

FINAL REPORT
OF THE
CHARTER STUDY
COMMISSION
OF THE
BOROUGH OF BELMAR

May 16, 1990

TABLE OF CONTENTS

LETTER OF TRANSMITTAL	3
PUBLIC QUESTION	5
Interpretive Statement	5
Timetable for Action	5
HISTORICAL BACKGROUND OF THE BOROUGH OF BELMAR	6
BACKGROUND OF BELMAR'S LOCAL FORM OF GOVERNMENT	7
DESCRIPTION OF BELMAR'S COMMISSION FROM OF GOVERNMENT	8
STRENGTHS AND WEAKNESSES OF BELMAR'S COMMISSION FORM OF GOVERNMENT	9
ALTERNATIVES CONSIDERED TO THE COMMISSION FORM OF GOVERNMENT	11
Mayor-Council-Administrator Plan	12
Mayor-Council Plan	12
Council-Manager Plan	13
RECOMMENDATION OF THE CHARTER STUDY COMMISSION	14
Direct Election of the Mayor	15
Mayor and Four Councilpersons	15
Staggered Terms	16
Partisan Elections in November	16
Municipal Administrator	17
Powers of Recall, Initiative and Referendum	17
CONCLUSION	19
APPENDIX A	20
APPENDIX B	21
APPENDIX C	22
MINORITY REPORT OF COMMISSIONER MICHAEL SUPKO	24
Role of the Council	24
Role of the Manager	24
Number of Elected Councilpersons	25
Non-partisan, Staggered, At Large Elections	25
Summary	25
EXCERPTS FROM THE OPTIONAL MUNICIPAL CHARTER LAW	26

LETTER OF TRANSMITTAL

To the Mayor, Commissioners, Borough Clerk,
and Residents of the Borough of Belmar:

At the general election on November 7, 1989, the voters of the Borough of Belmar overwhelmingly approved the referendum for a Charter Study Commission to consider a new charter or improvements to the present charter of the Borough of Belmar. The voters also elected five residents of the Borough of Belmar to serve on the Charter Commission and, as set forth in the Optional Municipal Charter Law, to study the form of the government of the Borough of Belmar, to compare it with other available forms under the laws of this State, and to determine whether or not, in our judgment, the government of the Borough could be strengthened, made more clearly responsive or accountable to the people, or whether its operations could become more economical or efficient under a changed form of government.

During the six months since our election as Charter Commissioners, we have interviewed past and present mayors and commissioners of the Borough, past and present municipal clerks, the Borough attorney and department heads regarding the strengths and weaknesses of our current Commission form of government. We also traveled as far south as Wildwood City and as far north as Fairfield to interview public officials and administrators from ten other municipalities and to discuss with them the strengths and weaknesses of the four forms of government available to Belmar under the Optional Municipal Charter Law.

In the course of our study we have held more than 26 public meetings and sponsored three public forums to receive input from our citizens. Our interviews and public meetings to date are recorded on more than 40 audio and video tapes and 56 pages of typed minutes.

Based upon our studies, numerous interviews and in-depth comparison of available forms of government in New Jersey, we have unanimously concluded for the reasons set forth more fully in our report, that it is time for the Borough of Belmar to abandon the Commission plan and to adopt a more modern and efficient form of government.

In the judgment of a 4-1 majority of the Charter Study Commission, the present and future needs of the Borough of Belmar would be best served by a change to a five-member Small Municipality Plan form of government with a directly elected mayor and the option to create the position of an administrator at a future date. The majority further recommends that the elected officials under the new form of government have staggered terms and run in partisan elections, which would be held each November.

The minority report recommends the adoption of a five-person Council-Manager form of government, with an indirectly elected mayor and a paid manager who would be responsible for overseeing the day-to-day administration of the community. The minority report further recommends that the elected officials have staggered terms and run in non-partisan elections, which would be held every other May.

In accordance with the conclusion set forth herein, the Charter Study Commission hereby directs the Clerk of the Borough of Belmar to put the public question set forth herein to a referendum vote of the registered voters of the Borough of Belmar at a Special Election to be held on Tuesday, July 24, 1990.

The Commission wants to take this opportunity to express its sincere appreciation to all of the individuals who took time from their busy schedules to share with us their thoughts and experiences about municipal government. We also want to thank our able secretary, Barbara Lynch, for her hard work; Dennis Lavender, Esquire, of Kalac, Newman & Lavender, who served as the Charter Commission's legal counsel without charge, and Gene Ertle and State Shorthand Reporting Service, who videotaped many of our interviews without charge. Finally, we want to express our special thanks to those residents who were interested enough in Belmar's future to come out to our meetings time and time again to ask questions and to share with us their valuable thoughts and opinions.

We hope that our report and recommendations will be received as we intend them -- as a thoughtful and substantial contribution to good government and the public interest of our community.

Respectfully submitted,

CHARTER STUDY COMMISSION
OF THE BOROUGH OF BELMAR

By: *Kenneth E. Pringle*
Kenneth E. Pringle
Chairman

By: *Barbara Iglay*
Barbara Iglay,
Vice Chairperson

By: *D Arcy P. McGill*
D Arcy P. McGill

By: *Patricia M. Provenzano*
Patricia M. Provenzano

By: *Michael Supko*
Michael Supko

PUBLIC QUESTION

The Borough of Belmar Charter Study Commission recommends, pursuant to Sections 1-14 and 1-15 of the Optional Municipal Charter Law, that the following public question be placed upon the ballot at a special election to be held on Tuesday, July 24, 1990:

"Shall the Small Municipality Plan of the Optional Municipal Charter Law, providing for the Mayor to be elected directly by the people for a four-year term, and four councilpersons to be elected at large for staggered three-year terms at elections held in November, be adopted by the Borough of Belmar?"

Interpretive Statement

A vote of "YES" is a vote to change the form of government of the Borough of Belmar to the Small Municipality Plan form of government. The Mayor would be directly elected by the voters for a four-year term, and four councilpersons would be elected at large on a partisan ballot for staggered three-year terms at November elections, as recommended by the Charter Study Commission of the Borough of Belmar.

A vote of "NO" is a vote to keep the present commission form of government.

TIMETABLE FOR ACTION

May 16, 1990	Filing of Charter Study Commission Report
June 25, 1990	Last date to register to vote in Special Election
July 24, 1990	Referendum at Special Election on Question Whether to Adopt Small Municipality Plan Form of Government
November 6, 1990	Election of Mayor & Council
January 1, 1991	Effective Date of New Charter & Date Mayor & Council Take Office

HISTORICAL BACKGROUND OF THE BOROUGH OF BELMAR *

The early history of Belmar is closely entwined with the history of Monmouth County. The earliest residents of Belmar were members of the Unami Tribe of the Lenni Lenape Indians, who established summer fishing villages along the banks of the Shark River. The first recorded history of Belmar can be found in the journal of Henry Hudson, who described the Shark River when he noted an inlet with high hills in the distance as he travelled up the New Jersey Coast toward what is now New York City.

In 1687, the land south of the Shark River was sold to Galvin Drummond by Chief Wannamasso. During the Revolutionary War, a salt works operation was established on the southern bank of the Shark River to provide salt for the Continental Army. During the mid-1800's, the Shark River area, including the area now known as the Borough of Belmar, contained several farms and homesteads.

On August 22, 1872, the "Pleasant Beach Association" was formed for the purpose of purchasing the land south of the Shark River with the intent of developing a seaside community. The name was changed to the "Ocean Beach Association" on January 18, 1873. The Association purchased 375 acres, including one mile of ocean frontage and 1 1/2 miles of frontage on the Shark River. This tract was planned in a grid pattern providing twelve 80-foot avenues extending from the Ocean to the River, which were crossed by a series of 60-foot streets. The price of a 7,500 square foot lot ranged between \$300.00 and \$1,500.00 depending upon the location. That same year, Belmar's first hotel, named the Ocean Beach House, was constructed at the intersection of Fifth Avenue and Main Street.

The Shark River was known to New York and Philadelphia sportsmen for its fishing and oyster beds. The combination of the river and wide oceanfront beaches encouraged summer tourism and year-round development. In 1875, railroad service was begun, linking Ocean Beach with northern New Jersey. During that same year, a Post Office was established and the first school opened. In the 1880 "Seaside Directory of New Jersey," Ocean Beach was noted as having a year-round population of 300, which would swell to 3,000 during the summer months.

* / The Charter Study Commission is indebted to the 1990 Master Plan prepared by the Belmar Planning Board for this section on Belmar's historical background.

BACKGROUND OF BELMAR'S LOCAL FORM OF GOVERNMENT **

Belmar's municipal government can be traced back to 1877, when efforts were begun to organize the Ocean Beach Association into a municipal government. The effort spawned strong resistance from some landowners and it was not until April 7, 1885, that "The Borough Commission of Ocean Beach" was incorporated.

