (SFY or FY) - July 1 through June 30 10/31/04
  1. Municipalities with a population of over 35,000; or
  2. Any municipality which, by ordinance, adopts a state fiscal year.

3. Any municipality may apply to the Local Finance Board for approval to convert to the State fiscal year, and the Board shall approve the conversion if it finds it is in the interest of the taxpayers of the municipality to change. Any municipality whose fiscal year is changed pursuant to this section shall prepare a transition budget to cover the period between January 1 and June 30 prior to the beginning of its first State fiscal year. A municipality may also apply to the Local Finance Board to revert back to a calendar year from a State fiscal year. In this case, they would do a transition Budget from July through December. 10/31/04; 10/31/05; 10/1/11

Note: The original statute creating the State Fiscal Year Budget Calendar for municipalities required that all municipalities with a population in excess of 35,000 adopt the State Fiscal Year Calendar. Later amendments permit any municipality to adopt the State Fiscal Year Calendar or to revert to the Calendar Year Budget Calendar. 9/15/14

### § 10-8. BUDGET PROCEDURE

10/1/07; 9/15/10

- A. In 2018 the State rolled out the release of the new Financial Automation Submission Tracking System (FAST) to municipalities and counties commencing with all submissions starting January 1, 2018. It is the responsibility of the Chief Financial Officer (CFO) to submit the budget document through this system. The Clerk will be required to electronically sign the budget document once it has been introduced, as well as once it has been formally adopted. Emails will be sent to the Clerk (from DoNotReply@dca.nj.gov) notifying them that they must sign the submitted document and provide the necessary link to allow for that action. The INTRODUCTION AND APPROVAL steps shown below are still required to be followed. 9/15/2021
- B. INTRODUCTION AND APPROVAL - While the budget is referred to as a budget resolution, it requires two (2) readings, similar to an ordinance. All budgets must be approved, or amended and adopted by resolution. Each resolution must be passed by not less than a majority of the full membership of the Governing Body.
  1. Not later than February 10 (CY) or August 10 (FY), in writing, at a public meeting of the Governing Body. 10/31/04
  2. Constitutes a first reading which may be by title.
  3. The date, time and place of the public hearing is fixed by the Governing Body. 9/15/09
  4. Within three (3) days, three (3) certified copies of the approved budget are submitted to the Director, together with the Governing Body's certification that the local unit's hiring practices comply with the "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964," as amended, 42 U.S.C. § 2000 et seq. (Apr. 25, 2012). [N.J.S.A. 40A:4-5] 10/1/07; 9/15/17

SEE PL2017, C183

C. EXTENSION OF DATES FOR INTRODUCTION AND APPROVAL - The Director, with the approval of the Local Finance Board, can extend the dates for introduction, approval and adoption of municipal budget beyond the dates required under the "Local Budget Law."

D. ADVERTISEMENT

1. Must be published in the official newspaper of the municipality at least ten (10) days before the date of public hearing.
2. Can be advertised in full or by publication of a summary.
3. Must include the date, time and place of the public hearing.

E. PUBLIC HEARING

1. Shall be held not less than twenty-eight (28) days after the approval/introduction of the budget.
2. May be adjourned from time to time until the hearing is closed.
3. Budget must be read in full **unless**:
  - a. At least one (1) week prior to the date of the hearing, and at the hearing, a complete copy of the approved budget shall be made available for public inspection. [N.J.S.A. 40A:4-8] 12/01; 10/31/05; 9/15/15
  - b. Shall be made available to each person upon request. 9/15/15
  - c. A resolution is passed by a majority of the full membership stating that the law has been met and allowing that the budget be read by title. 9/15/15

F. AMENDMENTS — If required by the Director, amendments can be made prior to the public hearing without advertisement. The Governing Body may make amendments only during or after the public hearing of the approved budget. 12/99; 9/15/15

1. Requires a public hearing if the amendment:
  - a. Adds a new item of appropriation in an amount in excess of one percent (1%) of the total amount of appropriations indicated in the approved budget; 9/15/15
  - b. Increases the amount to be raised by taxes by more than 5%, unless the same is made to include an emergency temporary appropriation only. 9/15/15
  - c. Increases or decreases any item of appropriation by more than ten percent (10%), or 9/15/15
  - d. The amendment resolution must be advertised at least three (3) days before the fixed date for the public hearing. The advertisement must be in full. 10/31/04; 10/1/07; 10/1/11; 9/15/12; 9/15/15
2. Within three (3) days of adoption, three (3) certified copies of the amendment resolution must be submitted to the Director. 10/1/07



3. Amending resolution **must be read in full** at the hearing and before adoption. Adoption requires a majority of full membership vote. 10/1/07
  4. The Director must approve and certify the amending resolution before its adoption unless the municipality is eligible and qualifies for local budget examination. 9/15/11
- G. ADOPTION - No budget or amendment can be adopted until the Director has certified approval unless the municipality is eligible and qualifies for local budget examination. 9/15/11
1. Budget resolution must be read in full **unless**:
    - a. At least one (1) week before the hearing and at the hearing, a complete copy of the approved budget: [N.J.S.A. 40A:4-8] 10/31/04; 9/15/16
      - (1) Shall be made available for public inspection, and 9/15/16
      - (2) Shall be made available to each person upon request, and 9/15/16
    - b. A resolution is passed by a majority of the full membership allowing that the budget be read by title. 9/15/16
  2. No later than March 20 (CY) or September 20 (FY). If the Director's certification is received after the public hearing, the Governing Body may adopt within ten (10) days after receipt. 10/31/04
  3. By resolution adopted by a majority of the full membership of the Governing Body.
  4. Within three (3) days after adoption, three (3) certified copies are to be sent to the Director. All signatures must be **manual**, all votes recorded. [N.J.S.A. 4-10] 10/1/07
  5. Within fifteen (15) days after adoption, one (1) certified copy is sent to the County Board of Taxation. [N.J.S.A. 40A:4-11] 10/31/07; 10/1/07
- H. SELF-EXAMINATION OF BUDGET 10/31/04
1. The Local Budget Law -N.J.S.A. 40A:4-78(b) and rules adopted by the Local Finance Board permit certain municipalities in sound fiscal condition to assume the responsibility, normally granted the Director of the Division of Local Government Services, of conducting the annual budget examination. In examining local budgets, the DLGS reviews the revenue estimates to determine that they are reasonable, accurate, and correctly stated and determines that items of appropriation are properly set forth, adequate provisions for debt service, deferred charges, statutory expenditures, cash deficit of preceding years, and reserve for uncollected taxes. This same analysis must be performed by the CFO and Governing Body when performing a self-examination of the budget.
    - a. The Director of Local Government Services also has the authority to approve the insertion of any special item of revenue in the budget.



- b. The director also examines the budget for accuracy of itemization and for compliance with the Local Budget Law and the regulations of the DLGS. The division cannot change the amount of an appropriation unless an amount is legally required.
  - I. **MUNICIPAL LEVY CAP LAW** — Municipalities are prohibited from increasing the amount to be raised by taxation by more than two percent (2%). Exempt are municipalities with a tax rate of \$0.10 or less per \$100 of assessed valuation. (Limitation on Increase in Appropriations) [N.J.S.A. 40A:4-45.3] 9/15/08; 10/1/11; 9/15/17; 9/15/2021
  - J. **ANNUAL COST-OF-LIVING ADJUSTMENT (COLA)** — is authorized under the original 1977 budget cap law. Current law affecting municipal and County budgets required compliance with both the "1977" cap law and the 2010 levy cap law. Pursuant to N.J.S.A. 40A:4-45.2, "municipalities shall be prohibited from increasing their final appropriations by more than 2.5%..." unless action is taken by the Governing Body to increase their final appropriations subject to the cap to the statutorily permitted 3.5%. A model ordinance is available on the Division of Local Governments website.  
  
**\*Editor's Note:** Refer to official communications (Local Finance notices) as to the current CAP.
    - 1. Exceptions may be subtracted from the budget amount when calculating the rate of increase. Exemptions from this calculation often change from year to year. A complete listing of exceptions is noted in N.J.S.A. 40A:4-5.3, however, a few are listed below:
      - a. Increase in pension.
      - b. Debt service.
      - c. Increase in health insurance.
      - d. Emergency appropriations.
- 9/15/17; 9/15/18

## § 10-9. CAPITAL BUDGET

10/1/07; 9/15/10

- A. Included in the budget document, a plan for the expenditure of public funds for capital purposes for a period not greater than six (6) years. Municipalities with a population under 10,000 only need a three (3) year capital plan. 12/99; 10/1/11
- B. Only after the adoption of a capital budget can the Governing Body expend or incur obligations for capital purposes.
- C. May be amended at any time during the year.

**§ 10-10. COST OF LIVING ADJUSTMENT (COLA)**

[N.J.S.A. 4-45.1a] 10/1/07; 9/15/10; 10/1/11

Defined as the annual percentage increase in the Implicit Price Deflator for State and Local government Purchases of Goods and Services for the year preceding the current year. The Director determines the COLA to be applied. 9/15/12

**A. FUND STRUCTURE 10/1/07**

The fund structure is a set of self-balancing accounts that provides for the separate reporting of income and expenditures by type of function or operation of the organization. The following is a description of the funds used by New Jersey municipalities:

1. Current Fund - This is the general fund of a municipality for the current year. Included as income are property tax collections and anticipated revenues.
2. General Capital Fund - All "general" capital improvements, equipment acquisition (only bondable items), and facility acquisition or major facility improvements not attributed to the Current or Utility Funds are recorded in the general capital funds. Income received to support general capital spending is derived from either budgetary appropriations or duly and legally approved bond ordinances.
3. Trust Fund(s) - Records specific receipts that may be used solely for the purpose for which they are intended. An example would be the "dog license" trust fund that allows for the receipt and disbursement of dog license revenues.
4. Dedication of Revenues by Rider - Dedication by Rider resolution adopted pursuant to N.J.S.A. 40A:4-39 is a request to the Director to approve in the budget of a local unit dedicated revenues anticipated to be received during the fiscal year, which are not subject to a reasonably accurate estimate in advance. Upon approval, the Rider by title is annexed to the operating budget of the current year and subsequent year, as riders are deemed to have an indefinite life to continue their function until rescinded by any respective governing body. Thus, a non-lapsing revolving fund must be set up, in a separate Trust Fund to accomplish the purposes of the dedicated revenue provided that cash is on hand for the expenditure to be made. There must be statutory or regulatory law authorizing the purpose of a dedicated by Rider Trust Fund. 10/31/04
5. Utility Operating and Capital Funds - These funds account for the operation and acquisition of capital facilities of municipal owned and operated utilities. The most common types of utilities are water, sewer, stormwater and swimming pool utilities, although utilities may also be established for other purposes. Income is derived from user fees based upon consumption or other reliable measurement of utility use by customers. Expenditures are recorded against budget appropriations. Utility capital acquisition is recorded as part of the utility capital fund. 9/15/19
6. Grant Fund 9/15/12

**§ 10-11. REFERENDUM TO EXCEED LIMITATIONS**

10/1/07; 9/15/10

A referendum can be conducted by a municipality requesting approval for increasing the municipal budget by more than two percent (2%). A resolution authorizing such a referendum is required.

**§ 10-12. BUDGET ADJUSTMENTS**

10/1/07; 9/15/10

**A. APPROPRIATION TRANSFERS**

1. During the last two (2) months of the current budget fiscal year, by a resolution adopted by a two-thirds (2/3) vote of the full membership. Funds are transferred from one line item to another. [N.J.S.A. 40A:4-58] 10/31/04
2. During the first three (3) months of a succeeding year, by a resolution adopted by a two-thirds (2/3) vote of the full membership. (Although the fiscal year has ended, some funds remain which are called "reserves." These appropriation reserves can be transferred from one line item to another within that budget through this process.) [N.J.S.A. 40A:4-59] 10/31/04
3. The exception to N.J.S.A. 40A:4-58 and N.J.S.A. 40A:4-59 is that no transfers may be made from an appropriation outside the CAP to an appropriation within the CAP. Also, no transfers shall be made among outside CAP appropriations except transfers may be made among debt service appropriations only. [N.J.S.A. 40A:4-38] 10/31/04

**B. UNEXPENDED BALANCES 10/31/05; 9/15/09**

1. May be cancelled prior to the end of the fiscal year by resolution of the Governing Body.
2. Automatically cancelled at the end of the next succeeding fiscal year. These funds go into fund balance (surplus) when cancelled. 10/1/07

**§ 10-13. AMENDMENTS AFTER ADOPTION OF THE BUDGET**

10/31/05; 10/1/07; 9/15/10

**A. EMERGENCY APPROPRIATIONS** - Made for an unforeseen purpose after the adoption of a budget. To meet a need to protect or promote the public health, safety, morals or welfare. The total amount of all emergency appropriations shall be included in the budget of the next succeeding fiscal year.

1. Regular Emergency Appropriations [N.J.S.A. 40A:4-48]
  - a. If the amount is less than three percent (3%) of the appropriations in the current budget, a resolution can be adopted by not less than two-thirds (2/3rds) of the full membership of the Governing Body that an emergency

exists. (See Exhibits for Sample Resolution - Emergency Appropriations/ less than three percent (3%)). 9/15/09; 9/15/17

- (1) Two (2) certified copies of the resolution are submitted to the Director for approval.
- (2) Affidavit of Chief Financial Officer as required by N.J.S.A. 40A:4-52.
- (3) See Exhibits for Sample Resolution - Emergency Appropriations less three percent (3%). 10/1/07; 9/15/17

- b. If the amount exceeds more than three percent (3%) of the appropriations in the current budget, the Governing Body must petition the Director for permission to exceed the limitation of three percent (3%). A resolution adopted by a two-thirds (2/3rds) vote of its full membership is required. (See Sample Resolution - Emergency Appropriations more than three percent (3%)). 9/15/09

- (1) Two (2) copies of the resolution are to be filed with the Director.
- (2) Affidavit of Chief Financial Officer as required by N.J.S.A. 40A:4-52.
- (3) See Exhibits for Sample Resolution - Emergency Appropriations more than three percent (3%). 9/15/17

2. Special Emergency Appropriations [N.J.S.A. 4A:4-53]

- a. Authorized by the adoption of an ordinance, by a two-thirds (2/3rds) vote of the full membership, for the repair, reconstruction of streets, road or bridges, or other property damaged by flood or hurricane. See Exhibits for Sample Ordinance - Special Emergency.
- b. For the specific reasons listed below:
  - (1) Preparation of an approved tax map.
  - (2) Preparation and execution of a revaluation.
  - (3) Revision and codification of ordinances.
  - (4) Preparation of a master plan.
  - (5) Preparation of drainage maps for flood control purposes.
  - (6) Preliminary engineering studies and planning necessary for installation and construction of a sanitary sewer system.
  - (7) Authorized expenses of a consolidation commission established pursuant to "Municipal Consolidation Act."
  - (8) Contractually required severance liabilities resulting from layoff or retirement of employees when the total liability is in excess of ten

percent (10%) of the amount to be raised by taxes for municipal purposes in the fiscal year such layoffs or retirements take place.

- (9) Preparation of a sanitary or storm system map.

A copy of all ordinances as adopted relating to special emergency appropriations shall be filed with the Director. 10/1/07

- c. Special Emergency Appropriations can be paid off over the next five (5) years. 10/1/07

**B. SPECIAL ITEMS OF REVENUE AND APPROPRIATIONS [N.J.S.A. 40A:4-87]**

1. During the course of the fiscal year, funds may become available which were not anticipated at the time of the adoption of the budget. The Director may approve the insertion of these revenues, making the item of revenue available for expenditure. At the same time, the Director may approve the insertion of an appropriation item of equal amount to offset the revenues (also known as Chapter 159). The Chief Financial Officer files the required certifications with the Director. See Exhibits for Sample Resolution - Special Items of Revenue and Appropriations.

Helpful tip: See reference material LFN 2013-07; New Jersey Department of Community Affairs, Division of Local Government Services; 9/15/14 [https://www.state.nj.us/dca/divisions/dlgs/resources/local\\_fin\\_notices.html](https://www.state.nj.us/dca/divisions/dlgs/resources/local_fin_notices.html)

- a. Is filed electronically by the Chief Financial Officer with the Division of Local Government Services. 9/15/06; 9/15/12; 9/15/14; 9/15/17
- b. Resolution must be approved by the Governing Body. 9/15/14

**C. CHANGE OF TITLE, TEXT OR AMOUNT OF APPROPRIATION [N.J.S.A. 40A:4-85]**

The Director may change the title, text or amount of an appropriation in the adopted budget only to make the appropriation available for the specific purpose required.

1. It may not be used as a means of making revisions to the budget during the year.
2. Two (2) copies of the resolution must be filed with the Director for approval. See Exhibits for Sample Resolution - Change of Title, Text or Amount of Appropriation.

**§ 10-14. SELF-LIQUIDATING MUNICIPAL UTILITIES**

9/15/10

**A. OVERVIEW 10/1/07**

A municipal utility is an agency created to perform a specific function (or functions) within a municipality, county or region. The utility is required by law to be self-financing. If it is not, the deficit must be appropriated in the general municipal budget



of the subsequent year. Excess revenue (surplus) may be transferred to the municipal budget if the Director of the Division of Local Government Services (DLGS) consents.

Utility operations are separate and distinct from the local unit (municipality or county). However, they are not autonomous since the budget and operations are the responsibility of the elected Governing Body and its management.

**B. DEFINITION 10/1/07**

Self-Liquidating Definition (N.J.S.A. 40A:2-45)

The self-liquidating purpose is met if cash receipts from fees, rents or other charges in a fiscal year are sufficient to meet operating costs, maintenance costs, and interest and debt redemption charges payable or accruing in such year.

**C. UTILITY BUDGET 10/1/07**

It is important to note that utilities that provide service to customers in an adjacent municipality are subject to control by the State Board of Public Utilities. Utility rates are subject to BPU approval and financial records must be kept according to BPU regulations.