This incorporation was immediately attacked in a friendly lawsuit by Henry H. Yard to establish the legality of the incorporation. Although the Borough won this suit, it subsequently lost an 1888 lawsuit by John Alspach challenging the Borough's taxing power.

In 1889, a popular desire for a more distinctive name than "Ocean Beach" resulted in numerous mass meetings at which such various names as Malta, Wallmere, Avon, Ebro, Stratford and Shade were considered. At an election on April 16, 1889, the name "City of Elcho" (or Elko) was adopted. The submission of this name is believed to have been forced by Henry H. Yard, who derived it from "Hell's Cove," his first choice for the community's name. The name, with its accompanying stigma, was immediately unpopular. At a second election, held one month later on May 14, 1889, the town's name was changed to "City of Belmar." This name is credited to Henry Yard's wife, who derived it from the French term "belle mer," meaning beautiful sea.

In 1890, the "Mayor and Council of the Borough of Belmar was incorporated under a new law. This incorporation annexed land on F Street south of Twelfth Avenue known as "H.H. Yard's Addition" and a tract owned by Kennedy & Wilson south of Twelfth Avenue from Ocean Avenue to A Street. In the midst of lawsuits by Kennedy against the Borough over taxes and the extension of sewer lines, the Borough was reincorporated in 1893. Finally in 1893, all claims were adjusted and all lawsuits were withdrawn.

In 1897, under the State's newly enacted Borough Act, "The Borough of Belmar" was re-incorporated. The only Borough record of this incorporation was the adoption of the name on May 6, 1897 and the adoption of a new seal on June 29, 1897.

**/ The Charter Study Commission would like to thank Mrs. Grace Trott Roper, Librarian of the Belmar Public Library, whose Belmar in Retrospect and other writings were the source of most of the historical information in this section.

Following the Legislature's enactment of the Commission Form of Government Law, or Walsh Act, in 1911, the citizens of the Borough of Belmar joined with many other communities in seeking to change their government to the Commission form, which was patterned after a form of government successfully used in

Galveston, Texas following a severe hurricane. Belmar's first attempt to adopt the Commission form was defeated at a special election on January 26, 1915 by a vote of 233 to 134. The same question was defeated at a second referendum in 1919. It was not until November 29, 1927 that the voters finally adopted the Commission form of government. In doing so, Belmar joined more than sixty other municipalities, including most of the large cities, many older suburbs, and a number of seashore resorts, which embraced the Commission form of government in the 1910's and 1920's.

Ten years later, a group of citizens led by Walter B. Atterbury and Wallace G. Hooper formed the Belmar Taxpayers Association and collected 797 signatures on a petition calling for a change back to the Borough form of government. The move was opposed by both Democratic and Republican organizations, and at a special election held on July 24, 1938, was overwhelmingly defeated by a vote of 1,067 to 435. There was no further effort to abolish the Commission form of government for another fifty years, until June 14, 1988, when a direct petition drive led to a referendum on the question of whether Belmar should change to the Mayor-Council-Administrator form of government under the Faulkner Act. This question was defeated by a vote of 1127 to 982.

On November 7, 1989 the voters of Belmar approved by a vote of 1,338 to 519 the creation of a Charter Study Commission to study possible changes to Belmar's form of government.

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DESCRIPTION OF BELMAR'S COMMISSION FORM OF GOVERNMENT

Under the Commission form of government, Belmar is governed by a three-member commission. The Commissioners serve four-year terms and are elected at the same time to what are known as "concurrent terms of office." Elections are held on a non-partisan basis, which means that the elections are held in May, rather than in November, and that candidates are prohibited from adding a political party label to their names on the ballot.

The three commissioners collectively make up the "Board of Commissioners," which is the legislative body of the municipality. The executive function of the municipality is divided among the three commissioners, each of whom heads one of the municipal departments specified by law. One commissioner is chosen by majority vote of the board to serve as mayor and to preside over meetings of the board for a four-year term. The mayor is directed by law and by municipal ordinance to "supervise" all departments, but there is no veto power, and judicial decisions have tended to regard each commissioner as supreme in his or her own department, so that the mayor's supervisory authority depends more upon personal qualities than

on statutory authority. Each commissioner has the power of appointment for all of the personnel in his or her department.

The Commission form of government authorizes use of the initiative, referendum and recall, thereby permitting the voters of the community to petition to initiate new ordinances, force a referendum to challenge ordinances adopted by the commissioners, and to force an elected official to step down from office and/or stand for re-election.

Although the Commission form of government makes no provision for the position of a municipal administrator, such a position can be established by local ordinance.

As of 1985, only 36 New Jersey municipalities were still using the Commission form of government.

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STRENGTHS AND WEAKNESSES OF BELMAR'S COMMISSION FORM OF GOVERNMENT

In the course of studying Belmar's current form of government, the Charter Study Commission interviewed Belmar's current elected officials, two past elected officials, the current and past Borough clerks, the current borough attorney, and four current department heads. The interviews were based on lengthy questionnaires that inquired into all aspects of our current form of government, how it operates, and how it could be made more efficient and accountable to the people. A list of the all the individuals interviewed by the Charter Study Commission is set forth in Appendix A to this Report.

The most commonly identified strength of the Commission form of government was that commissioners are able to "get things done." This comment was invariably made in the context of a discussion of the commissioners' complete authority to administer their own respective departments. In addition, several witnesses expressed the sentiment that the Commission form of government is more politically responsive than many other forms of government because commissioners have the ability under the Commission form to give direct orders in response to citizen complaints.

More commonly, the interviews described weaknesses in the Commission form of government. A common theme among past elected officials and the former Borough clerk, Donald Matthews, was that the job of administering the Borough's day to day operations had become more complex over time due to multiple legislative and administrative laws and regulations enacted by our federal, state and county governments and agencies. All of these have combined to make the job of administering the Borough through the Commission form of government more difficult.

Mr. Matthews, who was Borough Clerk from 1952 to 1984, described the enactment of the Open Public Meetings Act, or Sunshine Law, in 1975 as a major hindrance to the effective operation of the Commission form of government. Prior to that time, the government had managed to at least give the appearance of operating smoothly. Although there were frequently disagreements between commissioners, they were typically resolved in regular private meetings in Borough hall. As a result, disagreements between commissioners rarely surfaced in public, and the residents had the perception that their elected officials were working in unison.

Since the adoption of the Open Public Meetings Act, however, political differences must be aired publicly. Indeed, it seems the effect of the Open Public Meetings Act has been particularly great on three-person forms of government such as Belmar's Commission form, where a quorum consists of only two elected officials. Because the Open Public Meetings Act prohibits private discussions or decision-making between a quorum of elected officials on official business, two commissioners may not discuss any matter relating to the operation of the municipality, except at a public meeting in conformity with the Open Public Meetings Act.

This prohibition against private discussions and decision-making is a particular handicap to the Commission form of government because commissioners are required to convene a public meeting before they can discuss with one another even matters as common as coordinating a task between their departments. Indeed, under the Commission form of government, the Borough is effectively prevented by the Open Public Meetings Act from having weekly or monthly meetings between department heads because the Commissioners would be able to attend the meetings only if they were open to the public with appropriate notices posted and sent to the newspapers. To avoid the restrictions of the Open Public Meetings Act, coordination of most tasks involving two departments must be accomplished by using the Borough Clerk as a go-between. Current Borough Clerk Charles F. Ormsbee, Jr. acknowledged that over years the problems of obtaining authorization from the Commissioners for the borrowing of equipment between municipal departments were sometimes solved by simply buying duplicate equipment for different departments.

Another disadvantage of the Commission form of government was emphasized by Commissioner Joseph Hillman, Jr., in his interview before the Charter Study Commission. He described the administrative end of the Commission form of government as "fractured." He observed that a majority of the commissioners who vote for a specific ordinance or objective can be thwarted by a third commissioner who is in the minority, but who oversees the department responsible for enforcing the ordinance adopted. As a result, one commissioner can effectively stop the majority from doing what it was elected to do.*

A variation on this theme was the notion that under the Commission form of government commissioners have a natural tendency to look out for their own department and to promote it at the expense of other departments and the Borough as a whole. As a result, commissioners may attempt to obtain for the employees of their departments the same benefits or advantages given by other commissioners to the employees of their departments. This can result in increased costs to taxpayers.

Another commonly identified disadvantage of the Commission form of government is the provision for the indirect election of the mayor. Indirect election of the mayor means that the mayor is not chosen directly by the voters, but rather by a majority vote of the board of commissioners at its organization meeting. Although Mayor Maria G. Hernandez indicated in her interview that she generally favors of the Commission form of government, she was critical of this aspect of the form because there have been instances in past when the candidate who received the most votes was not made the mayor. There is no option available under the Commission form of government for the direct election of the mayor.

Another disadvantage of the Commission form of government is the concurrent, four-year term of office. Commissioner Hillman and former Mayor Francis Pyanoe were specifically critical of this aspect of the Commission form of government because it rendered the elected officials less accountable to the voters. Both individuals expressed the belief that staggered terms of office, whereby one or more elected officials would stand for re-election each year, would make the governing body much more accountable to the voters.

Although Belmar could elect by referendum to increase the size of its governing body to five members, the principal weaknesses of the Commission form, namely the "fractured" administration, the indirect election of the mayor, and the concurrent terms, would still remain. Accordingly, based on these shortcomings, and based upon the opinions expressed in the interview process and at our public meetings, the Charter Study Commission has unanimously concluded that the government of Belmar could be strengthened, made more clearly responsive and accountable to the people, and its operations made more economical and efficient under a new form of government.

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ALTERNATIVES CONSIDERED TO THE COMMISSION FORM OF GOVERNMENT

The Charter Study Commission has been as objective as possible in its study. We carefully considered each of the four forms of government available under the Faulkner Act: The Mayor-Council Plan, the Council-Manager Plan, the Small Municipality Plan, and the Mayor-Council-Administrator Plan. In the course of Phase II of our study, we interviewed elected

and/or administrative representatives from communities using each of these forms of government, with the exception of the Mayor-Council-Administrator Plan. (A list of the communities interviewed is set forth in Appendix A.) Because the township of North Brunswick is the only community using this plan, and because the plan was rejected by Belmar's voters at a referendum on June 14, 1988, the Charter Study Commission did not again interview representatives of North Brunswick.

Mayor-Council-Administrator Plan

The Mayor-Council-Administrator form of government was added to the Optional Municipal Charter Law in 1981. Under this form the council consists of a mayor and six council persons who are elected in at-large, partisan elections. The mayor serves for a four-year term, and the other members of the council serve for three-year terms on a staggered basis, with an election of two members every year.

The mayor presides at council meetings, but votes only to break ties. He or she has a veto over ordinances, which can be overridden only by a two-thirds vote of the council. The mayor is directed to exercise the executive power of the municipality and to enforce the charter, local ordinances and general laws.

The council is the legislative body and is responsible for preparing the municipal budget with the assistance of the administrator and the treasurer. Council members have no administrative duties and no appointive power. The council annually selects one its members to be council president.

The administrator serves at the pleasure of the council, and may be removed by a two-thirds vote of the council.

In not recommending this form of government, the Charter Study Commission has been guided by the results of the June 14, 1988 referendum in which this form of government was defeated by Belmar's voters. In addition, we are mindful that the adoption of this form of government would require the Borough to hire an administrator. Similarly, this form of government has the additional disadvantage of requiring a mayor and six-person council, whereas a majority of the members of the Charter Study Commission believes that a seven-person governing body is too large for a town the size of Belmar.

Mayor-Council Plan

This plan calls for a separately-elected mayor and council, who serve four-year terms of office. The council may consist of five, seven, or nine members, and they may be elected from the community at large or through a combination of at-large and ward representation. Elections may be held on a partisan basis, with primaries in the spring and the general election in November, or on a non-partisan basis in May, with or without runoff elections. Council terms may be served concurrently for

the full four years, or they may be staggered so that part of the council is elected every two years.

The mayor is the chief executive and is responsible for supervising the departments of the municipal government, which may have up to ten departments. The mayor appoints the department heads with the advice and consent of council. The mayor may attend council meetings, and has the right to speak, but not to vote. The mayor has veto power over ordinances, which may be overridden only by a two-thirds majority of the council. The mayor prepares the tentative budget and submits it to the council for approval. The council may reduce items in the mayor's budget by a simple majority, but may increase items only by a two-thirds majority.

The council is limited to legislative functions, with its only appointment being that of the municipal clerk. The council selects one of its own members to preside, with the title of president of the council.

The position of business administrator is a mandatory position under the Mayor-Council form of government. The administrator serves at the pleasure of the mayor, and may be removed by the council only for cause.

In the opinion of the Charter Study Commission, the Mayor-Council form of government has the potential to be an extremely divisive form of government. This form confers extremely strong powers on the mayor, and creates a wide gulf between the mayor and council. Indeed, the Mayor-Council plan was described as "cumbersome" even by a mayor we interviewed who otherwise liked the form of government. While the Mayor-Council plan's strict form of checks and balances is undoubtedly beneficial in the large cities and municipalities where it is most commonly used, we do not believe that it would be an efficient or effective form of government for the Borough of Belmar.

Council-Manager Plan

Under the Council-Manager form, the members of the council are elected by the voters for four-year terms of office, and there may be five, seven, or nine members. The municipality has the option of the holding all elections at large or by a combination of at large and ward voting. Elections may be on a partisan or non-partisan basis. Council terms may be scheduled to run concurrently for four years, or they may be staggered so that there is an election every two years.

The council appoints a manager who is the chief executive and administrative official of the municipality. The council is limited to legislative duties and must act as a body. Individual members of council are prohibited from dealing with the day-to-day operation of the municipality except through the manager.

The budget is prepared by the manager, who submits it to the council for revision and approval. The manager must attend all council meetings, and may take part in discussions, but has no vote. The manager serves at the pleasure of the council and may be removed by a majority vote at any time, although he or she must be paid 90 days severance pay. The mayor may be selected by the council from among its own members, in which case he or she will serve for a two- or four-year term until the organization meeting following the next council election. Alternatively, the mayor may be elected directly by the voters to a four-year term. In either case, the mayor is little more than a presiding officer for the council, with a voice in all discussions and a vote.

The Council-Manager plan is a respected form of government, and was clearly the favorite of most managers and administrators that we interviewed. The Council-Manager form was the favorite choice of one of the Charter Study Commission members for the reasons set forth more fully in the accompanying Minority Report. Although several of the members of the Charter Study Commission liked the teamwork aspect of this form of government, a four-person majority of the Charter Commission feels that the Council-Manager form of government has several disadvantages for Belmar at this time. First, the form necessarily requires that the Borough hire a professional manager, whose salary would range from \$45,000.00 to \$65,000.00, plus benefits. A majority of the members of the Charter Study Commission did not believe that such an additional salary could be justified at this time, particularly given that our current Borough Clerk, who acts in a quasi-administrative capacity, has tenure and earns a \$58,672.00 annual salary for his clerk duties alone, which by law cannot be reduced. In addition, the Charter Study Commission majority did not believe that the residents and taxpayers of Belmar were prepared to turn over the chief executive authority for the operation of the Borough to an appointed administrator, no matter how qualified he or she might be. For these reasons, a majority of the Charter Commission has decided not to recommend the Council-Manager form of government.

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RECOMMENDATION OF THE CHARTER STUDY COMMISSION

The Charter Study Commission majority recommends the adoption of the Small Municipality Plan form of government.

This form of government may only be adopted by municipalities which have a population of less than 12,000. The plan includes an elected council consisting of the mayor and two, four or six other council members. The mayor may be elected directly by the voters or may be selected by the council from among its members. Council terms are three years on either a concurrent or a staggered basis. If the mayor is elected directly, his or her term of office is four years; if chosen from the council, the mayor serves for either one or three

years, depending upon whether the council terms are staggered or concurrent. Elections may be either partisan or non-partisan. All elections are at large, as wards are not authorized.

The mayor presides at council meetings with the right to participate and vote. He or she is the chief executive officer of the municipality and is responsible for seeing that all laws and ordinances are observed. The mayor appoints an assessor, tax collector, municipal clerk, treasurer, and such other officers as are provided by ordinance, all with the advice and consent of the council. The mayor also appoints the finance committee and other committees of the council and all other municipal personnel for whom no other method of appointment is specified. The mayor does not have a veto power.

The council is the legislative body and has no specified administrative duties or appointments to be made. One member of the council is chosen as president of the council to preside in the absence of the mayor. The municipal budget is prepared by the mayor with the assistance of the treasurer and submitted to the council for review and revision.

For the following reasons, a 4-1 majority of the Charter Study Commission recommends that the Small Municipality Plan be adopted with a mayor elected directly by the people, with a four-person council, that the council be elected to staggered terms of office, and that the elections be held on a partisan basis in November of each year. The Small Municipality Plan does not require the appointment of an administrator.