**§ 10-15. SPECIAL DISTRICTS**

9/15/10

**A. OVERVIEW**

Special districts are independent governmental entities created within a local municipal unit to provide specific functions, with power to tax, impose service charges and incur debt. They are autonomous, and their officials are usually elected, rather than appointed.

**B. FIRE DISTRICTS 10/1/07**

Fire districts may be staffed by volunteers, paid firefighters or a combination thereof, are financed by annual property taxes, may be aided by a statutory limited appropriation from the municipal government's budget and may sell bond anticipation notes and/or serial bonds for capital improvements.

Fire District Budget, similar to the municipal budget, must be introduced in writing, subject to a public hearing, and made available for the public. Unlike a municipal budget, the Fire District budget must be approved by the voters at the Fire District elections.

If the voters reject the Fire District Budget:

1. The Governing Body of the municipality shall publish notice of a public hearing, conduct a public hearing and, by resolution of a majority of its full membership fix an annual budget for the fire district.
2. The Governing Body shall certify the amount to be raised by taxation to the Assessor of the Municipality and shall transmit copies of the approved budget to

the Director of the Division of Local Government Services and the Board of Fire Commissioners. 10/1/07

**TIP BOX:** Annually DLGS publishes a Local Finance Notice providing both Fire Budget Instructions and a Budget Calendar, as well as Fire District Budget Excel Workbook and Word Documents as a reference guide and to keep the documents used up to date. 9/15/19

C. SPECIAL IMPROVEMENT DISTRICT (District Management Corporation) 10/1/07

The Special Improvement District's (SID) annual budget must be approved by the Municipal Governing Body following notice, advertisement and public hearing. The SID must file its annual audit with the Municipal Governing Body and with DLGS and make an annual report of activities to the Municipal Governing Body within thirty (30) days after the end of the fiscal year.

**§ 10-16. SCHOOL FINANCES**

9/15/10; 10/1/11

A. GENERAL INFORMATION:

1. The largest portion of local property taxes statewide goes for school purposes.
2. In Type I school districts, certain school debts are included in the municipal budget.
3. Outstanding school debt is reported on the "annual debt statement" for which the Certified Municipal Financial Officer is responsible. 9/15/17
4. School districts may use part of the municipal borrowing margin, (with the approval of the local finance board) to finance school capital projects.
5. The school district may cooperate with the municipality in a variety of ways such as cooperative purchasing and shared services.
6. The Municipal Governing Body must review defeated school budgets and recommend reductions in current or capital outlay appropriations.
7. Title 18A of the New Jersey Statutes Annotated in the statutory authority, and N.J.A.C. Title 6 the Administrative Code governing public schools in New Jersey. 10/1/07

B. BUDGET TIMETABLE 10/1/07; 9/15/12

(Only applies to school budgets that are still voted on in April)

Annual Election 10/31/05	Annual school election in all Districts - third Tuesday in April except when adjusted by the Commissioner of Education because the date coincides with a period of religious observance(18A:14-2 as amended).
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C. DEFEATED SCHOOL BUDGETS [N.J.S.A. 18A:22-37 to 38]

1. If the voters reject any of the items submitted at the annual school election, the Board of Education shall deliver the proposed school budget to the Governing Body of the municipality, or of each of the municipalities included in the district, within two (2) days thereafter.
2. The Governing Body of the municipality/municipalities, after consultation with the Board of Education and by May 19th, determine the amount which, in the judgment of the Governing Body/Governing Bodies, is necessary to be appropriated for each item appearing in the school budget and certify to the County Board of Taxation the totals of the amount so determined to be necessary for each of the following:
  - a. General fund expenses of schools; or
  - b. Appropriations to capital reserve account.
3. Within fifteen (15) days after the Governing Body of the municipality/municipalities shall make certification to the County Board of Taxation, the Board of Education shall notify the Governing Body/Bodies if it intends to appeal to the State Commissioner of Education the amount which the Governing Body/Governing Bodies determined to be necessary to be appropriated for each item appearing in the proposed school budget.
4. If the Governing Body/Bodies fail to certify any amount determined to be necessary for any item rejected at the annual school election, or in the event that the different Governing Bodies certify different amounts, the State Commissioner of Education shall determine the amount to be appropriated, and the amounts shall be included in the taxes to be assessed, levied and collected in the municipality/ municipalities for those purposes. (Board of Education, East Brunswick Township v. Township Council, East Brunswick, 48 N.J. 94, 2 10/31/05
5. The Governing Body must submit a detailed explanation of any reductions made to the Board of Education budget, to the Board. Within fifteen (15) days after the Governing Body makes such a certification, the Board of Education shall notify such Governing Body if it intends to appeal the reduction to the Commissioner.
6. If the Board of Education does appeal the decision of the Governing Body, it must notify the Commissioner, by petition (N.J.A.C. 6:24-1.2), which starts the legal proceedings wherein the Office of Administrative Law holds hearings, takes briefs and generally determines the facts of the case (N.J.A.C. 6:24-1.10). The administrative law judge then issues an opinion and findings as to the reasonableness of the cuts.

#### D. SCHOOL APPROPRIATIONS AND TAX LEVY

Both the revenue and appropriation sections of the school budget are divided into the following parts for purposes of property tax levy certification: current expenses (operations); vocational evening schools or classes; evening schools or classes for foreign-born residents; capital reserve fund or any capital project to be financed from property taxes; and debt service. There is no direct annual vote on school debt service since the indebtedness has been previously approved. The school budget must be in

balance where income and appropriations are the same. Income may include both current income and available free balances (commonly referred to as surplus).

There is a major difference between municipal and school budgeting requirements with regard to the handling of appropriation balances and surplus. If there is a free balance in any school district appropriation, any portion of the amount may be expended by resolution of the Board without it being included in a subsequent budget. Additionally, budget amounts may be over-expended providing that the overall budget remains in a surplus (balance) position.

On the other hand, Municipal Budget Laws do not permit over-expenditures of appropriations, even if there is surplus. The municipality's surplus can be used only if included in an annual budget, while school balances not appropriated for budget expenditures may be included as income. Accordingly, a school district has the flexibility of either spending free balances or including it as surplus income in subsequent budgets.

The School Board Secretary certifies the amount of school taxes, through the Municipal Clerk, to the County Board of Taxation, which includes the levy on the annual county abstract of ratables.

Pursuant to N.J.S.A. 54:4-76, school taxes must be paid first from local tax collections, the dates which these payments are due is set forth in N.J.S.A. 54:4-75.

The school tax levy is certified on either a fiscal year or a calendar year basis. In a school district operating on a fiscal year basis, the full amount of taxes necessary to run the schools in 1989-90 would be levied in 1989. If the district were on a calendar year basis, approximately one-half (1/2) of the tax requirements for 1988-89 and one-half (1/2) of the tax needed for 1989-90 would be levied in 1989.

## **§ 10-17. UNIFORM SHARED SERVICES AND CONSOLIDATION ACT**

[N.J.S.A. 40A:65-1] 10/1/07; 9/15/10; 10/1/11; 9/15/19

### **A. INTENT OF LEGISLATION**

The intent of the legislation is to facilitate and promote interlocal and regional service agreements. The grant of power under this act is intended to be as broad as is consistent with general law relating to local government.

### **B. PARTIES ELIGIBLE TO PARTICIPATE**

1. Any local unit (a municipality, county, school district authority subject to the Local Authorities Fiscal Control Law, or a regional authority or district) of that State may enter into a contract with any other local unit or units for the joint provision within their several jurisdictions of any service, including services incidental to the primary purposes of the local unit (any of the powers, duties and functions exercised or performed by a local unit by or pursuant to law) which any party to the agreement is empowered to render within its own jurisdiction. 12/00
2. An authority subject to the Local Authorities Fiscal Control Law, and any other board, commission or district established by and within a single local unit and

providing service within such local unit or part thereof may become a party with the consent of the Governing Body of the local unit. 12/00

- a. Consent can be given by resolution.
- b. After consent given, such authority, board, commission or district may enter into such contract by resolution without need of publication or hearing. 12/00

C. PROCEDURE FOR ADOPTION

1. Resolution required.
2. Resolution need not set forth the terms of the contract in full but shall clearly identify it by reference.
3. Agreement must be filed and open to public inspection of the local unit immediately upon adoption. 12/02
4. Agreement shall take effect upon adoption of resolutions by all parties thereto.

D. SERVICES ELIGIBLE

1. Any service or aspect of service which any of the participants may legally perform for itself, including but not limited to:
  - a. General government administration
  - b. Health, police and fire protection
  - c. Code Enforcement
  - d. Tax Assessment and Collection
  - e. Financial Administration
  - f. Environmental services
  - g. Joint municipal courts, youth, senior citizens, welfare and social services programs
2. Required State agencies approvals are not amended or repealed by this statute.
3. In the case of a contract for the joint provision of services by an officer or employee of a municipality who is required to comply with State certification requirements as a condition of employment, the contract shall provide the payment of a salary to the officer or employee and shall designate one of the municipalities as the primary employer of the officer or employee for the purpose of that person's tenure rights. 12/00

E. CONTENTS OF AGREEMENT

1. The contract shall specify:
  - a. Exact nature and extent of the services to be performed jointly or by one or more of the parties as agent for the other party or parties.



- b. Measurable standards of the level, quality and scope of such performance, with specific assignment and allocation of responsibility for meeting such standards.
  - c. Estimated cost of such services through the duration, allocation to the parties in dollar amounts or by formula, time schedule for periodic payment, provisions for periodic modifications of estimates or formulas if necessary.
  - d. Duration of the contract which shall be seven (7) years unless otherwise agreed upon by the parties.
  - e. Procedure for payments.
2. The contract may provide for binding arbitration or fact finding procedures to settle disputes.
  3. Party performing service is the general agent for all parties and shall have:
    - a. Full powers of performance and maintenance and full powers to undertake any ancillary operation reasonably necessary or convenient to carry out its duties.
    - b. Powers of enforcement and administrative regulations which are or may be exercised by the part on whose behalf it acts, except as limited by the terms of the contract.
    - c. No party shall be liable for any part or share of the cost of acquiring, constructing or maintaining any capital facility except as permitted by the terms of the contract or amendment thereto.
  4. Any party may enter into another contract or contracts with any other eligible parties for the performance of any services or services except as explicitly provided, and participation in one such contract shall not bar participation with the same or other parties in any other contract.

#### F. CONTRACTS FOR LAW ENFORCEMENT SERVICES

1. Shall recognize and preserve the seniority, tenure, pension rights of full time law enforcement officers in the local units who are in good standing at the time the contract is adopted.
2. No law enforcement officer shall be terminated except for cause, however, the state does not prevent or prohibit the merged entity from reducing the force as provided by law for reasons of economy and efficiency.
3. May provide for appointment of a chief law enforcement officer. In such cases, the contract shall provide that any person who is serving as the chief law enforcement officer in one of the participating local units at the time the contract is adopted may elect either:
  - a. To accept a demotion of not more than one rank without any loss of seniority rights, impairment of tenure or pension rights; or

- b. To retire from service. If the person elects retirement, the statute sets forth retention of rank and provision of leave with full compensation and benefits.
- c. If the local units have adopted Civil Service Statutes, the position of chief law enforcement officer shall be in the career service.

#### G. PAYMENTS

- 1. Shall be made in accordance with the Contract.
- 2. In case of a dispute, the full amount is to be paid, but if through subsequent negotiation, arbitration or litigation the amount due shall be determined, agreed or adjudicated to be less, the party having received the payment shall forthwith repay the excess.

#### H. COMPLIANCE WITH LOCAL PUBLIC CONTRACTS LAW

If the contract involves the use of services of a private contractor, such party shall be required to award the contract for the work to be performed by the private contractor in accordance with the Local Public Contracts Law.

#### I. AUTHORITIES SUBJECT TO "LOCAL AUTHORITIES FISCAL CONTROL LAW"

If services to be provided to an authority subject to the Local Authorities Fiscal Control Law equal one-half (1/2) or more of the total costs of the services being performed by that immediately prior to the contract, the contract shall require approval by resolution of the Governing Body of each local unit which created such authority. 12/00

### § 10-18. LOCAL FISCAL AFFAIRS LAW

[N.J.S.A. 40A:5 et seq.] 10/1/07; 9/15/10

#### A. ANNUAL AUDIT [N.J.S.A. 40A:5-4] 10/31/05; 10/1/07

- 1. Requirements
  - a. Must be completed within six (6) months after close of fiscal year.
  - b. Must be prepared by Registered Municipal Accountant.
  - c. Must cover complete fiscal year. - "Fiscal year" period for which a local unit adopts a budget.
- 2. Report of Audit [N.J.S.A. 40A:5-6] 10/31/05; 10/1/07
  - a. Duties of Registered Municipal Accountant
    - (1) Must file the original report with the Municipal Clerk.
    - (2) Must file a certified duplicate copy of the report with the Director of Local Government Services.
    - (3) It should be noted that the Local Auditor (Registered Municipal Accountant) is required to audit all Federal and State grants as part of

the local audit under the single audit guidelines. Federal and State grants are changing in importance as major sources of local revenue. Municipal Officers have a responsibility to become familiar with the categories of grants, their eligibility requirements, and the municipality's financial ability to comply with all rules and regulations appertaining thereto. 10/31/04

b. Duties of the Municipal Clerk - Distribute Audit to Governing Body

- (1) Within thirty (30) days of receipt of the audit report, must publish the Synopsis of the audit, together with the recommendations made by the Registered Municipal Accountant, at least once in the official newspaper as designated by the municipality. [N.J.S.A. 40A:5-7] 10/1/07
- (2) Failure of the Municipal Clerk to publish within thirty (30) days after receipt shall subject the Municipal Clerk to a fine of ten dollars (\$10.00) for each day after the expiration of the thirty (30) days that such publication fails to appear, payable to the local unit.
- (3) Upon receipt of notice from Director of Local Government Services that audit report has been filed, the Governing Body must, within forty-five (45) days of receipt of the audit, pass a resolution stating they have reviewed, at a minimum, the report entitled Schedule of Findings and Questioned Costs and General Comments and Recommendations of the Registered Municipal Accountant and sign a Group Affidavit as evidence. 9/15/15
- (4) Municipal Clerk must forward to the Director of the Division of Local Government Services the following:
  - (a) "Proof of Publication" Affidavit from official newspaper.
  - (b) Certified copy of resolution of Governing Body.
  - (c) One originally signed Group Affidavit, duly notarized, containing the signatures of all members of the Governing Body holding office at the time of the passage of the resolution. Second originally signed Group Affidavit remains on file with the Municipal Clerk. (See Group Affidavit Form Exhibit at the end of this chapter.)

3. Corrective Action Plan

a. Duties of Chief Financial Officer

- (1) Prepare Plan with assistance from other officials affected by the audit recommendations.
- (2) The Plan shall cover all findings and recommendations in the audit report.

b. Duties of Municipal Clerk

- (1) Governing Body must pass resolution within sixty (60) days of receipt of audit that approves the Corrective Action Plan.
- (2) One (1) certified copy of approving resolution together with the Corrective Action Plan must be sent to the Director of the Division of Local Government Services.

c. Corrective action plan should include:

- (1) Description of findings.
- (2) Analysis of why it occurred.
- (3) Action plan to correct.
- (4) Date of corrected action.

B. ANNUAL FINANCIAL STATEMENT

1. Definition

A verified statement of the financial condition of the local unit as of the close of the fiscal year as required by N.J.S.A. 40A:5-12 prepared by the municipality's Chief Financial Officer or Auditor. 10/31/04

2. Requirements

- a. Required to be filed annually with the Director of the Division of Local Government Services by Chief Financial Officer on forms furnished and prescribed by the Director. If the Statement is not filed within ten (10) days after the time fixed for filing, the Chief Financial Officer shall be subject to a penalty of five dollars (\$5.) for each day of neglect to file the statement, in accordance with the Penalty Enforcement law. [N.J.S.A. 2A:58-1 et seq.] 10/1/07
  - b. Calendar year municipalities must file no later than February 10; State fiscal year municipalities must file no later than August 10.
3. Annual Financial Statements are also used to prepare the Balance Sheet of the municipality, which lists assets, liabilities and Fund Balance, and which is made part of the official Annual Budget. 10/31/04
  4. Municipalities must submit an annual financial statement, pursuant to DLGS requirements, containing trial balance for each fund, a cash reconciliation, a budget and property tax reconciliation, and other information required by DLGS. The annual audit also contains "audited" financial statements and supplementary information. 10/31/04

C. ANNUAL DEBT STATEMENT 10/31/04

1. Filed annually with the Municipal Clerk and electronically with the Director of the Division of Local Government Services by the Chief Financial Officer before the end of the first month of each fiscal year. 9/15/13

2. Filing and processing of Supplementary Debt Statements are set forth in Chapter 9, Bond Ordinances, of this Study Guide.

D. LEGAL DEPOSITORIES FOR PUBLIC MONEYS

1. Cash Management Plan

- a. Includes designation of depositories for public funds.
- b. Requires the investment of public funds in interest bearing accounts.

2. Deposit of Funds 12/02

All moneys, including moneys collected by taxation, received from any source by or on behalf of the local unit or any board or department thereof, shall, within forty-eight (48) hours after the receipt thereof:

- a. Be paid to the officer charged with the custody of the general funds of the local unit who shall deposit all such funds within forty-eight (48) hours after the receipt thereof to the credit of the local unit in its designated legal depository, or
- b. Be deposited to the credit of the local unit in its designated legal depository.

E. PAYMENT OF MONEYS OF LOCAL UNIT

1. Requirements for payment by Governing Body

- a. A detailed bill of items, certified as to its correctness by the party claiming payment, must be presented.
- b. A certification by an officer or duly designated employee of the local unit having knowledge of the facts that the goods have been received by, or the services rendered to, the local unit must be included with the detailed bill.