Direct Election of the Mayor

The Charter Commission majority has recommended that the mayor be directly elected. It was the consensus of all a majority of the members of the Charter Study Commission that voters strongly prefer to choose their mayor. In addition, direct election of the mayor would avoid occasions such as have occurred in the past in Belmar where the candidate who received the highest number of votes was not elected by his or her fellow officials to be mayor. The only potential disadvantage of directly electing the mayor is that a qualified candidate who runs for mayor and loses would not receive a seat on the council, even if he or she received more votes than one or more of the council candidates who won election. Nevertheless, the Charter Study Commission believes that the advantages of a directly elected mayor outweigh this potential disadvantage, particularly since a losing mayoral candidate would be able to run again for a council seat in the following November.

Mayor and Four Councilpersons

The Charter Commission majority has recommended that the council consist of five persons, one of whom would be the mayor. A council of this size was the overwhelming preference of virtually everyone interviewed. All of the members of the Charter Commission believe that five persons will increase the

"give and take" between our elected officials by permitting a wider range of elected representation on the governing body. At the same time, the Charter Study Commission believes that a five-person council is still a manageable size that will permit the council to accomplish its duties. The Charter Commission majority believes that the Small Municipality Plan offers the additional advantage of making the mayor an active participant of council, which will help foster a sense of teamwork that is missing under the Mayor-Council Plan.

Staggered Terms

All of the members of the Charter Study Commission believe that perhaps the most important proposed change, at least from the voters' perspective, is the majority and minority's recommendation of staggered terms of election. Under the form of government proposed by the majority, one or more elected officials would be required to stand for re-election each year, while elections would occur every two years under the minority approach. Based upon its interviews of current and past elected Belmar officials, as well as elected officials from other municipalities, the Charter Study Commission believes that staggered elections would make the mayor and council in the new form of government more accountable to the wishes of the voters. In making this recommendation, the majority recognizes that a potential disadvantage of staggered terms is that the mayor and council may be "distracted" each year around election time. While this distraction would be lessened somewhat under the minority's recommendation of staggered elections every other year, an option not available under the Small Municipality Plan, the Charter Commission majority believes that the additional inconvenience of annual elections is a small price to pay for greater accountability on the part of our elected officials.

Partisan Elections in November

The most difficult issue for the members of the Charter Study Commission to attempt to reach unanimous agreement upon was the question of partisan elections. By law, partisan elections are elections that occur at the General Election each November, and at which candidates may, but need not, run as either a Republican or Democrat. In contrast, non-partisan elections occur at the Regular Municipal Election in May, and at which candidates may not run under a party label. While the Charter Study Commission recognizes the concern on the part of some in the community about "injecting partisan politics into local issues," a 4-1 majority of the Charter Study Commission has recommended a change to partisan elections for several reasons:

The first and most fundamental reason is a financial one. There is an election every November in Belmar regardless of whether there is a local issue on the ballot. In contrast, the Borough is not required to hold a Regular Municipal Election in May unless there is a local non-partisan municipal election. If we were to recommend that our staggered elections be

non-partisan, there would be elections in Belmar not only every November, as there are now, but also every May, at what Borough Clerk Charles Ormsbee estimates is an additional cost of approximately \$6,500 per election.

Second, it was the opinion of most of the elected officials we interviewed, both in and out of Belmar, that non-partisan elections do not take politics out of local government. As more than one interviewee said, "there is no such thing as non-partisan government." Nevertheless, we believe that Belmar's voters will vote for the best people to govern our community, regardless of party labels.

Finally, far from dividing the community, the Charter Commission majority believes that a change to partisan elections may soften the divisions in our community. Over the past few years, our community has divided on a very personal level, with neighbor turning against neighbor and members of the same families turning against one another. We have coined divisive labels such as "bar people" and "group rental people" and "twelve o'clock people," as each group has attempted to turn public opinion against the other. Retaining a non-partisan form of government will serve only to perpetuate conflict on a personal, neighbor-against-neighbor level. In contrast, disagreements between Republicans and Democrats are a familiar part of American life, accepted by us all as part of the adversary process that makes our government work. By shifting the disagreements in Belmar to this less personal, more familiar arena, we in the majority sincerely hope that we will move a long way toward healing the divisions in our community, and elevating our disagreements to a more constructive level.

Municipal Administrator

As stated previously, the Small Municipality Plan does not provide for the position of a municipal administrator or manager. Accordingly, whether Belmar will have a municipal administrator will be up to the elected officials under the new form of government who may create such a position by ordinance. It was the unanimous and strongly-held opinion of the members of the Charter Study Commission, based upon our interviews of numerous managers and administrators, as well as elected officials in communities with managers or administrators, that Belmar's elected officials under the new form of government should create the position of an administrator by ordinance as expeditiously as the Borough's financial position will permit. To guide the elected the officials under the new form of government, we have set forth in a separate section in Appendix C our non-binding suggestions regarding the new form of government.

Powers of Recall, Initiative and Referendum

The powers of recall, initiative and referendum are available to the voters under all of the Faulkner Act forms of government, including the Small Municipality Plan recommended by

the Charter Commission majority. These powers are virtually identical to the powers of recall, initiative and referendum that Belmar's voters enjoyed under the Commission form of government. The Charter Study Commission is unanimous in its belief that these powers are essential to ensuring that elected officials remain responsive to the voters and taxpayers of our community.

CONCLUSION

The Optional Municipal Charter Law does not permit the voters to choose between the recommendations of the majority and minority. Instead, the law provides that only the form of government recommended by majority vote of the Charter Commission can be placed on the ballot for acceptance or rejection by the voters. Moreover, if the recommendation is rejected, no further effort can be made to change Belmar's form of government for another four years.

Mindful of the importance of our recommendation, all of the members of the Charter Study Commission have worked diligently in a sincere effort to reach unanimity in our choice of a form of government. Although ultimately we were not able to reach a unanimous decision, it was not for lack of genuine effort. The positions and beliefs of each of us have evolved considerably over the past six months. The differences that remain between us are not over whether there are shortcomings in the Commission form of government, or over whether the Small Municipality Plan or the Council-Manager Plan will correct those shortcomings. Instead, our differences are only over the question of which of these two forms of government will better, more efficiently, and more economically achieve that end.

For the reasons set forth above, the Charter Commission majority respectfully recommends the Small Municipality Plan as the best form of government for the Borough of Belmar at this time.

APPENDIX A

**LIST OF INTERVIEWS CONDUCTED BY
THE CHARTER STUDY COMMISSION**

I. Past and Present Belmar Officials & Department Heads

Paul Caverly, Former Commissioner
Timothy Crammer, Borough Attorney
Paul Greco, Public Works Superintendent
Maria Hernandez, Mayor
Joseph Hillman, Jr., Commissioner
James Klug, Harbor Master
Donald Matthews, Former Borough Clerk
Daniel Moynihan, Police Chief
Edward A. McCormick, Sanitation Supervisor
Francis A. Pyanoe, Former Mayor
Alfred Sheppard, III, Commissioner

II. Other Municipalities Interviewed

Fairfield Twp. (Small Municipality Plan)
Highlands (Small Municipality Plan)
Ocean Twp. (Council-Manager)
Manasquan (Borough Form)
Marlboro Twp. (Mayor-Council)
South Amboy (Mayor-Council Plan)
Stafford Twp. (Small Municipality Plan)
Spotswood (Mayor-Council Plan)
Wildwood City (Mayor-Council Plan)
Tinton Falls (Mayor-Council)

APPENDIX B

Estimated Costs of a Change in Belmar's Form of Government

According to Borough Clerk Charles F. Ormsbee, Jr., the estimated costs of changing Belmar's form of government from the Commission form of government to the Small Municipality Plan will be as follows:*

1. Cost of Special Election on July 24, 1990:	\$6,500**
2. Preparation of Revised Chapters 1 & 2 of the General Ordinances of the Borough of Belmar, which specifically relate to the Commission form of Government (Approx. 15 hrs of attorney time @ \$75 per hour plus \$600 cost of advertising the new ordinance:	\$1,725
3. Approximate Cost of Codifying and Printing Revised General Ordinances of the Borough of Belmar:	\$6,000
	<hr/>
TOTAL:	\$ 13,225

FOOTNOTES

*/ The Charter Study Commission did not include any amount for salaries for the two additional elected officials. As set forth in Appendix C, the Charter Study Commission has recommended that the Mayor be paid \$5,000 per annum, and that Councilpersons be paid \$2,500 per annum for a total of \$15,000 per year in salaries for elected officials. Our elected officials currently receive a total of \$17,500 per year in salaries. The Borough will not be required to replace its Borough Seal because the Seal does not refer to the "Board of Commissioners," but rather only to the "Borough of Belmar."

**/ The \$6,500 cost of the Special Election Referendum will be recouped in 1991. By changing to a partisan form of government, which requires that elections occur on the November General Election day each year, we will avoid the \$6,500 cost of the next Board of Commissioners election which would otherwise occur in May of 1991.