2. Payment of advances for travel expenses

- a. By resolution of the Governing Body, advances to specifically named officers and employees may be made for travel expenses incurred for authorized official travel.
- b. Within ten (10) days after the completion of the travel for which an advance was made, the officer or employee must submit a detailed bill of expended funds which includes verification of items, and must repay any excess of the advanced funds.

F. APPROVAL AND PAYMENT OF CLAIMS

1. Approval of claims

- a. The Governing Body shall approve or disapprove all claims.
- b. By ordinance, an approval officer may be designated with the title of Certifying and Approval Officer and specifying the maximum dollar



amount for which payment may be approved without prior approval of the Governing Body.

2. Payment of claims

- a. An ordinance may be adopted that provides a method of disbursing moneys or payment of approved claims.
- b. If there is no ordinance as mentioned in paragraph 1b. above, then payment is made by check drawn on the municipality, signed by the Mayor or other Chief Executive Officer and the Municipal Clerk and countersigned by such other officer or officers as are designated by ordinance. 10/31/04

3. Public recording of approved claims

- a. All claims approved for payment by the local unit shall be recorded in its minutes.
- b. The record of approval shall be open to the public.

G. OFFICERS TO DELIVER FUNDS AND RECORDS WHEN TERM EXPIRES

1. On the day of the expiration of his term of office, an official who ceases to hold office shall deliver to the Municipal Clerk, or other person who may be so designated by the Governing Body, all moneys, papers, books, memoranda, accounts and any data of any nature pertaining to his office.
2. On failure or refusal to comply with the above requirement within five (5) days after the expiration of his term, on notice in writing from the chief executive officer of such delinquency, he shall be subject to a penalty of fifty dollars (\$50.) for each day of refusal or neglect to comply, payable to the local unit.

H. PETTY CASH FUND OF LOCAL UNIT

1. May be established by a local unit upon written application to and approval received from the Director of the Division of Local Government Services.
2. Requests for increases in amounts of petty cash funds must be made via resolution of the Governing Body to the Director of the Division of Local Government Services.

I. OATHS OF OFFICE 10/1/11

1. The oaths shall be filed with the Municipal Clerk and shall be preserved as a public record.

**§ 10-18.1. EXHIBIT - LOCAL BUDGET VOTE, FILING & TIME INFORMATION**

Local Budget Vote, Filing & Time Information			
Item	Filed with DLGS	Vote Required	When May/Must be Done
Temporary Budget	No	Majority of Full Membership	First 30 days of beginning of fiscal year
(not to exceed 26.25% of the total appropriations made in preceding year)			
Emergency Temporary Budget 40A:4-20	Yes	2/3 Full Membership	Between beginning of budget year and adoption of budget
Budget Introductions 40A:4-5	Yes - certified copies within 3 days	Majority of Full Membership	Calendar Year Budget: By February 10th Fiscal Year Budget: By August 10th
(publish in full or in summary, 10 days prior to hearing; copy available in library one week prior to hearing; 28 days must elapse between introduction and hearing)			
Budget Amendment 40A:4-9	Yes - certified copies within 3 days	Majority of Full Membership	
(may only be made during or after advertised public hearing has been held on the approved budget; publish in full or in summary at least three days prior to hearing; must be read in full at the hearing and before adoption)			
Budget Amendment 40A:4-10	Yes - certified copies within 3 days	Majority of Full Membership	Calendar Year Budget: By March 20th Fiscal Year Budget: By September 20th
Adopted Budget to County Board of Taxation 40A:4-11			Within 15 days of adoption
Regular Emergencies 40A:48	Yes - 2 certified copies	2/3 Full Membership	
Special Emergencies 40A:4-53	Yes - 2 certified copies	2/3 Full Membership	
Special Item of Revenue 40A:4-87 One copy is marked "filed and returned"	Yes - 2 certified copies with backup documentation	Majority of Members Present	
Change of Title, Text or Amount 40A:4-85	Yes - 2 certified copies	Majority of Members Present	
Appropriation Transfers 40A:4-58	No	2/3 Full Membership	Last two months of budget year
Appropriation Transfers Reserves 40A:4-59	No	2/3 Full Membership	First three months of budget year

**§ 10-18.2. EXHIBIT - BUDGET PUBLICATION BY SUMMARY FORM**

[N.J.S.A. 40A:4-6,1]

The Governing Body of a municipality or county may satisfy the advertisement requirements for the introduction and passage of a budget in the following manner:

The publication of a summary pursuant to N.J.S.A. 40A:4-6 citing:

The totals of the major sections of the budget, including but not limited to, operating expenses, capital improvement appropriations, salaries and wages, and surplus for the previous and current budget years;

The amount of any principal and interest of any debt to be paid in the current budget year and the total amount of debt remaining;

The total number of persons employed in the previous budget year and the total number estimated to be employed in the current budget year, the municipal purposes property tax levy of the previous budget year and the estimated municipal purposes property tax levy of the current budget year, the total amount to be raised by taxation and the total amount to be received from other sources in the current budget year, and the total appropriations of the previous year's budget and of the current year's budget; and

The location, phone number and office hours of the principal municipal or county building where copies of the budget will be available to the public and the name of the person or the office to be contacted if a person wants to receive a copy of the budget by mail.

The name of the municipality or county and the budget title shall be printed in bold 16 point typeface, and the remainder of the summary shall be printed in bold 8 point typeface.

Attorney General Opinions issued in response to questions on publication by summary:

Publication of the budget meets the requirement of "official advertising" and is eligible for the rates for official advertising.

Despite the required 16 and 8 point typeface required, charges for publication must be based on the number of six point lines (type size) the ad takes up, times the number of eight pica wide (measurement of line width) segments utilized.

**§ 10-18.3. EXHIBIT - GOVERNING BODY APPROVAL OF LOCAL BUDGET EXAMINATION**

(insert name and county of municipality, fiscal year, and name of Governing Body as appropriate)

WHEREAS, pursuant to N.J.S.A. 40A:4-78b, the Local Finance Board has adopted rules that permit municipalities in sound fiscal condition to assume the responsibility, normally granted to the Director of the Division of Local Government Services, of conducting the annual budget examination; and

WHEREAS, pursuant to N.J.A.C. 5:30-7.2 through 5:30-7.5 the (insert name of municipality) has been declared eligible to participate in the program by the Division of Local Government

Services, and the Chief Financial Officer has determined that the (insert name of municipality) meets the necessary conditions to participate in the program for the (insert fiscal year);

NOW, THEREFORE, BE IT RESOLVED by the (insert name of Governing Body) of the (insert name and county of municipality) that, in accordance with N.J.A.C. 5:30-7.6a & b, and based upon the Chief Financial Officer's certification, the (insert name of Governing Body) has found the budget and has met the following requirements:

That with reference to the following items, the amounts have been calculated, pursuant to law, and appropriated as such in the budget:

Payment of interest and debt redemption charges;

Deferred charges and statutory expenditures;

Cash deficit of preceding year;

Reserve for uncollected taxes;

Other reserves and non-disbursement items; and

Any inclusions of amounts required for school purposes.

That the provisions relating to limitation on increases of appropriations, pursuant to N.J.S.A. 40A:4-45.2, and appropriations for exceptions to limits on appropriations found at N.J.S.A. 40A:4-45.3 et seq. (complies with the "cap" law) are fully met.

That the budget is in such form, arrangement, and content as required by the Local Budget Law and N.J.A.C. 5:30-4 and 5:30-5.

That pursuant to the Local Budget Law:

All estimates of revenue are reasonable, accurate and correctly stated;

Items of appropriation are properly set forth; and

In itemization, form, arrangement, and content, the budget will permit the exercise of the comptroller function within the municipality.

The budget and associated amendments have been introduced and publicly advertised, in accordance with the relevant provisions of the Local Budget Law, except that failure to meet the deadlines of N.J.S.A. 40A:4-5 shall not prevent such certification.

That all other applicable statutory requirements have been fulfilled.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Director of the Division of Local Government Services.

#### **§ 10-18.4. EXHIBIT - STATE FISCAL YEAR MODEL CAP ORDINANCE**

WHEREAS, the Local Government Cap Law, N.J.S.A. 40A:4-45 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget to five percent (5%) or the index rate, whichever is less, over the previous year's final appropriations, subject to certain exceptions; and

WHEREAS, P.L. 1986, c. 203 amended the Local Government Cap Law, to provide that a municipality may, in any year in which the index rate is less than five percent (5%), increase its final appropriations by a percentage rate greater than the index rate but not to exceed the five percent (5%) rate as defined in the amendatory law, when authorized by ordinance; and

WHEREAS, the index rate for State Fiscal Year (insert year) has been certified by the Director of the Division of Local Government Services in the Department of Community Affairs as (insert current year index); and

WHEREAS, the (insert name of Governing Body) of the (insert name and county of municipality) finds it advisable and necessary to increase its SFY (insert year) budget by more than (insert current year index) over the previous year's final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and

WHEREAS, the (insert name of Governing Body) hereby determines that a (insert rate of increase) percent increase in the budget for said year amounting to (insert dollar increase) in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary.

NOW, THEREFORE, BE IT ORDAINED by the (insert name of Governing Body) of the (insert name and county of municipality), a majority of the full authorized membership of this Governing Body affirmatively concurring that, in the SFY (insert year) budget year, the final appropriations of the (insert name of municipality) shall, in accordance with this ordinance and P.L. 1986, C.203 be increased by (insert rate of increase) percent, amounting to (insert dollar increase), and that the SFY (insert year) municipal budget for the (insert name of municipality) be approved and adopted in accordance with this ordinance; and

BE IT FURTHER ORDAINED that a certified copy of this ordinance as introduced be filed with the Director of the Division of Local Government Services within five (5) days of introduction; and

BE IT FURTHER ORDAINED, that a certified copy of this ordinance upon adoption, with the recorded vote included thereon, be filed with said Director within five (5) days after such adoption.

**§ 10-18.5. EXHIBIT - RESOLUTION - EMERGENCY APPROPRIATIONS LESS THAN 3 PERCENT TOTAL OPERATING APPROPRIATIONS**

WHEREAS, an emergency has arisen with respect to (insert reason or condition in full), and no adequate provision was made in the 20\_\_ budget for the aforesaid purpose, and N.J.S. 40A:4-46 provides for the creation of an emergency appropriation for the purpose above mentioned; and

WHEREAS, the total amount of emergency appropriations created including the appropriation to be created by this resolution is \$ \_\_\_\_\_

and three percent of the total operating appropriations in the budget for 20\_\_ is \$ \_\_\_\_\_ and



WHEREAS, the foregoing appropriation, together with prior appropriations, does not exceed three percent of the total current operating appropriations (including utility operating appropriations) in the budget for 20\_\_;

NOW, THEREFORE, BE IT RESOLVED by the (insert name of Governing Body) of the (insert name and county of municipality) (not less than two-thirds of all the members thereof affirmatively concurring) that in accordance with N.J.S. 40A:4-48:

1. An emergency appropriation be and the same is hereby made for (insert title of appropriation designated as to salaries and wages and/or other expenses) in the amount of \$ \_\_\_\_\_
2. That said emergency appropriation shall be provided for in full in the 20\_\_ budget and is requested to be excluded from CAPS pursuant to N.J.S. 40A:4-45.3.c(1).
3. That an "Emergency Note" not in excess of the above amount be authorized pursuant to N.J.S. 40A:4-48 and in accordance with the provisions of N.J.S. 40A:4-51.
4. That such note shall be executed by the (insert name and title of Financial Officer) and by the (insert name and title of "such other officer")
5. That said note shall be dated \_\_\_\_\_, 20\_\_, may be renewed from time to time, and such note and any renewals thereof shall be payable on or before December 31, 20\_\_ (insert further detail, i.e. place of payment, etc.)
6. That two certified copies of this resolution be filed with the Director of Local Government Services.

NOTE: OMIT 3, 4 AND 5 IF EMERGENCY NOTES ARE NOT AUTHORIZED.

#### **§ 10-18.6. EXHIBIT - RESOLUTION - EMERGENCY APPROPRIATIONS MORE THAN 3 PERCENT TOTAL OPERATING APPROPRIATIONS**

WHEREAS, an emergency has arisen with respect to (insert reason or condition in full), and no adequate provision was made in the 20\_\_ budget for the aforesaid purpose, and N.J.S. 40A:4-46 provides for the creation of an emergency appropriation for the purpose above mentioned; and

WHEREAS, the total amount of emergency appropriations created including the appropriation to be created by this resolution is \$ \_\_\_\_\_

and three percent of the total operating appropriations in the budget for 20\_\_ is \$ \_\_\_\_\_ and

WHEREAS, the foregoing appropriation, together with prior appropriations, exceeds three percent (3%) of the total current operating appropriations (including utility operating appropriations) in the budget for 20\_\_;

NOW, THEREFORE, BE IT RESOLVED by the (insert name of Governing Body) of the (insert name and county of municipality) (not less than two-thirds (2/3) of all the members thereof affirmatively concurring) that in accordance with N.J.S. 40A:4-49, petition be made to the Director of Local Government Services for permission to exceed the statutory

limitation of three percent (3%) for the creation of an appropriation for the purpose set forth in the preamble hereof in accordance with the following:

1. An emergency appropriation be and the same is hereby made for (insert title of appropriation designated as to salaries and wages and/or other expenses) in the amount of \$ \_\_\_\_\_
2. That said emergency appropriation shall be provided for in full in the 20\_\_ budget and is requested to be excluded from CAPS pursuant to N.J.S. 40A:4-45.3.c(1).
3. That an "Emergency Note" not in excess of the above amount be authorized pursuant to N.J.S. 40A:4-48 and in accordance with the provisions of N.J.S. 40A:4-51.
4. That such note shall be executed by the (insert name and title of Financial Officer) and by the (insert name and title of "such other officer")
5. That said note shall be dated \_\_\_\_\_, 20\_\_, may be renewed from time to time, and such note and any renewals thereof shall be payable on or before December 31, 20\_\_ (insert further detail, i.e. place of payment, etc.)
6. That two certified copies of this resolution be filed with the Director of Local Government Services.

NOTE: OMIT 3, 4 AND 5 IF EMERGENCY NOTES ARE NOT AUTHORIZED.

#### § 10-18.7. EXHIBIT - ORDINANCE - SPECIAL EMERGENCY

WHEREAS, it has been found necessary to make an Emergency Appropriation to meet certain extraordinary expenses incurred, or to be incurred, by reason of damage caused by (insert purpose), and

WHEREAS, N.J.S. 40A\_\_\_\_\_ provides that it shall be lawful to make such appropriation, which appropriation and/or the "special emergency notes" issued to finance the same shall be provided for in succeeding annual budgets by the inclusion of an appropriation of at least one-fifth or one-third of the amount authorized pursuant to this act.

NOW, THEREFORE, BE IT ORDAINED by the (insert name of Governing Body) of the (insert name and county of municipality) (not less than two-thirds of all the members thereof affirmatively concurring) that in accordance with the provisions of N.J.S. 40A:4-55:

1. An emergency appropriation be and the same is hereby made for (insert title of appropriation) in the total amount of \$ \_\_\_\_\_
2. That said emergency appropriation shall be provided for in full in the budgets of the next succeeding years by the inclusion of not less than \$ \_\_\_\_\_ (must be at least one-fifth of the total amount) in each of the next succeeding annual budgets.
3. That an "Emergency Note" not in excess of the above amount authorized pursuant to law be provided.
4. That such note shall be executed by the (insert name and title of Financial Officer) and by the (insert name and title of "such other officer")

5. That said note shall be dated \_\_\_\_\_, 20\_\_, may be renewed from time to time, and such note and any renewals thereof shall mature and be paid in the amount of not less than one-fifth or one-third of the total amount appropriated by this resolution in each year after the authorization thereof, (insert further detail, i.e. place of payment, etc.)

**§ 10-18.8. EXHIBIT - RESOLUTION - SPECIAL ITEMS OF REVENUE AND APPROPRIATION**

WHEREAS, N.J.S.A. 40A:87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any County or Municipality when such items shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget; and

WHEREAS, said Director may also approve the insertion of any item of appropriation for equal amount;

NOW, THEREFORE, BE IT RESOLVED that the (insert name of Governing Body) of the (insert name and county of municipality) hereby requests the Director of Local Government Services to approve the insertion of an item of revenue in the budget of the year 20\_\_ in the sum of \$\_\_\_\_\_, which item is now available as a revenue from the (insert source of revenue) in the amount of \$\_\_\_\_\_;

BE IT FURTHER RESOLVED that the like sum of \$\_\_\_\_\_ is hereby appropriated under the caption of "\_\_\_\_\_"; and

BE IT FURTHER RESOLVED that the above is a result of a (insert "State Grant of \$\_\_\_\_\_ from \_\_\_\_\_" or other source of revenue).

**§ 10-18.9. EXHIBIT - CERTIFICATION - GRANTS/SPECIAL ITEM OF REVENUE AND APPROPRIATION**

STATE OF NEW JERSEY  
DEPARTMENT OF COMMUNITY AFFAIRS  
DIVISION OF LOCAL GOVERNMENT SERVICES

Pursuant to N.J.S.A. 40A:4-87, I hereby certify that the following resolution has been duly adopted by the Governing Body of: \_\_\_\_\_ (Name of Municipality)

\_\_\_\_\_  
Municipal Clerk's signature

I hereby certify that (insert name of municipality) has realized or is in receipt of written notification of the state or federal monies cited in the following resolution, which meets all statutory requirements and will be included in the 20\_\_ municipal budget.

\_\_\_\_\_  
Chief Financial Officer's Signature

Resolution Number: \_\_\_\_\_

Date of Adoption: \_\_\_\_\_

Revenue Title: \_\_\_\_\_ Amount: \$ \_\_\_\_\_

Appropriation Title: \_\_\_\_\_ Amount: \$ \_\_\_\_\_

Local Match-Source: \_\_\_\_\_ Amount: \$ \_\_\_\_\_

Approval is hereby given to the cited resolution adopted by the Governing Body pursuant to N.J.S.A. 40A:4-87

Director, Division of Local Government Services

by: \_\_\_\_\_ FOR DCA USE ONLY

Duly Appointed Designee

Municode: \_\_\_\_\_

THIS CERTIFICATION FORM MAY BE  
REPRODUCED TO BE USED FOR STATE AND  
FEDERAL GRANTS ONLY

Doc. No.: \_\_\_\_\_

**§ 10-18.10. EXHIBIT - RESOLUTION - CHANGE OF TITLE, TEXT OR AMOUNT OF APPROPRIATION**

WHEREAS, N.J.S.A. 40A:4-85 provides that the Director of the Division of Local Finance may, at the request of, or with the consent of, the Governing Body of the County or Municipality, make such correction of the title, text or amount of any appropriation appearing in the budgets as may be necessary to make said item of appropriation available for the purpose or purposes required for the needs of any such County or Municipality;

NOW, THEREFORE, BE IT RESOLVED that in accordance with the provisions of N.J.S.A. 40A:4-85, that the (insert name of Governing Body) of the (insert name and county of municipality) hereby requests the Director of the Division of Local Finance to make the following corrections in the budget of (insert year):

FROM: (Insert name of account) (insert amount)

TO: (Insert name of account) (insert amount)

BE IT FURTHER RESOLVED that the foregoing correction is, in the opinion of the Governing Body, warranted and authorized by the Statute above referred to, and is necessary for the orderly operation of the (insert name and county of municipality) for the reasons hereinabove set forth.

**§ 10-18.11. EXHIBIT - SAMPLE RESOLUTION - SCHOOL BOARD BUDGET RESOLUTION CERTIFYING THE GENERAL FUND TAX LEVY FOR THE (MUNICIPALITY) BOARD OF EDUCATION FOR THE SCHOOL YEAR (YEARS), BY THE GOVERNING BODY OF THE (MUNICIPALITY) (COUNTY), STATE OF NEW JERSEY**

WHEREAS, the voters of the (Municipality) in a duly held election, did fail to approve the General Fund Tax Levy Budget of the Board of Education of the (Municipality) for the school year (years); and



WHEREAS, the Education, Budgets and Appropriations Law, N.J.S.A. 28a-22-37, requires the Governing Body of the (Municipality), after consultation with the (Municipality) Board of Education, to determine the amount which is necessary to be appropriated in such budget and to certify to the County Board of Taxation the total amount so determined; and

WHEREAS, the Governing Body of the (Municipality) has consulted with representatives of the (Municipality) Board of Education, and has thereafter determined the amount necessary to be appropriated;

NOW, THEREFORE BE IT RESOLVED by the Governing Body of the (Municipality) (County), State of New Jersey, that the following determination is hereby made:

1. The original tax levy on the ballot for the base budget: \$
2. The amount of reduction to the tax levy for the base budget: \$
3. The amount of tax levy being certified for the base budget: \$
4. Specific line item reductions:

Account Number	Description	Amount
a.		
b.		
c.		

5. Supporting reasons for reduction: Based upon a review of all data provided by the Board of Education, meetings with representatives of the Board of Education, numerous public hearings and consideration of the public need, it has been determined that the reductions set forth herein can be effectuated without a reduction in programs or negatively impacting upon the education of the students.
6. The revised budget is sufficient to provide a thorough and efficient education.
7. There was no additional general fund tax levy considered by the voters.

BE IT FURTHER RESOLVED that certified copies of this resolution be forwarded to the (Municipality) Board of Education, Superintendent of the (County) Department of Education, and the Administrator of the (County) Board of Taxation.

#### **§ 10-18.12. EXHIBIT - CORRECTIVE ACTION PLANS - NEW REQUIREMENTS FOR LOCAL UNITS**

LOCAL FINANCE NOTICE 92-15 - 7/8/92

Up until now, only those municipalities and counties receiving federal aid in excess of \$25,000/year have been obligated to prepare Corrective Action Plans in accordance with the Single Audit Act, U.S. Office of Management and Budget Circular A-128, and New Jersey Office of Management and Budget Circular Letter 87-11.

In accord with the timetable set forth in this Notice, all local units (includes municipalities, counties, and fire districts and authorities operating under the Local Public Authorities Fiscal



Control Act) must now prepare and submit a Corrective Action Plan as part of their annual audit process.

The Corrective Action Plan shall be prepared in accordance with the OMB circulars and this Notice. Plans are to be submitted to the Division and placed on file with the Clerk or Secretary of the local unit 60 days from the date the audit is received by the Governing Body. A sample typical Corrective Action Plan item is attached.

The Plan shall cover all findings and recommendations in the audit report, including state, federal and general findings, as well as the status of all prior year findings and recommendations. It should be prepared by the Chief Financial Officer of the local unit with assistance from other officials affected by the audit recommendations and approved by the Governing Body of the local unit.

Each Corrective Action Plan shall include the following for each finding:

- a) Description of the deficiency (finding, observation, questioned cost, etc.)
- b) Analysis of why the deficiency occurred
- c) Descriptions of procedures to be used to correct the deficiency or reason why the finding will not be corrected
- d) Expected date of implementation (which is required to be no later than six months after the date of the audit report)

Corrective Action Plans are to be referenced in the "synopsis" of the audit report that is published. Suggested language for the audit synopsis is attached.

Local unit Governing Bodies should be aware of their audit due dates. The Division urges Governing Body members to be aware of the auditor's responsibilities to have audits submitted on time. Late submissions will not be tolerated and monetary fines may be imposed for late audits. Authorities and fire districts are also reminded that a copy of their audit must be filed with the clerk of the government(s) that created them.

#### Audit Due Dates:

Municipal and County Audits are due no more than six (6) months from the close of the fiscal year.

Authority and Fire District audits are due four (4) months from the close of the fiscal year.

In all cases a copy of the audit must be sent to the Division, and the synopsis published in a local newspaper, with a copy to the Division.

#### SUGGESTED AUDIT SYNOPSIS LANGUAGE FOR CORRECTIVE ACTION PLANS

A Corrective Action Plan, which outlines actions the (insert name of local unit) will take to correct the findings listed above, will be prepared in accordance with federal and state requirements. A copy of it will be placed on file and made available for public inspection in the Office of the Municipal (or County) Clerk in (insert name of local unit) within 45 days of this notice.

**§ 10-18.13. EXHIBIT - GROUP AFFIDAVIT FORM**

9/15/2021

NO PHOTOCOPIES OF SIGNATURES  
GROUP AFFIDAVIT FORM  
CERTIFICATION OF GOVERNING BODY

STATE OF NEW JERSEY)

)SS.

COUNTY OF \_\_\_\_\_)

We, members of the governing body of the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, of full age, being duly sworn according to law, upon our oath depose and say:

1. We are duly elected (or appointed) members of the \_\_\_\_\_ (Insert name of governing body) of the \_\_\_\_\_ of \_\_\_\_\_.
2. In the performance of our duties, and pursuant to the Local Finance Board Regulations, we have familiarized ourselves with the contents of the Annual Municipal Audit filed with the Clerk pursuant to N.J.S.A. 40A:5-6 for the year \_\_\_\_\_.
3. We certify that we have personally reviewed and are familiar with, as a minimum, the section of the Annual Report entitled:

## SCHEDULE OF FINDINGS AND RECOMMENDATIONS

OR

## SCHEDULE OF FINDINGS AND QUESTIONED COSTS

(L.S.)

(L.S.)

(L.S.)

(L.S.)

(L.S.)

(L.S.)

(L.S.)

(L.S.)

Sworn to and subscribed before

Me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public of New Jersey

The Municipal Clerk (or Clerk of the Board of County Commissioners as the case may be) shall set forth the reason for the absence of signature of any members of the governing body.

IMPORTANT: This certification must be sent to the Division of Local Government Services, P.O. Box 803, Trenton, New Jersey 08625

## **Chapter 11**

### **MISCELLANEOUS DUTIES**

- § 11-1. CERTIFICATE AS TO LIABILITY FOR ASSESSMENT FOR MUNICIPAL IMPROVEMENTS
- § 11-2. TEMPORARY RENTALS
- § 11-3. LANDLORD REGISTRATION
- § 11-4. BONDS OF OFFICIALS AND EMPLOYEES
- § 11-5. NEW JERSEY TORT CLAIMS ACT
- § 11-6. LOCAL GOVERNMENT ETHICS LAW
- § 11-7. OFF-SITE CONDITIONS DISCLOSURE ACT
- § 11-8. REGISTRAR OF VITAL STATISTICS
- § 11-9. PENSION FUND DUTIES
- § 11-10. PUBLIC EMPLOYMENT RELATIONS COMMISSION
- § 11-11. AFFIRMATIVE ACTION/ PUBLIC AGENCY COMPLIANCE OFFICER
- § 11-12. VOLUNTEER FIRE COMPANIES/RESCUE SQUADS
- § 11-12.1. EXHIBIT - VOLUNTEER TUITION CREDIT PROGRAM - SAMPLE RESOLUTION — GOVERNING BODY RESOLUTION TO SUPPORT AND PARTICIPATE
- § 11-12.2. EXHIBIT - SAMPLE VOLUNTEER TUITION CREDIT PROGRAM SERVICE PLEDGE AGREEMENT
- § 11-12.3. EXHIBIT - SAMPLE VOLUNTEER TUITION CREDIT PROGRAM VERIFICATION OF SERVICE PERFORMED
- § 11-12.4. EXHIBIT - SAMPLE VOLUNTEER TUITION CREDIT PROGRAM BLANKET VERIFICATION OF SERVICE PERFORMED
- § 11-13. (RESERVED)
- § 11-14. SALE/LEASE OF MUNICIPALLY OWNED LAND/PROPERTY
- § 11-15. UNIFORM CONSTRUCTION CODE - DISCLOSURE STATEMENTS
- § 11-15.1. EXHIBIT - UNIFORM CONSTRUCTION CODE DISCLOSURE FORM
- § 11-16. NEW JERSEY WORKER AND COMMUNITY RIGHT TO KNOW ACT REGULATIONS
- § 11-16.1. EXHIBIT - CHECKLIST FOR RTK COMPLIANCE
- § 11-17. ACQUISITION OF LANDS AND BUILDINGS
- § 11-18. MORTGAGE STABILIZATION AND RELIEF ACT
- § 11-19. FORECLOSED PROPERTIES
- § 11-20. POSTING OF BUDGET DOCUMENT ON WEBSITE
- § 11-21. LIST OF MUNICIPAL RESIDENTS IN NEED OF SPECIAL ASSISTANCE

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**§ 11-1. CERTIFICATE AS TO LIABILITY FOR ASSESSMENT FOR MUNICIPAL IMPROVEMENTS**

- A. When a local improvement assessment ordinance is adopted by the Governing Body, immediately upon becoming effective, the improvements so authorized become unconfirmed assessments against the parcel.
- B. Person responsible for issuing "certificates as to liability for assessment for municipal improvements" shall be designated by the Governing Body by resolution. The person responsible for issuing assessment search certificates must be the Municipal Clerk or Municipal Engineer.
- C. Application must be in writing containing a diagram showing the location and dimensions of the tract to be covered.
- D. The issued certificate shall indicate:
  - 1. That no such ordinance has been adopted; or
  - 2. Set forth the number of the ordinance, date of its adoption and the type of improvements authorized.
- E. Fee for assessment search is ten dollars (\$10.00). The fee is statutorily set. If applicant requires another search of the same tract within three (3) years of issuance of search, a continuation search may be issued for a fee of two dollars (\$2.00) per calendar year.
- F. The Assessment Search Official shall issue the Certificate within fifteen (15) days of receipt of the application and fees.
- G. Any person who shall acquire interest in land covered by and in reliance on a search which does not indicate an unconfirmed assessment which existed at the time the search was issued, or a search was not issued within the fifteen (15) days allowed, shall hold such interest free from any subsequent liens of the municipality for such municipal improvements.
- H. All searches so made shall be certified as correct by the designated official, and the fees collected shall be paid by him to the Governing Body of the municipality. The designated official shall keep a duplicate copy of each certificate, which shall be consecutively numbered and show the amount of fees charged.

The Division of Archives and Records Management in the Department of State, with the approval of the State Records Committee, shall determine a retention schedule for all certificates made by the designated official. 10/31/05

**§ 11-2. TEMPORARY RENTALS**

- A. Consult the municipal attorney for information regarding the registration and regulation of temporary rentals through websites and apps such as Airbnb. 9/15/18

**§ 11-3. LANDLORD REGISTRATION**

[N.J.S.A. 46:8-26 et seq.]

- A. The landlord registration requirement applies to all rental premises or units used for dwelling purposes except owner-occupied premises with not more than two (2) rental units.
- B. Within thirty (30) days of transfer of ownership, or creation of new apartments, owner must file appropriate registration statements with:
  - 1. The Municipal Clerk of the municipality, or with such other municipal official as is designated by the Municipal Clerk, in which the residential property is situated for one or two family non-owner occupied rental dwelling; 12/02
  - 2. For dwellings with more than two (2) rental units:
    - a. Landlord must go to the Bureau of Housing Inspection in the Department of Community Affairs.
    - b. DCA sends copy of filed statement to Municipal Clerk for the public records of the municipality.

**C. CERTIFICATE OF REGISTRATION**

Certificate of Registration shall show the following information:

- 1. The name and address of the record owner(s) of the premises and the record owner(s) of the rental business if not the same person.
  - a. In the case of a partnership, the names and addresses of all general partners shall be provided;
  - b. In the case of a corporation, the name and address of the registered agent and corporate officers of said corporation shall be provided.
- 2. If the address of any record owner is not located in the county in which the premises are located, the name and address of a person who resides in the county in which the premises are located and is authorized to accept notices from a tenant and to issue receipts therefor and accept service of process on behalf of the record owner shall be provided.
- 3. The name and address of the managing agent of the premises, if any
- 4. The name and address, including the dwelling unit, apartment or room number, of the superintendent, janitor, custodian or other individual employed by the record owner or managing agent to provide regular maintenance service, if any.
- 5. The name, address and telephone number of an individual representative of the record owner or managing agent who may be reached or contacted at any time in the event of an emergency affecting the premises or any unit of dwelling space therein, including such emergencies as the failure of any essential service or system, and who has the authority to make emergency decisions concerning the building and any repairs thereto or expenditure in connection therewith.



6. The name and address of every holder of a recorded mortgage on the premises.
7. If fuel oil is used to heat the building and the landlord furnishes the heat in the building, the name and address of the fuel oil dealer servicing the building and the grade of fuel oil used.

**D. AMENDMENT OF CERTIFICATE**

After any change in the information required to be included, every landlord shall file an amended certificate of registration within twenty (20) days of the change.

**E. CERTIFICATE OF REGISTRATION AND AMENDMENT TO TENANTS**

1. At the time of filing a Certificate of Registration, the landlord shall provide each occupant or tenant in the premises with a copy of the Certificate of Registration.
2. Upon the filing of an amendment to a Certificate of Registration, the landlord shall provide each occupant or tenant in the premises with a copy of the Amended Certificate of Registration within seven (7) days of filing.

**F. EVICTION/POSSESSION OF PREMISES**

1. In any action for possession instituted by a landlord who has failed to comply with the provisions of this act, no judgment for possession shall be entered until there has been compliance.
2. The Court shall continue such case for up to ninety (90) days, and if there has not been compliance within such period, the action is dismissed.

**G. CERTIFICATE ON FILE, AVAILABLE FOR PUBLIC INSPECTION**

1. Upon filing of a Certificate of Registration with the Municipal Clerk or with such other municipal official as is designated by the Municipal Clerk, the Municipal Clerk or designated official shall index and file the certificate and make it reasonably available for public inspection. 12/02
2. Upon filing of a Certificate of Registration with the Bureau of Housing, the Bureau shall validate the Certificate and issue a validated copy to the landlord and a validated copy to the Municipal Clerk of the municipality or such other municipal official as is designated by the Municipal Clerk in which the building is located. The Municipal Clerk shall index and file them or forward them to the designated official for indexing, and the certificates shall be made available for public inspection. 12/02

**§ 11-4. BONDS OF OFFICIALS AND EMPLOYEES**

Public employees must be covered not only against intentional or dishonest losses, but also against losses caused unintentionally by failure to perform faithfully.

**A. REQUIREMENT**

1. Every officer or employee entrusted or charged with the receipt, custody or expenditure of public funds shall be bonded to the local unit for the true and

faithful performance of his duties. This includes but is not limited to the Treasurer, Deputy Treasurer, Tax Collector, Deputy Tax Collector, Municipal Court Judge, Court Administrator, Violations Clerk, Court Assistants, and the Municipal Clerk.

- a. The Tax Collector's bond is established by a formula involving the annual tax levy and the amount of the bond is checked annually by the Registered Municipal Accountant during the conduct of the audit.
  - b. The bonds of the Municipal Court Judge and the Court Administrator are established by a formula based on the annual amount of money handled by the Municipal Court.
2. All bonds shall be filed with the Municipal Clerk, except the bond of the Clerk shall be filed with the Treasurer.
  3. The term of the individual bond should run concurrently with the term of office of the bonded official.

#### B. BLANKET BOND COVERAGE

1. Waives the necessity for individual applications and for informing the surety of personnel changes occurring during the term of the bond as such changes are automatically covered, whether they involve reductions, additions or substitutions.
2. May be provided in lieu of an individual bond, except for treasurers and tax collectors, provided the blanket bond meets the requirements for the individual bond in amount, rights of cancellation and the governmental agencies in whose favor it runs.
3. Blanket Bond coverage may be provided by a surety company authorized to do business in New Jersey or by a joint insurance fund in lieu of an individual bond as to any officer or employee required by law to be bonded including treasurers and tax collectors and Municipal Court Judges and administrators, provided the blanket bond meets the requirements for the individual bond in the amount, rights of cancellation and the governmental agencies in whose favor it runs.  
(REFERENCE - P.L. 2013, c.2) 9/15/06; 9/15/13

### § 11-5. NEW JERSEY TORT CLAIMS ACT

[N.J.S.A. 59:8 et seq.]