APPENDIX C

The Optional Municipal Charter Law permits the Charter Study Commission to make non-binding, advisory suggestions to assist the newly elected officials in implementing the new form of government if it is adopted by the voters. Our suggestions, which are based upon our many interviews, are as follows:

I. A Professional Administrator

The members of the Charter Study Commission unanimously believe that it is of paramount importance that Belmar be administered by a professional administrator. We strongly urge the mayor and council under the new form of government to establish the position of an administrator by ordinance as soon as is financially feasible under Belmar's tight budgetary conditions. We firmly believe that the cost of an administrator would be a wise investment for a community with Belmar's complex problems, and this investment would undoubtedly pay for itself many times over. We suggest that in order to choose the best, most qualified administrator, the newly elected governing body should take the following steps once Belmar is financially able to create such a position:

1. Create a Search Committee, comprised of elected officials, the Borough Clerk, employee representatives of employees, and taxpayers to screen and interview potential candidates and make recommendations to the governing body;
2. Rely upon the following sources in the search for candidates for the position;
 - a. New Jersey Municipalities Magazine;
 - b. The International City Management Assoc.;
 - c. The New Jersey Municipal Management Assoc.;
 - d. The Public Administration Recruiter, the newsletter of the American Society for Public Administration;
 - e. Graduate Schools of Public Administration.
3. Hire an administrator solely upon the basis of his or her qualifications by reason of education and demonstrated experience, particularly in such areas as grantsmanship, labor negotiations and cost controls.

II. Salaries of Elected Officials

The Charter Study Commission believes that salaries for elected officials under the new form of government can and should be reduced. We suggest that the salary for the new mayor be reduced to \$5,000 per year, which is more in keeping with the salaries paid to mayors in other Monmouth County

municipalities. We suggest that the salaries of the Council members be \$2,500 per annum, which reflects the reduced responsibilities that Council members will have under the new form of government.

MINORITY REPORT OF COMMISSIONER MICHAEL SUPKO

Over the past six months, it was made very clear that the administration of our town would best be served by the addition of a full time professional manager. The Council-Manager Plan is the system of local government which combines the strong political leadership of elected officials in the form of the town council with the strong managerial experience of the town manager.

Role of the Council

The council is the community's legislative body. It sets policy, approves the budget, and determines the tax rate. It also hires the manager and supervises his/her performance.

The manager prepares a recommended budget for the council's action, attends town meetings, serves as the council's chief advisor, recruits and hires government's staff, and sees to it that the council's programs are carried out.

Role of the Manager

The manager is hired to serve the council as its full time executive whose job is to bring to the community the benefits of years of training and experience in administering a local government's staff, projects, and programs on behalf of the council. The manager is bound by whatever action the council takes. Since the job of manager is non-tenured, the town manager may be removed by a majority vote of the council.

The Role of the Mayor in the Council-Manager Plan

The mayor is the leader in developing community policies. With the council, he/she is responsible for soliciting citizen views in forming these policies and interpreting them to the public. He/she also represents the town in official functions, presides over meetings, appoints advisory committees, coordinates their work, and maintains liaison with other governmental agencies and civic groups. Unlike the Small Municipality Plan of government, the mayor in the Council-Manager Plan does not see to the day-to-day operations of the town. Direct election of the mayor in the Small Municipality Plan makes sense because the mayor becomes the chief business administrator. Direct election of the mayor in the Council-Manager Plan is not as important since the mayor's role is basically equal to the other individuals on the council. The candidate that runs against a directly elected mayor in a staggered, Council-Manager plan would have to wait two years before another election cycle. Considering these factors, an indirectly elected mayor would be the best option in the Council-Manager Plan.

Number of Elected Councilpersons

Our town would benefit from an increase in the number of elected officials from our existing number of three to a more workable number of five for a couple of reasons. The "sunshine" laws prevent the majority of our elected leaders from meeting to discuss town matters. Since in our present government a majority consists of two out of the three officials, pre-meeting dialogue between individuals has been prevented. An increase to five officials would mean that any two individuals could meet to discuss topics freely without the pressures of normal meetings interrupting thoughts. Secondly, five elected officials would increase the number of persons available for committee work and allow for greater representation of our citizens.

Non-partisan, Staggered, At Large Elections

Non-partisan elections would allow the voters the opportunity of voting on a person's qualifications for the elected position without being influenced by a party label. This form of election would encourage more people to seek public office without having to receive the endorsement of political leaders and would allow individuals from both parties to run together based on a philosophy of what is best for our town, rather than how the political party is leaning.

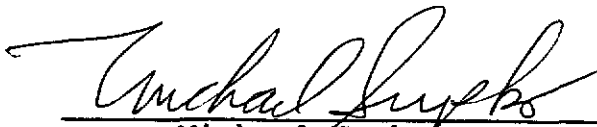
The Council-Manager Plan allows a four year term that can be staggered. This would mean that every two years we would have an election rather than every year under the proposed Small Municipality Plan. Two or three council seats would be up for election during the cycle. Staggered terms would make the councilpersons more responsive to the wishes of the voters. Elections would occur in May and would be financed by the taxpayers of Belmar. It is the minority opinion that the positive aspects of non-partisan politics would outweigh the expense of running an election.

Although different areas of Belmar have unique characteristics and associated problems, the negative effects of a ward system cannot be justified. An at large plan would best serve a town of one square mile.

Summary

In summary, it is the minority's opinion that a non-partisan, staggered, four year term, five member, appointed mayor, Council-Manager Plan form of government would best serve Belmar in the future

Commissioner Michael Supko


Michael Supko

EXCERPTS FROM THE OPTIONAL MUNICIPAL CHARTER LAW

CHAPTER 210, LAWS OF 1950

As Amended and Supplemented To

January, 1989

(FAULKNER ACT)

AN ACT concerning municipalities, providing a plan of optional charters and for the manner of adoption and effect thereof.

ARTICLE I

PROCEDURE FOR ADOPTION OF OPTIONAL CHARTER PLANS

* * *

C. PROVISIONS APPLICABLE TO ALL REFERENDA ON CHARTER CHANGES

40:69A-22. Vote in favor of change in form of government

Whenever the legally qualified voters of any municipality by a majority of those voting on the question, vote in favor of adopting a change in their form of government pursuant to this act, either by the charter commission method or by direct petition and referendum, the proposed charter or charter amendment or amendments shall take effect according to its terms.

40:69A-23. After adoption, no subsequent vote on change for 3 or 5 years

The voters of any municipality which has adopted an optional form of government pursuant to this act may not vote on the question of adopting another form of government until three years thereafter, in the case of municipalities of 7,000 or less inhabitants, and five years thereafter in the case of all other municipalities.

40:69A-24. Each optional form declared complete form of government

For the purposes of this act each of the optional plans of government provided in this act, and each of said optional plans as modified by any available provisions concerning the time of elections, size and terms of council and number of wards, is hereby declared to be a complete and separate form of government provided by the Legislature for submission to the voters of the municipality.

Amended P.L. 1981, c. 465, § 12.

D. ABANDONMENT OF AN OPTIONAL PLAN AND REVERSION TO A PRIOR FORM

40:69A-25. Petition and referendum on reversion to prior plan

Any municipality may, subject to the provisions of section 1-23 [40:69A-23]* of this act, abandon its optional plan and revert to the form of government under which it was governed immediately prior thereto, upon the filing of a petition and referendum as follows:

(a) Upon petition of the registered voters of the municipality signed by the same number thereof as required in section 1-19, [40:69A-19]* for an election to submit the question of abandonment and reversion as herein provided, the municipal clerk shall provide for submission of the question in like manner as provided in section 1-20, [40:69A-20]*.

(b) The form of the question shall be as follows:

Shallabandon its present form of
(Name of Municipality)
government and revert to its prior form of government, known as
.....
(Popular Name of Plan) as provided by?
(Statutory Reference of Prior
.....
Plan)

(c) If a majority of those voting on the question vote in the affirmative the municipality shall revert to its prior form of government as of 12 m. of the fifty-ninth day following the election of officers under the form of government to which the municipality will revert. The first officers under such form of government shall be elected at the next regular municipal or general election, as appropriate to the form of government to which the municipality will revert, occurring not less than 60 days following the referendum. It shall be the duty of the municipal clerk to perform all the duties respecting such election as would be required of a municipal clerk for elections under the form of government to which the municipality will revert. Whenever a municipality has reverted to any form of government other than the commission form of government law (R.S. 40:70-1 et seq.) or the municipal manager form of government (R.S. 40:79-1 et seq.) at a later date than the one fixed for the filing of nominating petitions at the primary election, the candidates to be first elected shall be nominated by direct petition in the manner provided by law for nomination, by direct petition for a general election.