#### A. PURPOSE

1. Provide "Protected Immunities" to Public Entities, even if such injury or damage arises out of an act or omission of the public entity or a public employee provided that the public entity or public employee was not "Palpably Unreasonable" in the conduct of regular business or jurisdictional exercises which created or caused the situation which gave rise to the claim;
2. Establish procedure and time constraints by which claims against public entities may be brought forth;

3. More specifically define the scope and parameters for liability.

**B. FILING**

1. Served upon the Municipal Clerk by personal service or certified mail;
2. Notice must contain pertinent information surrounding the incident, event or accident which gave rise to the claim.
3. The action must be filed by the claimant or by a person acting on his, her, or its behalf.

**C. CLAIM FORMS** may be authorized for use by the public entity (municipality) by ordinance to include additional information.

**D. TIME FOR FILING CLAIM AND SUIT**

1. A claim relating to a cause of action for death or for injury to a person or for damage to property shall be presented not later than the ninetieth (90th) day after accrual of the cause of action;
2. After the expiration of six (6) months from the date of notice of the claim is received, the claimant may file suit in an appropriate court of law;
3. If the person involved in the claim is an infant or incompetent, nothing in this section shall prohibit such infant or incompetent person from commencing an action under this act within the time limitations contained herein after his/her coming to or being of full age and sane mind.

**§ 11-6. LOCAL GOVERNMENT ETHICS LAW**

[N.J.S.A.40A: 9-22.1 et seq.]

**A. THE LAW:**

1. Sets forth its purpose; [N.J.S.A. 40A:9-22.2]
2. Defines the terms used therein; [N.J.S.A. 40A:9-22.3]
3. Provides jurisdiction to govern and guide the conduct of local government officers or local government employees to the Local Finance Board of the State Department of Community Affairs unless regulated by a County or Municipal Ethics Board; [N.J.S.A. 40A:9-22.4]
4. Sets forth specific regulations regarding the conduct of local government officers or employees; [N.J.S.A. 40A:9-22.5]
5. Requires local government officers to file financial disclosure statements; [N.J.S.A. 40A:9-22.6]
6. Sets forth the powers of the Local Finance Board of the State Department of Community Affairs; [N.J.S.A. 40A:9-22.7]

7. Sets forth regulations for hearings, violations, and penalties for violations; [N.J.S.A. 40A:9-22.8 through 40A:9-22.12]
8. Sets forth regulations for County Ethics Boards; [N.J.S.A. 40A:9-22.13 through 40A:9-22.18]
9. Sets forth regulations for Municipal Ethics Boards [N.J.S.A. 40A:9-22.19 through 40A:9-22.25].

B. THE LOCAL GOVERNMENT ETHICS LAW APPLIES TO: [N.J.S.A. 40A:9-22.3]

1. Local Government Agency - any agency, board, governing body, including the chief executive officer, bureau, division, office, commission or other instrumentality within a county or municipality, and any independent local authority, (includes sewerage, utilities, housing, transportation authorities, fire districts and library trustees); including any entity created by more than one (1) county or municipality, which performs functions other than of a purely advisory nature, but shall not include a school board;
2. Local Government Employees - any person, whether compensated or not, whether part-time or full-time, employed by or serving on a local government agency who is not a local government officer, but shall not mean any employee of a school district;
3. Local Government Officer — any person whether compensated or not, whether part-time or full time: (1) elected to any office of a local government agency; (2) serving on a local government agency which has the authority to enact ordinances, approve development applications or grant zoning variances (including governing bodies, planning boards, boards of adjustment and historic commissions); (3) who is a member of an independent municipal, county or regional authority; or (4) who is a managerial executive or confidential employee of a local government agency, as defined in Section 3 of the "New Jersey Employer-Employee Relations Act," P.L. 1941, c.100 (C.34:13A-3) rules and regulations adopted by the Director of the Division of Local Government Services in the Department of Community Affairs pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.), but shall not mean any employee of a school district or member of a school board. 9/15/15

\* Office of County Prosecutor is "local government agency; County Prosecutor is "local government officer" - AGO #91-0090, 9/20/91

\* Municipal Attorney is "local government officer" - AGO #91-0092, 9/20/91

\* Determination of whether Managerial executives or confidential employees are "local government officers" is a fact and legally specific determination - AGO # 91-0093, 9/20/91

\* Members of "authorities" within the scope of the Local Authorities Fiscal Control Law are "local government officers" - AGO #91-0093, 9/20/91

\* Municipal Court Judges and Municipal Court Employees (unless serving in dual capacity in other municipal position) are not subject to the Local Government Ethics Law - AGO #91-0096, 9/20/91

\* Municipal Court Prosecutors and Municipal Court Public Defenders are "local government officers" - AGO #93-0096, 9/20/91

\*Members of Boards of Recreation Commissions established pursuant to NJSA 40:12-1 et seq are "local government officers" - AGO #91-0132, 11/1/91

\*Planning Board and Zoning Board Attorneys are "local government officers" - AGO #91-0133, 11/1/91

\*Attorneys for independent government agencies are "local government officers" - AGO #91-0134, 11/1/91

\*Members of County Boards of Taxation are not "local government officers" - AGO #91-0141, 11/18/91

\*Members of Local Ethics Boards are "local government officers" - AGO #92-0061, 5/27/92

\*Members of Rent Leveling Boards meeting certain criteria as "local government officer" - AGO #92-0069, 6/4/92

\*Members of Local Assistance Boards are "local government employees" but not "local government officers" - AGO #92-0070, 6/4/92

\*Members of Municipal Environmental Commissions are "local government employees" but not "local governing officers" - AGO #92-0071, 6/4/92

\*Commissioners of Joint Insurance Funds are "local government officers" - AGO #92-0072, 10/30/92

\*Emergency Management Coordinators are "local government officers"; Members of Emergency Management Councils are not "local government officers" - AGO #92-109, 7/20/92 <sup>12/98</sup>

\*Registered Municipal Accountants who are engaged by a local government to prepare the annual audit as required by N.J.S.A. 40A:5-4 are not "local government officers" or "local government employees" - AGO #97-0135, 8/25/97 <sup>12/98</sup>

4. While this act does not require disclosure by any member of a School District or member of a School Board, N.J.S.A. 18A:12-21 does require school district officials to file ethics disclosure information with the School Ethics Commission.
5. Failure to comply with the act can cause fines of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00), as well as possible removal from office, suspension, or demotion.

#### C. FINANCIAL DISCLOSURE STATEMENTS: [N.J.S.A. 40A:9-22.6]

1. Local government officers shall annually file a financial disclosure statement. All financial disclosure statements filed pursuant to this act shall include the following information which shall specify, where applicable, the name and address of each source and local government officer's job title:

\*Local Ethics Boards may not require "local government employees to file Financial Disclosure Statements - AGO #93-0022, 3/4/95



Helpful tip: See reference material LFN 2014-06 and 2014-07; New Jersey Department of Community Affairs, Division of Local Government Services; [https://www.state.nj.us/dca/divisions/dlgs/resources/local\\_fin\\_notices.html](https://www.state.nj.us/dca/divisions/dlgs/resources/local_fin_notices.html) 9/15/14

- a. Each source of income, earned or unearned, exceeding \$2,000 received by the local government officer or a member of his/her immediate family during the preceding calendar year. Individual client fees, customers receipts or commissions on transactions received through a business organization need not be separately reported as sources of income. If a publicly traded security is the source of income, the security need not be reported unless the local government officer or member of his/her immediate family has an interest in the business organization;
- b. Each source of fees and honoraria having an aggregate amount exceeding \$250 from any single source for personal appearances, speeches or writings received by the local government officer or a member of his/her immediate family during the preceding calendar year;
- c. Each source of gifts, reimbursements or prepaid expenses having an aggregate value exceeding \$400 from any single source, excluding relatives, received by the local government officer or a member of his/her immediate family during the preceding calendar year;
- d. The name and address of all business organizations in which the local government officer or member of his/her immediate family had an interest during the preceding calendar year; and
- e. The address and brief description of all real property in the State in which the local government officer or a member of his/her immediate family held an interest during the preceding calendar year.

\*Local Ethics Boards may not require additional information to be included on the Financial Disclosure Statement - AGO #93-0023, 3/4/93

2. The Local Finance Board shall: 9/15/13
  - a. Prescribe a financial disclosure statement form for filing purposes. Said form must be completed online and submitted electronically through the Division of Local Government Services website.
  - b. The Municipal Clerk and County Clerk shall annually remind all Local Government Officers that these forms are available online and must be filed by April 30th.
  - c. For counties and municipalities which have established Ethics Boards, the Commission shall annually remind all Ethics Boards that these forms are available online and must be filed by April 30th in accordance with this act. The Ethics Boards shall, in turn, remind the local government officers within their jurisdiction.
3. For local government officers serving the municipality: 9/15/13; 9/15/14

## a. Procedure:

- (1) Develop a list, or roster, of local government officers who must file a Financial Disclosure Statement. This list is managed online at the Division of Local Government's website. 9/15/14
- (2) Once the Local Government Officer (LGO) roster is completed the information will be available from year to year and should only require maintenance; i.e. adding new LGOs, disabling former LGOs. 9/15/14
- (3) For each LGO included in your roster you will need to send each of them a copy of Local Finance Notice 2014-7 together with the LGO's Login ID (their first and last names) and PIN #(automatically generated). 9/15/14
- (4) Local Government Officers shall file the initial financial disclosure statement within thirty (30) days of taking office. Thereafter, statements shall be filed annually on or before April 30th. 9/15/14
- (5) Annually send a reminder to all Local Government Officers reminding them of their responsibility to complete a Financial Disclosure Statement online. 9/15/14

4. \*All financial disclosure statements filed shall be public records. AGO #91-0014, 9/30/91

## D. MUNICIPAL ETHICS BOARD: [N.J.S.A. 40A:9-22.19 through 40A:9-22.20]

## 1. Municipal Ethics Board Creation/Membership:

- a. Each municipality of the State may, by ordinance, establish a Municipal Ethics Board consisting of six (6) members who are residents of the municipality, at least two (2) of whom shall be public members. The members shall be chosen by virtue of their known and consistent reputation for integrity and their knowledge of local government affairs. No more than three (3) members of the board shall be of the same political party.

\*In Faulkner communities with 100,000+ population, Municipal Ethics Boards are appointed by the mayor with advice and consent of the council; in other Faulkner communities, Municipal Ethics Boards are appointed by the municipal council - AGO #92-0074, 6/7/92

- b. The members of the Municipal Ethics Board shall annually elect a chairperson from among the membership.
- c. The members shall serve for a term of five (5) years; except that of the members initially appointed, two (2) of the public members shall be appointed to serve for a term of five (5) years, one (1) member shall be appointed to serve for a term of four (4) years, and the remaining members shall be appointed to serve for a term of three (3) years. Each member shall serve until his successor has been appointed and qualified. Any vacancy

occurring in the membership of the Ethics Board shall be filled in the same manner as the original appointment for the unexpired term.

- E. Members of the board shall serve without compensation but shall be reimbursed by the municipality for necessary expenses incurred in the performance of their duties under this act.

1. Municipal Ethics Board Operations:

- a. The Governing Body of the municipality shall provide the Municipal Ethics Board with offices for the conduct of its business and the preservation of its records, and shall supply equipment and supplies as may be necessary.
- b. All necessary expenses incurred by the Municipal Ethics Board and its members shall be paid, upon certification of the chairperson of the board, by the Municipal Treasurer within the limits of funds appropriated by the municipal governing body by annual or emergency appropriations for those purposes.
- c. The Municipal Ethics Board may appoint employees, including independent counsel, and clerical staff as are necessary to carry out the provisions of this act within the limits of funds appropriated by the municipal governing body for those purposes.

F. MUNICIPAL ETHICS CODE: [N.J.S.A. 40A:9-22.21]

1. Within ninety (90) days after the establishment of a Municipal Ethics Board, the board shall promulgate by resolution a municipal code of ethics for all local government officers and employees serving the municipality.
2. Local government officers and employees serving a municipal independent authority shall be deemed to be serving the municipality for purposes of this act.
3. The municipal code of ethics so promulgated shall be either identical to the provisions set forth in the Statute or more restrictive, but shall not be less restrictive.
4. Within fifteen (15) days following the promulgation thereof, the municipal code of ethics, and a notice of the date of the public hearing to be held thereon, shall be published in at least one newspaper circulating within the municipality and shall be distributed to the Municipal Clerk and to the heads of the local government agencies serving the municipality for circulation among the local government officers and employees serving the municipality.
5. The Municipal Ethics Board shall hold a public hearing on the municipal code of ethics not less than thirty (30) days following its promulgation at which any local government officer or employee serving the municipality and any other person wishing to be heard shall be permitted to testify. As a result of the hearing, the board may amend or supplement the municipal code of ethics as it deems necessary.
6. If the municipal code of ethics is not identical to the provisions set forth in the Statute, the Municipal Ethics Board shall thereafter submit the municipal code of

ethics to the Local Finance Board for approval. The board shall approve or disapprove the municipal code of ethics within sixty (60) days following receipt. If the board fails to act within that period, the municipal code of ethics shall be deemed approved.

7. Municipal Ethics Code Effective Date:

- a. A municipal code of ethics requiring board approval shall take effect for all local government officers and employees serving the municipality sixty (60) days after approval by the board.
- b. A municipal code of ethics identical to the provisions set forth in the Statute shall take effect ten (10) days after the public hearing thereon.

8. The Municipal Ethics Board shall forward a copy of the municipal code of ethics to the Municipal Clerk and shall make copies of the municipal code of ethics available to local government officers and Employees serving the municipality.

G. POWERS OF THE MUNICIPAL ETHICS BOARD: [N.J.S.A. 40A:9-22.22]

1. To initiate, receive, hear and review complaints and hold hearings with regard to possible violations of the municipal code of ethics or financial disclosure requirements by local government officers or employees serving the municipality;
2. To issue subpoenas for the production of documents and the attendance of witnesses with respect to its investigation of any complaint or to the holding of a hearing;
3. To forward to the County Prosecutor or the Attorney General or other governmental body any information concerning violations of the municipal code of ethics or financial disclosure requirements by local government officers or employees serving the municipality which may become the subject of criminal prosecution or which may warrant the institution of other legal proceedings by the Attorney General;
4. To render advisory opinions to local government officers or employees serving the municipality as to whether a given set of facts and circumstances would constitute a violation of any provision of the municipal code of ethics or financial disclosure requirements;
5. To enforce the provisions of the municipal code of ethics and financial disclosure requirements with regard to local government officers or employees serving the municipality and to impose penalties for the violation thereof as are authorized by this act; and
6. To adopt rules and regulations and to do other things as are necessary to implement the purposes of this act.

H. ADVISORY OPINIONS: [N.J.S.A. 40A:9-22.23]

1. A local government officer or employee serving the municipality may request and obtain from the Municipal Ethics Board an advisory opinion as to whether any



proposed activity or conduct would in its opinion constitute a violation of the municipal code of ethics or any financial disclosure requirements.

2. Advisory opinions of the Municipal Ethics Board shall not be made public, except when the Ethics Board by the vote of two-thirds (2/3) of all of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.

\*Local Finance Board may render advisory opinion in Executive Session - AGO #91-103, 9/10/91

I. ETHICS COMPLAINTS: [N.J.S.A. 40A:9-22.24]

1. The Municipal Ethics Board, upon receipt of a signed written complaint by any person alleging that the conduct of any local government officer or employee serving the municipality is in conflict with the municipal code of ethics or financial disclosure requirements, shall acknowledge receipt of the complaint within thirty (30) days of receipt and initiate an investigation concerning the facts and circumstances set forth in the complaint.
2. The Ethics Board shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis.
  - a. If the Ethics Board shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and shall transmit a copy thereof to the complainant and to the local government officer or employee against whom the complaint was filed.
  - b. Otherwise, the Ethics Board shall notify the local government officer or employee against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein.
3. The officer or employee shall have the opportunity to present the Ethics Board with any statement or information concerning the complaint which he wishes.
4. Thereafter, if the Ethics Board determines that a reasonable doubt exists as to whether the local government officer or employee is in conflict with the municipal code of ethics or any financial disclosure requirements, the board shall conduct a hearing in the manner prescribed by N.J.S.A. 40A:9-22.9 concerning the possible violation and any other facts and circumstances which may have come to its attention with respect to the conduct of the local government officer or employee.
5. The Ethics Board shall render a decision as to whether the conduct of the officer or employee is in conflict with the municipal code of ethics or any financial disclosure requirements.
  - a. This decision shall be made by no less than two-thirds (2/3) members of the Ethics Board.



- b. If the Ethics Board determines that the officer or employee is in conflict with the code or any financial disclosure requirements, it may impose any penalties which it believes appropriate within the limits of this act.
- c. A final decision of the board may be appealed to the Local Finance Board within thirty (30) days of the decision.

**J. PRESERVATION OF RECORDS: [N.J.S.A. 40A:9-22.25]**

All statements, complaints, requests or other written materials filed pursuant to this act, and any rulings, opinions, judgements, transcripts or other official papers prepared pursuant to this act shall be preserved for a period of at least five (5) years from the date of filing or preparation, as the case may be.