Any law to the contrary notwithstanding, persons holding office at the time of a referendum approving reversion shall continue to hold office until the municipality reverts to the previous form of government. Vacancies existing at the holding of the referendum or which occur between the holding of the referendum and the reversion of the municipality to its previous form of government, shall be filled by

appointment pursuant to procedures for the filling of vacancies appropriate to the "Optional Municipal Charter Law."

If a majority of those voting on the question vote in the negative, the question of abandonment and reversion shall not again be submitted for 5 years.

(d) The reversion to a prior form of government shall take effect as provided in section 17-57 through 17-59 [40:69A-206 through 40:69A-208]* of this act for transition to an optional plan hereunder.

Amended P.L. 1980, c. 82 1.

*Material in brackets added for clarity.

40:69A-25.1. Amendment of charter to include alternative under plan of government; referendum; ballot; form of question

a. Any municipality governed by a plan of government adopted pursuant to P.L. 1950, c. 210 (C. 40:69A-1 et seq.) may, by referendum, amend its charter to include any alternative permitted under that plan of government. The question of adopting an alternative may be initiated by the voters pursuant to, and subject to the pertinent provisions of, sections 17-35 through 17-47 (C. 40:69A-184 through 40:69A-196); or may be submitted to the voters by ordinance adopted by the governing body, in which case the question and ordinance shall be subject to the pertinent provisions of sections 17-42 through 17-47 (C. 40:69A-191 through 40:69A-196), except that no petition of the voters shall be necessary in order to submit the question.

b. At any election at which the question of adopting an alternative is to be submitted to the voters pursuant to this section, the question shall be submitted in substantially the following form:

"Shall the charter of
(insert name of municipality)
governed by be amended,
(insert plan of government)
as permitted under that plan, to provide for
(insert
.....
appropriate language from below for the alternative to be voted
.....?
upon)

GROUP A.

- (1) "the holding of regular municipal elections in May;"
- (2) "the hold of general elections in November;"

GROUP B.

- (3) "the election of all council members at large;"
- (4) "the division of the municipality into
(insert number)
wards with council members to be elected at
(insert number)
large and one from each ward;"

GROUP C.

- (5) "the election of all council members for concurrent terms;"
- (6) "the election of council members for staggered terms;"

GROUP D.

- (7) "the election of the mayor by the members of the council from
among their own number;"
- (8) "the election of the mayor directly by the voters of the
municipality;"

GROUP E.

- (9) "a municipal council to consist of three members;"
- (10) "a municipal council to consist of five members;"
- (11) "a municipal council to consist of seven members;"
- (12) "a municipal council to consist of nine members."

If more than one alternative is to be submitted to the voters at the same time, each alternative shall be separately stated on the ballot in the form of a question as set forth above. If the provisions of two or more alternatives adopted at the same election conflict, then that receiving the greatest affirmative vote shall control. Nothing contained in this section shall authorize the submission to the voters of the question of adopting any alternative not authorized by the plan of government under which the municipality is governed. No question shall be submitted to the voters pursuant to this section within 4 years next following the adoption by the municipality of a plan of government authorized by P.L. 1950, c. 210 (C. 40:69A-1 et seq.) or this act, or within 4 years next following the date on which the question of adopting it or any alternative in the same group was last submitted to the voters pursuant by this section.

c. In any municipality having adopted a charter providing for the division of the municipality into wards, the question of increasing or decreasing the number of council members to be elected in the municipality shall be submitted to the voters in the manner set forth in alternative (4) of Group B. of subsection b. of this section. None of the alternatives set forth in Group E. of that subsection shall be

submitted to the voters in any municipality divided into wards, unless at the same election alternative (3) of both alternatives shall be approved by the voters in order for either to take effect.

P.L. 1981, c. 465, § 7.

40:69A-25.2. Group A or B alternative; adoption; transitional provisions

Whenever any municipality, pursuant to the authority granted in section 7 of this act, [40:69A-25.1],* shall amend its charter to include an alternative permitted under its plan of government and included in either Group A. or Group B. of subsection b. of section 7 of this act, [40:69A-25.1],* the terms of all council members, and directly elected mayor if affected, currently serving in the municipality on the date of the election at which the amendment was adopted, and of all affected officers elected at that election, shall terminate on June 30, or December 31, as appropriate to the election provisions of the amended charter, next following the date of the first election of officers under the amended charter. The nomination and election of those municipal officers as are required shall be conducted in accordance with the provisions of the amended charter and appropriate law for the election to be held on the second Tuesday in May next following the date of adoption, or on the first Tuesday after the first Monday in November next following the date of adoption. If the amendment adopted to the charter shall provide for the division of the municipality into wards, or by its terms require an increase or decrease in the number of wards into which the municipality is divided, the ward boundaries required by the amended charter shall be fixed and determined pursuant to law within 90 days of the date of adoption.

If the municipality shall at the same time amend its charter to include an alternative permitted under its plan of government and included in Group C., Group D. or Group E. of subsection b. of section 7 of this act, [40:69A-25.1],* the transitional provisions of this section shall apply and the provisions of all amendments shall take effect for the election to be held pursuant to this section.

P.L. 1981, c. 465, § 8.

*Material in brackets added for clarity.

40:69A-25.3. Group C alternative; adoption; transitional provisions

Whenever any municipality shall, pursuant to the authority granted in section 7 of this act, [40:69A-25.1],* amend its charter only to include an alternative permitted under its plan of government and included in Group C. of subsection b. of section 7. of this act, [40:69A-25.1],* the transitional provisions of this section shall apply.

a. If the amended charter shall provide for the election of all council members for concurrent terms in a municipality where prior to the amendment council members were elected for staggered terms, at the next election at which municipal officers are elected, and at each succeeding municipal election thereafter until such time as it shall occur that all council members shall be elected at the same election, council members elected at that election shall serve for a term equal in years to the

number which the council member currently serving and having the greatest number of years remaining of his term has yet to serve of his term. At the election that it shall occur that all council members shall be elected at the same time, each council member shall be elected for the term of years provided in the amended charter.

b. If the amended charter shall provide for the election of council members for staggered terms in a municipality where prior to the amendment council members were elected for concurrent terms, the amendment to the charter shall take effect for the next election at which municipal officers are elected in the municipality.

P.L. 1981, c. 465, § 9.

*Material in brackets added for clarity.

40:69A-25.4. Group D alternative; adoption; transitional provisions

Whenever any municipality shall, pursuant to the authority granted in section 7 of this act, [40:69A-25.1],* amend its charter only to include an alternative permitted under its plan of government and included in Group D. of subsection b. of section 7 of this act [40:69A-25.1],* the transitional provisions of this section shall apply.

a. If a municipality in which the mayor is elected by the members of the council shall adopt an amendment to its charter providing for the election of the mayor directly by the voters of the municipality, the amendment shall take effect for the next election held in the municipality at which municipal officers are elected, in accordance with the provisions of the amended charter. Any mayor currently serving on the date of the election shall, upon and after the date of the commencement of the term of the mayor elected at that election, serve as a member of the council for the remainder of his term but shall not exercise the powers or duties of mayor.

b. If a municipality in which the mayor is elected directly by the voters of the municipality shall adopt an amendment to its charter providing for the election of the mayor by the members of the council, the amendment shall take effect the first day of the next full month after adoption. On that date the members of the council currently serving shall meet and elect one of their number as mayor to serve until the first day of July, or January, as appropriate, next, at which time the members shall elect one of their number to serve a full term as mayor, pursuant to the amended charter. Any mayor serving on the effective date of the amendment shall, on and after that date, serve as a member of the council for the remainder of his term, but shall not exercise the powers or duties of mayor unless elected by the council.

P.L. 1981, c. 465, § 10.

*Material in brackets added for clarity.