**K. INTERLOCAL SERVICE AGREEMENTS WITH COUNTY**

\*Such agreements are permitted by N.J.S.A. 40:8A-1, however, the Local Finance Board must first adopt regulations providing for the implementation of same - AGO # 94-0092, 5/16/94

**§ 11-7. OFF-SITE CONDITIONS DISCLOSURE ACT**

- A. The law requires a range of off-site conditions to be reported to the Municipal Clerk of each municipality who shall make them available to the public. The law was enacted to ensure that buyers of new residential construction have information available to them about the location of off-site conditions while considering the purchase of a property. 9/14/07
- B. Off-site conditions are reported to the Municipal Clerk in several ways. The Municipal Clerk, however, has no responsibility to solicit lists or enforce their submission from owners of off-site conditions.
- C. Copies of the "Listing of Off-Site Conditions" form and instructions are provided by the NJ Department of Environmental Protection to those who own, lease or maintain (owners) off-site conditions. 9/15/2021
- D. Upon submission, the Municipal Clerk is to make them available to the public:
  - 1. The publication entitled "Known Contaminated Sites in New Jersey - Municipal Report" provided to the Municipal Clerk annually on or about August 31st by the Department of Environmental Protection pursuant to N.J.S.A. 58:10-23.16-17;
  - 2. Latest list of sanitary landfill facilities provided to the Municipal Clerk by the Department of Environmental Protection pursuant to N.J.S.A. 13:1E-3;
  - 3. "Listing of Off-Site Conditions" forms provided to the Municipal Clerk by owners of such off-site conditions;
  - 4. Copies of all tax map sheets that show the Airport Safety Zone if the municipality has such zone must be provided by the Municipal Clerk.
- E. The following off-site conditions (with maps if indicated with an \*) are to be reported, by owners on the "List of Off-Site Conditions" forms to be provided to the Municipal

Clerk by the Division of Local Government Services of the New Jersey Department of Community Affairs:

1. Overhead electric utility transmission lines conducting 240,000 volts or more\*;
  2. Electrical transformer substations;
  3. Underground transmission lines as defined in 49 C.F.R. 192.3\*;
  4. Sewer pump stations designed for 0.5 million gallons per day and sewer trunk lines in excess of 15 inches diameter\*;
  5. Public wastewater treatment facilities;
- F. Maps and lists shall be made available:
1. For public inspection at no charge in the office of the Municipal Clerk;
  2. For copies of documents at a charge of not more than the actual reproduction cost for each page of these documents for copies; the actual reproduction cost has been defined as the direct cost of making copies and does not refer to standard fee charged for making copies in N.J.S.A. 47:1a-2 or local fee ordinance, and shall not include employee labor or the cost of outside contractors making copies;
  3. For mailing copies of documents, a charge for the cost of packaging and postage may be added for mailing.
- G. Where an owner chooses to submit maps utilizing municipal tax maps, the municipality shall make copies of tax maps required available upon request. The municipality may charge the owner a fee not in excess of the cost of reproduction for each sheet. Standard 24x34' sheets shall be utilized unless the municipality has smaller, appropriately scaled tax map sheets available that otherwise meet the requirements of maps.
- H. Lists and maps submitted to Municipal Clerks are to be updated annually with information on off-site conditions accurate as of August 31 of each year. Updated lists and maps shall be submitted to the Municipal Clerk no later than September 30 of each year by the owners of off-site conditions.
- I. A municipality may, at its own expense, consolidate mapped information from individual owners onto a single map or maps, as long as individual types of facilities are keyed and displayed differently, and lists of operators, phone numbers and addresses are included. The Municipal Engineer shall certify to the accuracy of such consolidated maps.

## § 11-8. REGISTRAR OF VITAL STATISTICS

### A. APPOINTMENT, TERM OF OFFICE, EFFECTIVE DATE [N.J.S.A. 26:8-11-13]

1. In municipalities having a population of less than 5,000, the Municipal Clerk must be appointed as Registrar of Vital Statistics. [N.J.S.A. 26:8-11] In municipalities having a population of 5,000 or more, the Municipal Clerk may be

appointed as Registrar at a salary to be determined by the appointing authority.  
12/02

2. The appointment of the Registrar of Vital Statistics is made by the Board of Health of the Municipality.
3. Term of Office:
  - a. For a Municipal Clerk serving as registrar shall be concurrent with his/her term of office of Municipal Clerk. [N.J.S.A. 26:8-13]
  - b. For other Registrars, the term of office is for three (3) years.
4. The appointment must be immediately certified to the State Department of Health and becomes effective thirty (30) days thereafter. [N.J.S.A. 26:8-12]

B. DUTIES [N.J.S.A. 26:8-25]

Registrars of Vital Statistics process vital records pertaining to births, deaths and marriages, civil unions occurring in the municipality. Monthly activity reports must be transmitted to the State Registrar by the 10th of each month. Municipal Clerks who serve as Registrars should contact the Office of State Registrar for an *Instruction Manual for Local Registrars*, all certificates, forms and booklets. Personalized help from field representatives and training courses are available from the State Registrar. 9/15/08

C. DEPUTY REGISTRAR(S) [N.J.S.A. 26:8-17]

A Deputy Registrar shall be appointed by the Registrar, however, the Registrar has primary responsibility for the duties of the office. The Registrar may also appoint one (1) or two (2) alternate deputy Registrars. 9/15/08; 9/15/15

## § 11-9. PENSION FUND DUTIES

A. INTRODUCTION

In any municipality where the Municipal Clerk is designated the "certifying officer" for any one or all of the pension funds administered by the State Division of Pensions and Benefits, including the Public Employees' Retirement System (PERS) and the Police and Firemen's Retirement System (PFRS), he/she is responsible for the administration of these programs on the municipal level. The certifying officer must be familiar with all aspects of the retirement programs since the municipal work force, as well as the State Division of Pensions and Benefits, will look to the certifying officer for both administrative and financial compliance requirements.

B. BASIC CRITERIA

Any salaried employee, with the exception of temporary personnel, who is expected to earn at least one thousand five hundred (\$1,500) dollars per year and is not a member of another public retirement system, must be enrolled in the applicable pension fund, i.e. PERS or PFRS.

For employees hired after 06/28/2011 the minimum amount to be earned before required enrollment into an applicable pension fund is seven thousand five hundred (\$7,500) dollars. 9/15/12

1. Civil Service Communities

In civil service communities, employees must be enrolled in the system as of the date of their permanent appointment.

2. Non-Civil Service Communities

In non-civil service communities, employees must be enrolled as of the date of their hire.

3. Salary Cap for resumption of active membership 10/31/05

PL 2001 C. 355 permits a PERS retiree to be hired in a PERS eligible position without having to resume active membership provided the annual salary does not exceed fifteen thousand (\$15,000) dollars. The retiree must be off the payroll for at least thirty (30) consecutive days after termination of employment and must be retired from PERS prior to beginning employment in the position.

C. PERCENTAGE RATE OF CONTRIBUTIONS

Each pension fund is administered on a contributory basis with the municipality. The employee's rate of contribution is established through the applicable pension system; currently the employee's PERS rate of contribution is a flat six and one-half percent (6.5%) with an additional one percent (1%) increase over a seven (7) year period starting 07/01/2012 and the PFRS rate of contribution is a flat ten percent (10%). 9/15/12

D. TYPES OF RETIREMENT 10/31/05

1. PFRS

- a. Service Retirement - available to all members age fifty-five (55) or older with no minimum number of years of service credit required. The monthly pension retirement amount, however, will be directly tied to annual earnings and years of service.
- b. Special Retirement - available at any age to members having twenty-five (25) or more years of service credit.
- c. Deferred Retirement - available to members having terminated covered employment with ten (10) or more years of service credit but not yet fifty-five (55) years of age. Benefits are payable the first day of the month following the month of the member's fifty-fifth (55th) birthday.
- d. Ordinary Disability Retirement - available to members who have four (4) or more years of service credit, who are deemed totally and permanently incapacitated for the performance of usual duty or any other available duty the employer is willing to assign and who is a member in service at the time the ordinary disability retirement application is filed. 10/31/05

- e. Accidental Disability Retirement - available to members who have been enrolled in the retirement system on or before the date of the traumatic event (an event in which the worker is involuntarily exposed to a violent level of force or impact which is not brought into motion by the worker).

## 2. PERS

- a. Service Retirement - available to all members age sixty (60) or older with no minimum number of years of service credit required. The monthly pension retirement amount, however, will be directly tied to annual earnings and years of service.
- b. Early Retirement - available to members before age sixty (60) who have twenty-five (25) or more years of service credit.
- c. Deferred Retirement - available to members having terminated covered employment with ten (10) or more years of service credit but not yet sixty (60) years of age; contributions may, on this basis, be left in the system. Benefits are payable the first day of the month following the month of the member's sixtieth (60th) birthday.
- d. Ordinary Disability Retirement - available to members who have ten (10) or more years of service credit, who are deemed totally and permanently disabled because of a non-work related accident; he/she may receive an allowance. The employee must have ten (10) years or more of credited service. 10/31/05
- e. Accidental Disability Retirement - available to members who have been enrolled in the retirement system on or before the date of the traumatic event (an event in which the worker is involuntarily exposed to a violent level of force or impact which is not brought into motion by the worker).
- f. Veteran retirement - available to members having retirement status with the retirement system who are sixty (60) years of age and have a minimum of twenty (20) years service credit or age fifty-five (55) with a minimum of twenty-five (25) years of service credit. 10/31/05

## 3. Life Insurance/death benefits

### a. PFRS

During employment, a member is provided with a life insurance provision of three and one-half (3.5) times their annual salary (non-contributory). 10/31/05

### b. PERS

During employment, a member is provided with a life insurance provision of one and one-half (1.5) times their annual salary (non-contributory). PERS also contains an option by which the employee, while in an active working status, can purchase an additional life insurance benefit (contributory insurance) which will yield an additional benefit of one and one-half (1.5) times their annual salary. 10/31/05



- c. At retirement, both contributory and non-contributory life insurance are reduced to a paid-up amount payable at death during retirement.

## § 11-10. PUBLIC EMPLOYMENT RELATIONS COMMISSION

[N.J.S.A. 34:13A-1 et seq.]

PERC is the body charged with implementing New Jersey's law relating to public employees. It is the entity that deals with labor relations in the public sector. It allows for the formation of unions for collective bargaining purposes.

### A. STRUCTURE

1. Commission consists of seven (7) members appointed by the Governor, with the advice and consent of the Senate.
  - a. Two (2) members represent public employers.
  - b. Two (2) members represent public employee organizations.
  - c. Three (3) representatives are public members, including the Chair.

### B. ROLE

1. Insure a fair process for selecting a bargaining unit.
2. Insure that bargaining unit is appropriate in relationship to both the interests of the employer and the public at large.
3. PERC has full authority in determining appropriate bargaining unit.

### C. PROCESS

1. PERC is empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain a free choice of the employees.
  - a. Employer can request a secret ballot election for determination of recognition of a union of the majority.
  - b. A **petition** must be filed with PERC to hold a secret ballot election.
2. Basic Test employed by PERC in identifying and certifying a bargaining unit is a clear and identifiable community of interests among employees who would constitute an appropriate unit to negotiate their problems with the employer.
3. Municipal Clerks post PERC notices on the public bulletin board or any other place designated for public notices.
4. Eligible voters are those who potential members of the prospective bargaining unit. The majority vote of those present determines the outcome.
5. PERC sends certification of the election results to both parties.

### D. PARTICIPATION

## 1. Unions

- a. Police and non-Police are in separate unions.
- b. Supervisors (definition: authority to hire, fire and discipline, or the power to recommend such actions) and non-supervisors are in separate unions.
- c. Fire employees are in a separate union.

## 2. Non-Unions

- a. Elected officials cannot form a union for themselves.
- b. Members or Boards or Commissions.
- c. Managerial employees (definition: persons who formulate management policies and practices and persons who are charged with responsibility of implementing such management policies and practices).
- d. Confidential employees (definition: those whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiation process would make their membership in any appropriate negotiations incompatible with their official duties; i.e. Municipal Clerk).

## 3. Agency Shop

Once a bargaining unit has been certified, all employees in the unit must pay for their representation, by way of paying dues if they are union members, or payment in lieu of dues if they are not members of the employee organization. A public employee who is eligible to join the union may refuse to do so, but must pay eighty-five percent (85%) of union dues because he/she is still being represented by the bargaining unit and will reap the rewards of that which is negotiated on his/her behalf. As non-members of the union, they have no right to vote nor hold a position within the bargaining unit.

## E. SCOPE OF NEGOTIATIONS

PERC has jurisdiction over what is and is not negotiable.

## 1. Negotiable Items (limited by PERC and cases in courts):

- a. Salaries
- b. Hours of employment
- c. Terms and conditions of employment:
  - (1) Vacations
  - (2) Fringe benefits
  - (3) Grievance procedures
  - (4) Disciplinary review proceedings
  - (5) Leaves of absence

2. Non-negotiable Items (management retains control):
  - a. Slate of officers for municipality
  - b. Pensions
  - c. State Health Benefits system
3. Negotiations in a *voluntary* setting (as opposed to arbitration) should commence one hundred and twenty (120) days before required budget submission date.
4. In *Arbitration*, negotiations between the parties shall be at least one hundred twenty (120) days prior to the day on which the collective negotiations agreement is to expire, and the parties shall meet at least three (3) times.

#### F. IMPASSE PROCEDURES

1. Mediation
  - a. Informal proceeding; strictly voluntary.
  - b. Mediator obtained through PERC.
  - c. A mediator sits down with both sides, listens to both sides, then separates the parties and tries to reach agreement through persuasion.
2. Fact Finding
  - a. More formal procedure; used if mediation unsuccessful.
  - b. Fact Finder obtained through PERC.
  - c. Findings can bring about voluntary agreement; not binding.
  - d. Parties brought together in same room and present documents, evidence, briefs, etc. in support of their respective positions.
  - e. Fact Finder writes a report that is distributed to both parties, it is made public, and in it a settlement of the issues is recommended by the Fact Finder, which is neither binding nor enforceable.
3. Parties continue to negotiate until settlement is reached, when in the voluntary setting. In extreme cases, municipality will invoke the "Last Best Offer" Option.
4. Arbitration setting
  - a. Final step for fire and police.
  - b. A neutral person (certified Arbitrator), either selected randomly by PERC or agreed upon by the parties, has statutory authority to determine the contents of the contract, following specific criteria established by statute.
  - c. The Arbitrator is given power to accept the proposals of either party or to fashion a decision using elements from the two (2) positions.

- d. The Arbitrator shall issue the written opinion and award within one hundred and twenty (120) days of selection. His award sets forth the reasons for the result reached, and copies of his award are sent simultaneously to both parties.

#### G. AGREEMENTS

1. Agreements must be approved by the Governing Body and the signatures of Mayor and Municipal Clerk authorized.
2. Copies of the agreement, at a minimum, to the following:
  - a. Municipal Clerk keeps one for the public record
  - b. Bargaining Unit to which agreement pertains
  - c. PERC is sent a copy of all collective bargaining agreements

#### H. MISCELLANEOUS

##### Unfair Labor Practices

1. Charges are heard at PERC with hearings, attorneys, witnesses
2. Hearing examiner's decision is passed on to PERC for adjudication

### § 11-11. AFFIRMATIVE ACTION/PUBLIC AGENCY COMPLIANCE OFFICER

- A. New Jersey Statutes provide that no public work contracts can be awarded nor any moneys paid until the prospective contractor has agreed to contract performance which complies with an approved affirmative action program. The law applies to each political subdivision and agency of the State and includes service and procurement contracts and construction contracts. [N.J.A.C. 17:27-1.1]
- B. Each public agency shall annually designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer (P.A.C.O.): [N.J.A.C. 17:27-3.5]
  1. Notice of designation shall be given to the Department of the Treasury, State Affirmative Action Office by January 10th of each year.
  2. The officer shall perform the duties prescribed in the Administrative Code, be responsible for ensuring the agencies' compliance with the rules and may perform any other liaison and assistance functions as may be requested by the Affirmative Action Office.

### § 11-12. VOLUNTEER FIRE COMPANIES/RESCUE SQUADS

[N.J.S.A. 13:12-1.1] 10/31/04

- A. LENGTH OF SERVICE AWARD PROGRAM (LOSAP) [N.J.S.A. 40A:14-183 et. seq.]

## 1. Definition

- a. A system established to provide tax-deferred income benefits to active volunteer members of an emergency service organization.
- b. A "year of active emergency service" means a twelve (12) month period during which an active volunteer member participates in the fire or first aid service and satisfies the minimum requirements of participation established by the sponsoring agency (municipality or fire district) on a consistent and uniform basis.

## 2. Establishment

- a. A local government unit without fire districts may, by ordinance, or the Board of Fire Commissioners may, by resolution, establish or terminate a length of service award program for active volunteer members of the emergency service organizations operating under the municipality's jurisdiction.
- b. Such ordinance or resolution shall not become effective until ratified by the voters at the next General Election/Fire District Election.
- c. Ordinance or resolution must be adopted at least sixty (60) days prior to the election.
- d. Ordinance or resolution shall include:
  - (1) A description of the program;
  - (2) A statement of the proposed estimated total amount to be budgeted for the program;
  - (3) A statement of the proposed maximum annual contribution for an active volunteer member;
  - (4) If the proposed program authorized the crediting of prior year service, a statement of the number of prior years of service available for crediting for each active volunteer member; and
  - (5) Any such other provisions as may be reasonably required by the Director of the Division of Local Government Services of the Department of Community Affairs to carry out the purposes of the act.
- e. No ordinance, resolution or public question related to a length of service award program shall require prior approval of the Director.
- f. Subsequent to the adoption of the program, the maximum annual contribution may be increased from time to time without public hearing or public question, provided such increased contribution does not exceed a number calculated by multiplying the original contribution as approved by public question by the consumer price index factor.



- g. Any amounts appropriated annually for a length of service award program shall be included in the budget of the local government unit or fire district as a separate line item.
  - h. Length of service award programs shall commence with the budget immediately following enactment of the program.
3. Abolition

A length of service award program may be abolished or amended in the same manner as it was created, however, any such abolition or amendment shall be by a two-thirds vote of the full membership of the governing body. All accumulated proceeds shall remain in trust for the volunteer members.