40:69A-25.5. Group E alternative; adoption; transitional provisions

Whenever any municipality shall, pursuant to the authority granted in

section 7 of this act [40:69A-25.1],* amend its charter only to include an alternative permitted under its plan of government and included in Group E. of subsection b. of section 7 of this act [40:69A-25.1],* the transitional provisions of this section shall apply.

a. If the amended charter shall provide for the election of council members at large for concurrent terms, the increase or decrease in the number of council members shall take effect for the next election at which municipal officers are elected in the municipality.

b. If the amended charter shall provide for the election of council members at large for staggered terms, an increase in the number of council members shall take effect as follows:

(1) If the plan of government requires generally a 3-year term for council members:

(a) And the increase is from three to five council members, at the next election at which municipal officers are elected, one additional council member shall be elected for a term of 1 year and one for a term of 2 years;

(b) And the increase is from three to seven council members, at the next election at which municipal officers are elected, two additional council members shall be elected for terms of 1 year, one for a term of 2 years, and one for a term of 3 years; or,

(c) And the increase is from five to seven council members, at the next election at which municipal officers are elected, one additional council member shall be elected for a term of 1 year and one for a term of 3 years;

(2) If the plan of government requires generally a 4-year term for council members:

(a) And the increase is from five to seven council members, at the next election at which municipal officers are elected, one additional council member shall be elected for a term of 2 years and one for a term of 4 years;

(b) And the increase is from five to nine council members, at the next election at which municipal officers are elected, two additional council members shall be elected for terms of 2 years and two for terms of 4 years; or,

(c) And the increase is from seven to nine council members, at the next election at which municipal officers are elected, one additional council member shall be elected for a term of 2 years and one for a term of 4 years.

c. If the amended charter shall provide for the election of council members at large for staggered terms, and the adopted amendment requires a decrease in the number of council members, the terms of all council members currently serving in the municipality on the date of the election at which the amendment was adopted, and of all council members

elected at that election, shall terminate on June 30, or December 31, as appropriate to the election provisions of the amended charter, next following the date of the first election of officers under the amended charter. The nomination and election of council members shall be conducted in accordance with the provisions of the amended charter and appropriate law for the election to be held on the second Tuesday in May next following the date of adoption, or on the first Tuesday after the first Monday in November next following the date of adoption.

P.L. 1981, c. 465, § 11.

*Material in brackets added for clarity.

ARTICLE 2

INCORPORATION AND POWERS

40:69A-26. Laws governing after adoption of optional form of government

Upon the adoption by the qualified voters of any municipality of any of the optional forms of government set forth in this act, the municipality shall thereafter be governed by the plan adopted, by the provisions of this act common to optional plans and by all applicable provisions of general law, subject to the transitional provisions of Article 17 of this act, unless and until the municipality should adopt another form of government as provided by law.

40:69A-27. Municipality remains body corporate and politic; name

Upon such adoption of a plan under this act, the inhabitants of any municipality or municipalities within the corporate limits as now or hereafter established shall be and remain a body corporate and politic with perpetual succession, and with such corporate name as it has heretofore adopted or may hereafter adopt.

40:69A-28. "General Law" defined

For the purposes of this act, a "general law" shall be deemed to be any law or provision of law, not inconsistent with this act, heretofore or hereafter enacted which is by its terms applicable or available to all municipalities, and the following additional laws whether or not such additional laws are so applicable or available to all municipalities: legislation relating to taxation, local courts, education, health, public authorities serving more than one municipality, and municipalities in unsound financial condition.

40:69A-29. General powers of municipalities governed by optional form of government

Each municipality governed by an optional form of government pursuant to this act shall, subject to the provisions of this act or other general laws, have full power to:

(a) Organize and regulate its internal affairs, and to establish, alter, and abolish offices, positions and employments and to define the functions, powers and duties thereof and fix their terms.

(b) Adopt and enforce local police ordinances of all kinds and impose one or more of the following penalties: fines not exceeding \$1,000.00, or imprisonment for any term not exceeding 90 days, or a period of community service not exceeding 90 days for the violation thereof; prescribe that for the violation of particular ordinances at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$100.00; to construct, acquire, operate or maintain any and all public improvements, projects or enterprises for any public purpose, subject to referendum requirements otherwise imposed by law, and to exercise all powers of local government in such manner as its governing body may determine;

(c) Sue and be sued, to have a corporate seal, to contract and be contracted with, to buy, sell, lease, hold and dispose of real and personal property, to appropriate and expend moneys, and to adopt, amend and repeal such ordinances and resolutions as may be required for the good government thereof;

(d) Exercise powers of condemnation, borrowing and taxation in the manner provided by general law.

Amended P.L. 1987, c. 411, § 2.

40:69A-30. Power of local self-government conferred; construction of grants of power

The general grant of municipal power contained in this article is intended to confer the greatest power of local self-government consistent with the Constitution of this State. Any specific enumeration of municipal powers contained in this act or in any other general law shall not be construed in any way to limit the general description of power contained in this article, and any such specifically enumerated municipal powers shall be construed as in addition and supplementary to the powers conferred in general terms by this article. All grants of municipal power to municipalities governed by an optional plan under this act, whether in the form of specific enumeration or general terms, shall be liberally construed, as required by the Constitution of this State, in favor of the municipality.

ARTICLE 13

SMALL MUNICIPALITY PLAN

40:69A-115. Adoption by municipalities under 12,000; applicable laws

The form of government provided in this article shall be known as the "small municipality plan." It may be adopted by any municipality having a population of less than 12,000 inhabitants and shall, together with articles 2 and 17, govern any municipality the voters of which have adopted the plan pursuant to this act.

Amended P.L. 1981, c. 465, § 29.

40:69A-116. Government by elected mayor and councilmen and appointed officers

Each municipality shall be governed by an elected council and a mayor and such other officers as shall be appointed pursuant to this article, general law or ordinance.

Amended P.L. 1981, c. 465, § 30.

40:69A-117. Council

The council shall consist of the mayor and two councilmen, unless pursuant to the authority granted under sections 1-13 or 1-19 of article 1 of this act [40:69A-13 or 40:69A-19]*, or unless provided by amendment of the charter pursuant to section 7 [40:69A-25.1]* of this amendatory act, the municipality shall be governed by a mayor and four or six councilmen. Members of the council shall be elected at large by the voters of the municipality and shall serve for a term of 3 years.

Amended P.L. 1981, c. 465, § 31.

*Material in brackets added for clarity.

40:69A-117.1.

Any municipality adopting a small municipality plan of government shall provide in its charter that the council members shall be elected by the voters of the municipality either:

a. At a regular municipal election held on the second Tuesday in May in the years in which municipal officers are to be elected, in which case the term of office of the council members shall begin on July 1 next following their election; or,

b. At the general election held on the first Tuesday after the first Monday in November or at such other time as may be provided by law for holding general elections, in which case the term of office of the council members shall begin on January 1 next following their election.

Amended P.L. 1981, c. 465, § 32.

40:69A-117.2.

Any municipality adopting a small municipality plan of government may provide in its charter that the council members elected at the first regular municipal election or general election, as the charter shall provide, following the adoption of the plan shall serve for the following terms: if the municipal council is to consist of three members, one shall serve for 1 year, one for 2 years and one for 3 years; if the municipal council is to consist of five members, two shall serve for 1 year, two for 2 years and one for 3 years; or, if the municipal council is to

consist of seven members, three shall serve for a term of 1 year, two for a term of 2 years and two for a term of 3 years. The length of the respective term of each member of the first council shall be determined by lot at the organization of the council immediately following their election; except that if, pursuant to the charter, the mayor is elected directly by the voters, the mayor shall, for the purposes of this section, be counted among those first councilmen to serve a 4 year term.

Amended P.L. 1981, c. 465, § 33.

40:69A-117.3.

Any municipality adopting a small municipality plan of government shall provide in its charter either:

a. That the mayor shall be elected by the members of the council; in which case on the first day of July or January, as appropriate, following their election, the members elect of the municipal council shall assemble at the usual place of meeting of the governing body of the municipality and organize and elect one of their number as mayor; that the mayor shall be chosen by ballot by majority vote of members of the municipal council; that if the members shall be unable, within five ballots to be taken within 2 days of the organization meeting, to elect a mayor, then the member who in the election for members of the municipal council received the greatest number of votes shall be mayor; and that should that person decline to accept the office, then the person receiving the next highest vote shall be the mayor, and so on, until the office is filled; or,

b. That the mayor shall be elected directly by the voters of the municipality at the regular municipal election, or general election, as the charter shall provide; that at the first election following the adoption of the charter, and each appropriate subsequent election, one position of council member to be elected at large shall be designated and voted for under the title of mayor, candidates for the position shall be clearly designated as candidates for mayor in their respective nominating petitions; and that the candidate for mayor receiving the greatest number of votes shall be elected and shall serve for a term of 4 years.

Amended P.L. 1981, c. 465, § 34.

40:69A-118. Repealed by P.L. 1981, c. 465, § 44.

40:69A-119. Repealed by P.L. 1979, c. 83, § 1.

40:69A-120. Legislative power; quorum; mayor's duties; president of council

The legislative power of the municipality shall be exercised by the council, except as may be otherwise provided by general law. The mayor shall participate and vote as other council members. A majority of the whole number of the governing body shall constitute a quorum for the transaction of business but a smaller number may meet and adjourn from time to time. The mayor shall preside over all meetings of the council. The council shall select from among its members a president of the council who shall serve in place of the mayor in the event of his absence, disability or refusal to act.