**TIP BOX**

Reference Local Finance Notice 2016-3 for Guidance on Administration of Length of Service Award Programs (LOSAPs). The State issues a Local Finance Notice providing an annual increase in the cost of living adjustment. 9/15/16; 9/15/2021

**B. TUITION CREDIT PROGRAM [N.J.S.A. 18A:71-78.1]**

1. A person who is an active member of a volunteer fire company or volunteer first aid or rescue squad of association in good standing, and the dependent children and spouse of a volunteer, shall be allowed to enroll in a post-secondary program on a tuition-free basis in a county college, county vocational school or county technical institute and be eligible to receive tuition credit in an amount not to exceed a maximum of \$2,400 for the member, children and spouse.
2. In order to be eligible, a person shall agree to serve as a member of the volunteer agency for a minimum of four years and sign an agreement with the municipality in which the agency is located pledging four years of service in exchange for tuition credit. Following each year of volunteer service performed, the volunteer, spouse or dependent child, shall be entitled to receive tuition credit of up to \$600, not to exceed a maximum of \$2,400 for the member, children and spouse over a four year service period.
3. Upon acceptance in the institution, the volunteer, dependent child or spouse shall provide verification to the institution that the volunteer has performed the service required for the tuition credit. Upon completion of each semester, the volunteer shall permit a transcript to the municipality to be maintained in a permanent record. The volunteer, dependent child or spouse shall maintain a "C" grade average in order to continue eligibility for the program.
4. A municipality which chooses to participate in the tuition credit program shall issue a letter of eligibility to the volunteer to be presented to the institution stating that the individual is a member in good standing of the volunteer agency.

**§ 11-12.1. EXHIBIT - VOLUNTEER TUITION CREDIT PROGRAM - SAMPLE RESOLUTION — GOVERNING BODY RESOLUTION TO SUPPORT AND PARTICIPATE**

**WHEREAS**, the (name of Governing Body) of the (Name of Municipality) in the County of (Name of County), deems it appropriate to enhance the recruitment and retention of volunteer firefighters and emergency medical volunteers in the (Name of Municipality); and

**WHEREAS**, the State of New Jersey has enacted P.L. 1998, c. 145 which permits municipal governments to allow their firefighting and emergency medical volunteers to take advantage of the Volunteer Tuition Credit Program at no cost to the municipal government;

**NOW, THEREFORE, BE IT RESOLVED** by the (Name of Governing Body) of the (Name of Municipality) in the County of (Name of County), that the Volunteer Tuition Credit Program as set forth in P.L. 1998, c. 145 is herewith adopted for the volunteer firefighters and emergency medical volunteers in the municipality; and

**BE IT FURTHER RESOLVED** that the (Name/Title of Municipal Official) is herewith delegated the responsibility to administer the program and is authorized to enter into all agreements and to maintain files of all documents as may be required under the P. L. 1998, c. 145, a copy of which is herewith made part of this resolution.

**§ 11-12.2. EXHIBIT - SAMPLE VOLUNTEER TUITION CREDIT PROGRAM SERVICE PLEDGE AGREEMENT**

I, (Printed Name of Volunteer), agree to serve as an active volunteer member of the (Name of Volunteer Organization) for a minimum term of four (4) years.

I further agree to comply with the regulations, rules and by-laws that are applicable to this volunteer service organization and that I will, to the best of my ability, perform the duties required of me as a member.

Following each year of volunteer service, my spouse, dependant children and I are eligible to participate in the Volunteer Tuition Credit Program as set forth in N.J.S.A. 18A:71-78 et seq. I further understand that a "C", or "2.0" or "pass" is required for the student to maintain program eligibility and that registration is on a space available basis.

\_\_\_\_\_  
Signature of President,  
Captain or Chief

\_\_\_\_\_  
Signature of Volunteer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**§ 11-12.3. EXHIBIT - SAMPLE VOLUNTEER TUITION CREDIT PROGRAM VERIFICATION OF SERVICE PERFORMED**

As of (date), (name of volunteer) has successfully completed one year of active volunteer service with the (name of organization).

This letter is intended to serve as verification to the (name of municipality) that the volunteer has fulfilled the obligation as stated in the Service Pledge Agreement as required by N.J.S.A. 18A:71-78.3. A copy of this letter is to remain in the volunteer's file along with the required documents for the Volunteer Tuition Credit Program.

\_\_\_\_\_  
Signature of President,  
Captain or Chief

\_\_\_\_\_  
Signature of Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

#### **§ 11-12.4. EXHIBIT - SAMPLE VOLUNTEER TUITION CREDIT PROGRAM BLANKET VERIFICATION OF SERVICE PERFORMED**

As of (date), the following individuals have completed one year of active volunteer service with the (name of organization).

This letter is intended to serve as verification to the (name of municipality) that the volunteers are fulfilling the obligations as stated in the Service Pledge Agreement as required by N.J.S.A. 18A:71-78.3. A copy of this letter is to remain in each of the volunteer's file along with the required documents for the Volunteer Tuition Credit Program.

List of Volunteers

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
Signature of President,  
Captain or Chief

\_\_\_\_\_  
Signature of Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

#### **§ 11-13. (RESERVED)**

9/15/18

**§ 11-14. SALE/LEASE OF MUNICIPALLY OWNED LAND/PROPERTY**

The Local Lands and Buildings Law was enacted in 1971 and should be read together with the Local Public Contracts Law. 9/14/07

**A. SALE OF MUNICIPALLY OWNED REAL PROPERTY, CAPITAL IMPROVEMENTS AND PERSONAL PROPERTY NOT NEEDED FOR PUBLIC USE [N.J.S.A. 40A:12-13]**

Real Property shall include, in addition to the usual connotations thereof, development rights or easements, or any right, interest or estate in the area extending above any real property or capital improvement thereon, to such a height or altitude as any title, interest or estate in real estate may extend, commonly known as "air rights." [N.J.S.A. 40A:12-2]

Capital Improvements shall include, in addition to buildings, any structures, fixtures, edifices, byways, parking lots, service facilities and any other facility necessary and incidental to the lawful performance of any function of a municipality. [N.J.S.A. 40A:12-2]

Personal Property shall mean any personal property necessary and incidental to the furnishing, refurbishing or refurbishing of a building. Personal property shall also include but not be limited to, office furniture, office equipment, office supplies, computers, computer equipment, telephone equipment, cameras, tractors, lawn mowers, dump trucks, golf carts, modular office trailers, tools, janitorial supplies and farm animals. [N.J.S.A. 40A:12-2]

1. Sale to the highest bidder of property not needed for public use is conducted by public auction sale:
  - a. By resolution (or ordinance if required elsewhere in the statute) of the Governing Body, public property is declared no longer needed and the sale by auction is authorized. [N.J.S.A. 40A:12-13(a) and N.J.S.A. 40A:12-13.1]
  - b. Notice of the public auction is published in a newspaper circulating in the municipality. Two (2) insertions are required at least once a week for two (2) consecutive weeks. The last notice shall appear not earlier than seven (7) days prior to sale. [N.J.S.A. 40A:12-13(a)]
  - c. A minimum bid price may be fixed, with or without right of the Governing Body to reject all bids if highest bid is not accepted. If a minimum is fixed, it must be included in the resolution and advertisement and must be announced at the beginning of the sale. [N.J.S.A. 40A:12-13(a)]
  - d. Restrictions and conditions on use of the property may be imposed; and, if imposed, must be advertised. The type, size or other specifications of buildings or structures, demolition, repair or reconstruction and time limits for same may also be set. If set, they must be included in the resolution and advertisement. Restrictions must be related to a lawful public purpose, encourage and promote fair and competitive bidding and be consistent with Zoning, Development and Building Codes then in effect. [N.J.S.A. 40A:12-13(a)]

- e. If municipality wishes to retain an estate or interest in a property, the notice shall require the bidder to submit one (1) bid under each of the following two options: [N.J.S.A. 40A:12-13(a)[1 & 2]]
    - (1) Option A: The bid is subject to the conditions or restrictions; or
    - (2) Option B: The bid is free of all conditions and restrictions.
  - f. The Governing Body must accept or reject bids not later than second public meeting following the sale. If it does not accept nor reject such bids, the bids deemed to be rejected. [N.J.S.A. 40A:12-13(a)]
  - g. Any public auction may be adjourned at the time advertised for not more than one (1) week without readvertising. [N.J.S.A. 40A:12-13(a)]
2. Sale of municipal property may also be authorized by ordinance and conducted at private sale to the following persons or entities and in the following instances: [N.J.S.A. 40A:12-13(b)]
- a. To any political subdivision, agency, department, commission, or board of the State, interstate agency of which NJ is a member or the US government, department or agency thereof. [N.J.S.A. 40A:12-13(b)[1]]
  - b. To a person who had bid at a public auction and where all bids were subsequently rejected, provided the terms and conditions of sale are identical and that the price is not less than the highest bid rejected. [N.J.S.A. 40A:12-13(b)[4]]
  - c. To a private person who purchased a parcel at public auction but
    - (1) it is subsequently determined that title to the property is insufficient for conveyance and
    - (2) after sufficient title has been subsequently attained, conveyance is authorized by resolution to perfect the title;
  - d. Of a public easement no longer needed for public use. Such conveyances and releases are authorized by ordinance. [N.J.S.A. 40A:12-13(b)[4]]
  - e. To an owner of a sole contiguous real property provided that the municipal property is undersized and is without capital improvement. The price paid shall be no less than fair market value. When there is more than one owner with contiguous property, sale shall be to the highest bidder from among the owners. [N.J.S.A. 40A:12-13(b)[5]]

When there is only one owner with real property contiguous to the property being sold, and the property is less than an eighth of the minimum size required for the zone and is without any capital improvement thereon, the fair market value on the property may be determined by negotiation between the municipality and the owner of the contiguous real property. The negotiated sum shall be subject to approval by resolution of the Governing Body, but in no case shall that sum be less than one dollar. 12/00



- f. To the County in which the municipality is located, a municipal property with or without improvements. Sale shall be for nominal consideration, with limitation that the property must be used for public purpose or revert to the municipality. [N.J.S.A. 40A:12-13.4]
  - g. To a State, Regional, Consolidated, County Vocational or Municipal Board of Education, a municipal tract of land with or without improvements. The sale shall be authorized by resolution, consummated for nominal consideration and restricted to educational purposes. Prior dedication of the land for park purposes does not preclude conveyance. [N.J.S.A. 40A:12-19]
  - h. To certain non-profit and charitable organizations as specified in the statute, a municipal tract of land with or without improvements. The sale shall be consummated for nominal consideration, with limitation to agreed upon purposes and reversibility to the municipality. [N.J.S.A. 40A:12-21]
- 3. Private sales of municipally owned property are authorized by ordinance of the Governing Body, except in circumstances of insufficient title as described in foregoing Subsection 2(c)(1 & 2).
  - a. List of the property(ies) to be sold at private sale, together with the minimum bid price(s) shall be included in the ordinance authorizing the sale and be posted in the municipal building and advertised in a newspaper circulated in the municipality within five (5) days of enactment of the ordinance.
  - b. Offers to purchase the property(ies) may be made to the Governing Body or designee for a period of twenty (20) days following the advertisement at not less than the minimum bid price.
  - c. Governing Body may reconsider its ordinance not later than thirty (30) days after its enactment and advertise the real property for sale at public auction.
  - d. Subsequent to sale, the municipality must file with the Director of the Division of Local Government Services of the State Department of Community Affairs affidavits of publication of the advertisements.
- 4. Municipal property can be sold at private sale to a private developer under Local Redevelopment Law [N.J.S.A. 40A:12A-1 et seq.] where there exist and persist conditions of deterioration. [N.J.S.A. 40A:13(c)]
  - a. A deposit not exceeding ten (10%) percent of the minimum price or value of the property may be required of all bidders.
  - b. All such sales may be made for cash or upon credit.
  - c. The municipality may accept a five (5) year purchase-money mortgage and the rate shall be equal to that set by N.J.S.A. 31 or the last borrowing rate paid by the municipality on notes pursuant to N.J.S.A. 40A:2-1.
  - d. The municipality may provide for the payment of a commission to a broker or representative of purchaser, provided that the Governing Body's intention shall be stated in advertisement of sale. The recipient of the commission

must sign an affidavit stating that the recipient is not the purchaser. Commissions shall not exceed five (5%) percent.

5. Where lands were sold with certain deed restrictions, the Governing Body may, by resolution, waive, release, modify or subordinate the deed restrictions, provided however, that the Governing Body shall first conduct a public hearing on the matter. Notice of hearing describing the lands in question and the terms, covenants, conditions, limitations or reverts to be waived, released or modified or subordinated, must be published once each week for two (2) weeks in a newspaper published in said municipality or, if no newspaper is published therein, then in a newspaper circulated in the municipality. This power shall not be exercised to impair any vested or contractual rights of third parties. [N.J.S.A. 40:60-51.2] 10/31/05

B. LEASING OF MUNICIPALLY OWNED REAL PROPERTY, CAPITAL IMPROVEMENTS AND PERSONAL PROPERTY NOT NEEDED FOR PUBLIC USE [N.J.S.A. 40A:12-14]

1. Lease to the highest bidder (except for a public purpose under N.J.S.A. 40A:12-15), of property not needed for public use, is authorized by ordinance and conducted by open public auction sale or by the submission of sealed bids. [N.J.S.A. 40A:12-13(a)]
  - a. Notice of the date and method of bidding is published in a newspaper circulating in the municipality. Two (2) insertions are required at least once a week for two (2) consecutive weeks. The last notice shall appear not earlier than seven (7) days prior to the date of the bids.
  - b. A minimum rental may be fixed by resolution of the Governing Body as well as a reservation to reject all bids if highest bid not accepted. The reservation must also be stated in the advertisement and announced at the time of bidding.
    - (1) Any conditions and restrictions on the lease must be set forth in the resolution.
    - (2) The Governing Body must accept or reject bids no later than second regular meeting following the completion of bidding. If the bids are not accepted nor rejected, they are deemed to be rejected.
    - (3) Any public award may be adjourned at the time advertised for not more than one (1) week without readvertising.
  - c. A lease to a public body, containing the terms and conditions, must be approved by ordinance or resolution. [N.J.S.A. 40A:12-14(b)]
  - d. A lease to a non-profit organization or association for a public purpose must be authorized by ordinance. [N.J.S.A. 40A:12-14(c)]
    - (1) The ordinance shall include the consideration, if any, the name and location of the corporate lessee, the lessee's public purpose, the number of persons benefitting from the purpose, and the enforcement officer or agent.

- (2) The ordinance must require the filing of an annual report by the corporation or association and an affirmation of continued tax-exempt status.

e. Public purpose leases may have a term not exceeding fifty (50) years and may be extended for an additional twenty-five (25) years by ordinance or resolution. Purposes are limited to the following: [N.J.S.A. 40A:12-15 (a-k)]

- (1) Fire and emergency services;
- (2) Health care or services;
- (3) Veterans' housing or services;
- (4) Mental health services;
- (5) Shelter care or services for persons aged 62 or over; 12/99
- (6) Cerebral palsy patient services;
- (7) Civic or historic programs or activities;
- (8) Services or care of poor or indigent persons;
- (9) Promotion of health and general community welfare;
- (10) Vacant lots for gardening or recreation - the Governing Body may designate a municipal official to enter into leases for these purposes;
- (11) Electrical transmission service for a municipality.

Leases relating to commercial or other profit-making enterprises or such purposes as political or religious are expressly prohibited.

C. EXCHANGE OF CERTAIN LANDS [N.J.S.A. 40A:12-16]

1. Exchanges of lands or rights or interests therein (except uses for public highways or places) are authorized by ordinance.
2. If the land to be conveyed is determined by the Governing Body to be of higher value than the land to be acquired, an additional cash consideration may be required.
3. Municipal lands that are dedicated for park purposes may be exchanged but the park purpose shall remain.
4. Lands to be exchanged shall be valued for not less than the amount for which it was acquired or at the full and fair value as determined by the Assessor of the Municipality in which it is located.

D. SALE OF MUNICIPALLY OWNED PERSONAL PROPERTY (NOT REAL PROPERTY OR PERSONAL PROPERTY REGULATED BY THE LOCAL LAND AND BUILDING LAW) [N.J.S.A. 40A:11-36] 12/01

1. By resolution of a Governing Body:

- a. Sale of personal property no longer needed for public use. [N.J.S.A. 40A:11-36]
  - b. Personal property valued in excess of \$2,500.00. [N.J.S.A. 40A:11-36(1)]
  - c. Disposed of at public sale to highest bidder except when a sale is made to certain other governmental agencies. [N.J.S.A. 40A:11-36(2)]
2. A public advertisement must include a notice of the date, time and place of a public sale, together with a description of items to be sold and terms and conditions of a sale. [N.J.S.A. 40A:11-36(3)]
  3. A sale must be held not less than seven (7) nor more than fourteen (14) days after latest publication of a notice. [N.J.S.A. 40A:11-36(3)]
  4. If no bids are received, the property may then be sold at private sale without further publication or notice but at no less than the estimated fair value or the bids can be received for a second time. [N.J.S.A. 40A:11-36(4)] <sup>12/99</sup>
  5. If bids are rejected in the public interest, the bids may be readvertised for second sale. If the bids are rejected at the second public sale, the property may then be sold at private sale without further publication or notice but at no less than the highest price offered at the two public sales. [N.J.S.A. 40A:11-36(5)] 12/99; 10/31/05
  6. This provision of law does not govern public (real) property transactions. The Local Lands and Buildings Law [N.J.S.A. 40A:12-1 et seq.] is covered in the Miscellaneous Duties Chapter.

NOTE: If a municipally-owned vehicle is sold, the Certificate of Ownership must be endorsed by the Municipal Clerk for title to transfer to the purchaser. At the time of endorsement, the Certificate should contain the name of the seller, name and address of the buyer, the recorded mileage, sale price and the date of sale.

E. MAINTENANCE OF CENTRAL REGISTRY [N.J.S.A. 40A:12-22]

Each municipality and county may establish and maintain a central registry of all real property in which it has acquired title or a leasehold interest for other than street or highway purposes. This registry may also include a record of all real property which the municipality or county may hereafter acquire, sell or lease.

If established and maintained, the Registry shall:

1. Constitute a public record;
2. Be entitled "Municipal (County) Real Property Registry";
3. Be available for inspection in the office of the Municipal Clerk.

**§ 11-15. UNIFORM CONSTRUCTION CODE - DISCLOSURE STATEMENTS**

[N.J.A.C. 5:23-4.5(j)]

Employees of enforcing agencies such as construction subcode officials and inspectors are required to annually report any income or benefits received from any business or property subject to the Code, or from any business furnishing materials, products, labor or services for types of work subject to Uniform Construction Code regulations, to the municipal Governing Body. This report shall include a list of all sources of income, but need not list the amount.

**§ 11-15.1. EXHIBIT - UNIFORM CONSTRUCTION CODE DISCLOSURE FORM**

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
POSITION: \_\_\_\_\_  
DATE OF  
EMPLOYMENT: \_\_\_\_\_  
POSITION HELD: \_\_\_\_\_

NJAC 5:23-4.5 Provides:

**J. Conflict of Interest:**

1. No person employed by an enforcing agency as a construction or subcode official or as an inspector shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she, or a member of his or her immediate family, has an economic interest.
  - i. Where an inspection or enforcement procedure is necessary or required in any such property or business, the official or inspector shall arrange for the inspection or enforcement to be carried out either by another local enforcing agency or by the Department (of Community Affairs). <sup>12/99</sup>
2. No person employed by an enforcing agency as a construction or subcode official, assistant to the construction or subcode official, trainee, inspector or plan reviewer, shall engage in, or otherwise be connected directly or indirectly for purposes of economic gain, with any business or employment furnishing labor, materials, products or services for the construction, alteration, or demolition of building or structures within any municipality in which he or she is so employed by an enforcing agency, and in any municipality adjacent to any municipality in which he or she is thus employed.
3. Persons subject to this subsection shall annually report any income or benefits received from any business or property subject to the Code, or from any business furnishing materials, products, labor or services for types of work subject to Uniform Construction Code regulations, to the municipal governing body. This report shall include a list of all sources of income, but need not list the amount.
4. No person employed by a municipal enforcing agency as a construction official, subcode official or inspector shall be employed to appear before any construction board of appeal, or be involved in any court proceeding within the State, as a paid expert witness, or in any other compensated capacity in any proceeding involving the enforcement of the Uniform Construction Code except on behalf of another enforcing agency, or as a court-appointed witness.



- i. This prohibition shall not apply to any litigation not involving enforcement of the Code, or to an appearance as a fact witness; nor shall it apply to any activities unrelated to an action for, or an appeal of, enforcement of the Code.
- 5. This section shall not apply to:
  - i. The ownership of stock or other investment instrument in any corporation listed on any national stock exchange;
  - ii. Any such business or employment outside the State;
  - iii. Dual employment by two or more enforcing agencies;
  - iv. Any business or employment which is not subject to the regulations.
  - v. Service as an instructor in a code enforcement training program.
- 6. Nothing herein shall prohibit a municipality from establishing by ordinance more restrictive provisions covering conflict of interest.

I am familiar with the above cited Conflict of Interest provisions of the Uniform Construction Code. The following represents my report of income/benefits as specified above received for the period July 1, 20\_\_ to June 30, 20\_\_.

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DATE

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SIGNATURE

## **§ 11-16. NEW JERSEY WORKER AND COMMUNITY RIGHT TO KNOW ACT REGULATIONS**

### **A. LEGISLATIVE FINDINGS [N.J.S.A. 34:5A-1 et. seq.]**

With the passage of The New Jersey Worker and Community Right to Know Act (RTK), the New Jersey State Legislature determined that it is in the public interest to:

- 1. Establish a comprehensive program for the disclosure of information about hazardous substances in the workplace and the community, and
- 2. Provide a procedure whereby residents of New Jersey may gain access to this information.

### **B. REGULATIONS [N.J.A.C. 8:59]**

The New Jersey Department of Health and Senior Services have adopted comprehensive Regulations within the New Jersey Administrative Code, providing

details regarding the responsibilities of various parties for compliance with the Right To Know Law.

### C. TERMINOLOGY

People sometimes make an incorrect reference to the "Right To Know", when they are attempting to deal with OPRA, or other state and federal regulations involving the right of the public to have general access to public records and information.

There is no need, in general, to correct people when they make an incorrect reference to their "Right To Know", but it is important for the Municipal Clerk, as the custodian of public records, to understand if a person is interested in OPRA, which is covered under N.J.S.A. 47:1A-1, or if the person is interested specifically in information regarding hazardous substances in a workplace, covered by N.J.S.A. 34:5A-1 and N.J.A.C. 8:59.

### D. ENFORCEMENT

Three State Agencies work together to implement the RTK Act. The Municipal Clerk's involvement with these agencies is as follows in the public sector:

1. The New Jersey Department of Health and Senior Services enforces all provisions of RTK in public workplaces, and Prepares Hazardous Substance Fact Sheets.
2. The New Jersey Department of Environmental Protection, Bureau of Chemical Release Information and Prevention implements the federal Superfund Amendments and Reauthorization Act (SARA), which provides important information about hazardous chemicals in private industry. This information is important for your Emergency Management Coordinator and your Police, Fire and First Aid Squad responders, who may have to offer emergency responses to these locations.
3. The New Jersey Department of Labor investigates complaints by public employees who suspect they are being discriminated against for exercising their rights under RTK.

### E. DEFINITIONS

1. **"Workplace Hazardous Substance List"** means a complete list of all hazardous substances developed by the Department of Health. This is a reference tool for Employers to use when they complete their Workplace Survey.
2. **"Hazardous Substance Fact Sheet"** means a written document prepared by the Department of Health for each hazardous substance listed on the Workplace Hazardous Substance List. The Fact sheet includes:
  - a. The hazard posed (e.g., toxicity, flammability, explosiveness, etc.)
  - b. A description, in nontechnical language, of the health effects of exposure to the hazardous substance
3. **"Workplace Survey"** means a written document, prepared by the Department of Health and completed by an employer pursuant to this act, on which the employer shall report each hazardous substance present at his facility.

4. **"Hazardous Substance"** means any substance, or substance contained in a mixture, included on the workplace hazardous substance list developed by the Department of Health, introduced by an employer to be used, or handled at a facility.

F. COMPLETION AND DISTRIBUTION OF WORKPLACE SURVEY

1. Each employer covered by the RTK Act must transmit a copy of the completed Workplace Survey to:
  - a. The New Jersey Department of Health
  - b. The health department of the county in which the facility is located
  - c. The local fire department
  - d. The local police department.
2. Any employer whose workplace survey, transmitted to the Department of Health, indicates that no hazardous substances are present at the facility shall be exempt from the provisions of this act for that facility, except for the requirement to annually update the workplace survey.
3. Procedures are established under N.J.A.C. 8:59-3 for any public employer who wishes to claim a **trade secret** for a product name on the Right to Know survey.

G. DISTRIBUTION OF HAZARDOUS SUBSTANCE FACT SHEETS

Upon receipt of a completed workplace survey from an employer, the Department of Health transmits to that employer a hazardous substance fact sheet for each hazardous substance reported by the employer on the workplace survey.

H. MATERIAL SAFETY DATA SHEETS

A public employer shall obtain material safety data sheets from manufacturers, suppliers and subcontractors for all products purchased for the facility, which involve hazardous substances reported on the workplace survey.

I. EMPLOYER'S CENTRAL FILE

1. Every municipality must establish and maintain a central file, which shall contain:
2. A workplace survey for the facility
3. Appropriate hazardous substance fact sheets
4. Material Safety Data Sheets

J. EMPLOYEE ACCESS TO CENTRAL FILE

1. Employers shall post on bulletin boards readily accessible to employees, a notice of the availability of the information in the central file.
2. Employers with employees whose native language is Spanish shall also post the notice in Spanish.

3. An employer shall provide an employee with access to a workplace survey, appropriate hazardous substance fact sheets, and, if applicable, an environmental survey, within five working days of a request therefor.
4. An employee shall have the right to refuse to work with a hazardous substance for which a request was made and not honored without loss of pay or forfeit of any other privilege until the request is honored.

K. EMPLOYEE EDUCATION AND TRAINING PROGRAM

1. Every employer shall establish an education and training program for his employees. The program shall:
2. Inform employees in writing and orally of the nature of the hazardous substances to which they are exposed in the course of their employment
3. Explain the potential health risks which the hazardous substances pose
4. Train employees in proper procedures for handling the hazardous substances.

An employer shall, upon request, provide employees whose native language is Spanish with the education and training program in Spanish.

Any person who becomes an employee shall be provided with the program within the first month of employment.

Consultants who conduct the Right to Know education and training program to a public employer shall possess a current certification, in good standing, issued by the Department of Health and Senior Services.

L. LABELING OF CONTAINERS

Every employer shall assure that every container at his facility containing a hazardous substance shall bear a label indicating the chemical name and Chemical Abstracts Service number of the hazardous substance or the trade secret registry number assigned to the hazardous substance.

Exemptions From Requirements of Labeling:

1. All items listed under the exemptions from the definition of "Hazardous Substance" are exempt from labeling requirements under RTK.
2. Articles that are also excluded from labeling requirements include solid articles that contain some amount of liquid or powder, which, due to the design and use of the article, is not released from the article and thus does not cause any exposure to public employees and emergency responders. The following solid articles, which are some examples and do not represent an exclusive list of excluded articles, meet the requirements and are excluded from labeling:
  - a. Ammunition
  - b. Polaroid film
  - c. Dry cell batteries

- d. Photocopier toners and developers in self-contained cartridges
  - e. Pens
3. Consumer products that are excluded from labeling include Typewriter correction fluid (for example, "WiteOut," "Liquid Paper")

**M. RIGHT TO ENTER FACILITY TO DETERMINE COMPLIANCE**

Either the Department of Health or the New Jersey Department of Environmental Protection shall have the right to enter an employer's facility during the normal operating hours of the facility to determine the employer's compliance with the provisions of RTK.

**N. PENALTIES FOR NONCOMPLIANCE**

The Commissioner of Environmental Protection or the Commissioner of Health, as appropriate, is authorized to impose a civil administrative penalty of not more than \$2,500.00 for each violation and additional penalties of not more than \$1,000.00 for each day during which a violation continues after receipt of an order from the commissioner to cease the violation.

**O. MUNICIPAL CLERK'S ROLE IN RTK**

Depending on the community being served, the role of the Municipal Clerk in RTK compliance may be very minimal or very involved. If the Municipal Clerk is not the designated official responsible for maintaining RTK compliance, then the Municipal Clerk should know who that official is, and where the files are located, so that requests by employees and/or members of the public can be processed in the time frames provided by the RTK Law.

**§ 11-16.1. EXHIBIT - CHECKLIST FOR RTK COMPLIANCE**

- ☐ Does the municipality have a central file of RTK materials?
- ☐ Has the municipality completed a RTK Survey at least once every 5 years since 1993?
- ☐ Does the municipality submit annual updates to the RTK Survey?
- ☐ Does the municipality maintain Hazardous Substance Fact Sheets for each substance identified on the RTK Survey in its central file?
- ☐ Does the municipality maintain Material Safety Data Sheets, as required, for each substance identified on the RTK Survey in its central file?
- ☐ Is a procedure in place for responding to employee requests for access to information and material in the RTK central file?
- ☐ Is a procedure in place for responding to citizen requests for access to information and material in the RTK central file?
- ☐ Has the municipality complied with the requirement for initial employee education and training under the RTK Law?
- ☐ Does the municipality provide update training at least once every two years?
- ☐ Is the RTK employee education and training program provided to all new employees within one month of the date of hire?



- ☐ Are containers properly labeled in accordance with the requirements of the RTK Law?
- ☐ Are RTK Brochures distributed to all employees annually?
- ☐ Are the required RTK posters and informational notices posted on municipal bulletin boards as required by the RTK Law?

### § 11-17. ACQUISITION OF LANDS AND BUILDINGS

[N.J.S.A. 40A:12-3 et seq.] 10/31/05

- A. Any municipality may, by ordinance, acquire, construct, maintain, furnish, equip, repair and replace such buildings, land or other capital improvements as may be necessary and suitable for the performance of its functions and other functions set forth in the statute.
- B. Any municipality may, by ordinance, acquire real property, capital improvement, personal property or any interest or estate whatsoever therein, including easements, water, water power or water rights, either within or without the municipality.

### § 11-18. MORTGAGE STABILIZATION AND RELIEF ACT

(P.L. 2008, c.127) 9/15/10

- A. This Act required that mortgage holders notify the Municipal Clerk of any intention to foreclose on a residential property within the community.

Procedure for serving notice of intention to foreclose.

1. A creditor serving a summons and complaint in an action to foreclose on a mortgage on residential property in this State shall, within 10 days of serving the summons and complaint, notify the Municipal Clerk of the municipality in which the property is located that a summons and complaint in an action to foreclose on a mortgage has been filed against the subject property. The notice shall contain the name and contact information for the representative of the creditor who is responsible for receiving complaints of property maintenance and code violations, may contain information about more than one property, and shall be provided by mail or electronic communication, at the discretion of the Municipal Clerk. If the municipality has appointed a public officer pursuant to P.L. 1942, c.112 (C.40:48-2.3 et seq.), the Municipal Clerk shall forward a copy of the notice to the public officer or shall otherwise provide it to any other local official responsible for administration of any property maintenance or public nuisance code.

In the event that the property being foreclosed on is an affordable unit pursuant to the "Fair Housing Act," P.L. 1985, c.222 (C.52:27D-301 et seq.), then the creditor shall identify that the property is subject to the "Fair Housing Act."

The notice shall also include the street address, lot and block number of the property, and the full name and contact information of an individual located within the State who is authorized to accept service on behalf of the creditor. The notice shall be provided to the Municipal Clerk within 10 days of service of a summons and complaint in an action to foreclose on a mortgage against the subject property.

2. If the owner of a residential property vacates or abandons any property on which a foreclosure proceeding has been initiated or if a residential property becomes vacant at any point subsequent to the creditor's filing the summons and complaint in an action to foreclose on a mortgage against the subject property, but prior to vesting of title in the creditor or any other third party, and the property is found to be a nuisance or in violation of any applicable State or local code, the local public officer, Municipal Clerk, or other authorized municipal official shall notify the creditor, which shall have the responsibility to abate the nuisance or correct the violation in the same manner and to the same extent as the title owner of the property, to such standard or specification as may be required by State law or municipal ordinance. The municipality shall include a description of the conditions that gave rise to the violation and shall provide a period of not less than 30 days from the creditor's receipt of the notice for the creditor to remedy the violation. If the creditor fails to remedy the violation within that time period, the municipality may impose penalties allowed for the violation of municipal ordinance pursuant to R.S. 40:49-5.
3. If the municipality expends public funds in order to abate a nuisance or correct a violation on a residential property in situations in which the creditor was given notice pursuant to the provisions of paragraph 2. but failed to abate the nuisance or correct the violation as directed, the municipality shall have the same recourse against the creditor as it would have against the title owner of the property, including but not limited to the recourse provided under section 23 of P.L. 2003, c.210 (C.55:19-100).

#### **§ 11-19. FORECLOSED PROPERTIES**

9/15/12

Certain owners of foreclosed properties are required to file contact information.

- A. The owner of any non-owner occupied residential property who takes title to the property as the result of a sheriff's sale or deed in lieu of foreclosure shall provide notice, within ten (10) business days, to the municipal clerk, or other designated municipal official, of the municipality wherein the property is located providing the name and address of the property owner. 9/15/2021
- B. If the owner is not located within New Jersey, then the owner shall designate an agent within New Jersey, including agent's address who is authorized to accept service of process on behalf of property owner.

#### **§ 11-20. POSTING OF BUDGET DOCUMENT ON WEBSITE**

9/15/14; 9/15/15; 9/15/18

- A. The adopted budget shall be provided for public inspection on the local unit's website, if one exists, or, if one does not exist, the budget shall be provided for public inspection on the website of the Department of Community Affairs, and made available online and in print as required in a "user-friendly" summary format using plain language.

- B. In addition to the current year adopted budget, the local unit's adopted budgets of the immediately preceding three budget years also shall be provided for public inspection on the local unit's website, if one exists, or, if one does not exist, those budgets shall also be provided for public inspection on the website of the Department of Community Affairs.
- C. Any adopted budget posted online pursuant to P.L. 2011, c.7 (N.J.S.A. 40A:4-10) shall remain posted online for the duration of the local budget year.
- D. The Local Finance Board shall promulgate a "user-friendly" plain language summary format for use by local units for this purpose.

#### **§ 11-21. LIST OF MUNICIPAL RESIDENTS IN NEED OF SPECIAL ASSISTANCE**

(P.L. 2018, c266) 9/15/18

The Governing Body of a municipality, by ordinance, may require the clerk of the municipality to maintain a list containing the names and addresses of municipal residents who identify themselves as being in need of special assistance in the event of an emergency and who request that this information be maintained on their behalf, for public safety purposes.

- A. This list shall be cross-indexed by name and address of each resident requesting to be on the list, and shall identify the special circumstances of each individual
- B. A notice to municipal residents advising them that such a list is being maintained by the clerk for public safety purposes shall be included annually with the tax bills mailed to local property taxpayers. The notice shall include information as to how a municipal resident may add his or her name and address to the municipal list.
- C. The municipal clerk shall notify each landlord who has filed a certificate of registration with the municipality pursuant to section 2 of P.L. 1974, c. 50 (C.46:8-28) of the existence of the list, and shall provide the landlord with a copy of a notice to be provided to the landlord's tenants, including information as to how a tenant may be added to the list. The landlord is required to provide said notice to their tenants.
- D. This list is considered as one of the items that SHALL be deemed confidential for the purposes of the Open Public Records Act [N.J.S.A. 47:1A-1]

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# MUNICIPAL CLERK STUDY GUIDE

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