40:69A-121. Executive power; mayor's duties

The executive power of the municipality shall be exercised by the mayor. It shall be his duty to see that all laws and ordinances in force and effect within the municipality are observed. He shall address the council and report to the residents annually, and at such other times as he may deem desirable, on the condition of the municipality and upon its problems of government.

40:69A-122. Assessor; tax collector; attorney; clerk; treasurer; other officers; appointment

An assessor, a tax collector, an attorney, a clerk, a treasurer and such other officers as may be provided by ordinance shall be appointed by the mayor with the advice and consent of the council. One person may be appointed to two or more such offices, except that one person shall not be the assessor and treasurer, or assessor and collector.

40:69A-123. Finance committee and other committees of council

The mayor shall also appoint a finance committee of council, which may consist of one or more councilmen, and may appoint and designate other committees of council of similar composition.

40:69A-124. Appointment of officers and employees by mayor

All officers and employees whose appointment or election is not otherwise provided for in this article or by general law shall be appointed by the mayor. If the municipality has not adopted the provisions of Title 11 of the Revised Statutes (Civil Service), it shall be the duty of the mayor to recruit, select and appoint persons qualified by training and experience for their respective offices, positions and employments.

40:69A-125. Residency in municipality not required

Appointive officers and employees need not be residents of the municipality unless council shall so require.

40:69A-126. Municipal clerk

A municipal clerk shall be appointed by the mayor with the advice and consent of council. The municipal clerk shall be qualified by previous training or experience to perform the duties of his office. He shall serve at the pleasure of the council, except as otherwise provided by this act.

40:69A-127. Duties of municipal clerk

The municipal clerk shall serve as clerk of the council, perform such functions as may be required by law of municipal clerks generally, have such other powers and duties as council may prescribe. He shall maintain the records and minutes of the governing body.

40:69A-128. Annual budget

The mayor shall prepare the annual budget with the assistance of the treasurer and the co-operation of the other members of the council.

40:69A-129. Treasurer's duties

The treasurer shall be the chief financial officer of the municipality and shall keep and maintain books and records of all financial transactions of the municipality in accordance with the standards and requirements of the State Division of Local Government.

The treasurer shall have custody of all public moneys of the municipality. He shall make monthly reports to council of all receipts, expenditures, commitments and unencumbered appropriation balances.

40:69A-130. Disbursement of municipal funds

No municipal funds shall be disbursed except pursuant to and within the limits of appropriations made in accordance with law. All disbursements shall be by bank check or draft signed by the mayor and countersigned by the treasurer, upon warrant of the chairman of the finance committee of council approved by council.

40:69A-131. Tax collector; duties

The municipal tax collector shall receive and collect all moneys assessed or raised by taxation or assessment for any purpose. The collector shall enter in suitable books or other records to be kept by him the sums received each day together with the account to which each receipt is credited. Within forty-eight hours after the receipt of any moneys of the municipality, or on the first banking day thereafter, the collector shall deposit such moneys in the authorized public depository of the municipality to the credit of the appropriate account. He shall report to council at least once each month at the same time as the treasurer is required to report, all receipts and deposits and cash on hand belonging to the municipality. Within sixty days after the end of the fiscal year, and at such other times as may be required by council, the collector shall make and furnish a detailed and true list of all delinquent taxpayers for the next preceding year or for such period as council may require.

40:69A-132. Bond of treasurer and collector

The treasurer and the collector shall each give bond, at the expense of the municipality, in accordance with general law.

ARTICLE 17

ADDITIONAL PROVISIONS TO OPTIONAL PLANS

A. Elections in General

40:69A-150. Municipal elections; time

Regular municipal elections shall be held in each municipality on the second Tuesday in May in the years in which municipal officers are to be elected, where the election of such officers is not provided to be at the general election. Regular municipal elections shall be conducted pursuant to the "Uniform Nonpartisan Elections Law," P.L. 1981, c. 379 (C. 40:45-5 et seq.).

Amended by P.L. 1981, c. 379, § 30.

40:69A-151. Repealed by P.L. 1981, c. 379 § 31.

40:69A-152. Terms of municipal officers

Every municipal officer elected under any of the plans provided in this act shall serve for the term of office specified in the plan and until his successor is elected and qualified.

B. Regular Municipal Elections

40:69A-153. Repealed by P.L. 1981, c. 379.

40:69A-153.1. Dual candidacy; prohibition

No person shall accept nomination for more than one municipal office to be voted for at a regular municipal election to be held pursuant to Article 17 of P.L. 1950, c. 210 (C. 40:69A-150 et seq.).

P.L. 1981, c. 87, § 1.

40:69A-154 to 40:69A-161. Repealed by P.L. 1981, c. 379.

40:69A-161.1. Repealed by P.L. 1980, c. 75, § 3.

C. Officers and Employees

40:69A-163. Interest in contracts or jobs forbidden

No officer or employee elected or appointed in any municipality shall be interested directly or indirectly in any contract or job for work or materials, or the profits thereof, to be furnished or performed for the municipality, and no such officer or employee shall be interested directly or indirectly in any contract or job for work or materials or the profits thereof, to be furnished or performed, for any person operating any interurban railway, street railway, gas works, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of such municipality.

40:69A-164. Franks, free passes, tickets or services; acceptance forbidden

No officer or employee shall accept or receive, directly or indirectly, from any person operating within the territorial limits of a municipality, any interurban railway, street railway, gas works, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange or other business using or operating under a public franchise, any frank, free pass, free ticket or free service, or accept or receive, directly or indirectly, from any person, any other service upon terms more favorable than is granted to the public generally, except that such prohibition of free transportation shall not apply to policemen

or firemen in uniform. Nor shall any free service to the municipal officials heretofore provided by any franchise or ordinance be affected by this section.

40:69A-165. Promise of office, position, employment or benefits forbidden

No candidate for office, appointment or employment, and no officer, appointee, or employee in any municipality shall directly or indirectly give or promise any person any office, position, employment, benefit or anything of value for the purpose of influencing or obtaining the political support, aid or vote of any person, under the penalty of being disqualified to hold the office or employment to which he may be or may have been elected or appointed.

40:69A-166. Persons convicted of offenses; violations of sections 40:69A-163 through 40:69A-165

Any person convicted of a crime or offense involving moral turpitude shall be ineligible to assume any municipal office, position or employment in a municipality governed pursuant to this act, and upon conviction thereof while in office shall forfeit his office; provided, however, any person convicted of such an offense who has achieved a degree of rehabilitation which in the opinion of the appointing authority and the Civil Service Commission, as to employment subject to the Civil Service law, indicates his employment would not be incompatible with the welfare of society and the aims and objectives of the governmental agency, may be considered eligible to apply for employment or be continued in employment. Any person who shall violate any of the provisions of sections 17-14, 17-15, or 17-16 [40:69A-163, 40:69A-164, or 40:69A-165]* of this article shall upon conviction thereof in a court of competent jurisdiction forfeit his office.

Amended P.L. 1970, c. 82.

*Material in brackets added for clarity.

40:69A-167. Failure to appear and testify before court; legislative committee or Governor

If any person hereafter elected or appointed to any office or position in a municipality governed under this act shall, after lawful notice or process, willfully refuse or fail to appear before any court, any legislative committee, or the Governor, or having appeared shall refuse to testify or to answer any question regarding the property, government or affairs of the municipality, or regarding his nomination, election, appointment or official conduct on the ground that his answer would tend to incriminate him, or shall refuse to waive immunity from prosecution on account of any such matter in relation to which he may be asked to testify, may be removed from office by the governing body of the municipality in its discretion. Any person removed from office pursuant

to this section shall not thereafter be eligible for election or appointment to any office or employment in such municipality.

40:69A-167.1. Repealed by P.L. 1980, c. 94, § 7.

D. Recall

40:69A-168. Elective officers; removal by recall petition and vote

Any elective officer shall be subject to removal from office for cause connected with his office, after he has served at least one year, upon the filing of a recall petition and the affirmative vote of a majority of those voting on the question of removal at any general, regular municipal or special election.

40:69A-169. Recall petition

A recall petition shall demand the removal of a designated incumbent, shall be signed by qualified voters equal in number to at least twenty-five per centum (25%) of the registered voters of the municipality, and shall be filed with the municipal clerk. It shall set forth a statement of the cause upon which the removal is sought.

40:69A-170. Signatures to recall petition

The signatures to a recall petition need not all be appended to one paper but each signer shall add to his signature his place of residence giving the street and number or other sufficient designation if there shall be no street and number. One of the signers to each such paper shall take an oath before an officer competent to administer oaths that the statement therein made is true as he believes and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing the petition the municipal clerk shall complete its examination and ascertain whether or not such petition is signed by the requisite number of qualified voters, and shall attach to the petition his certificate showing the result of his examination. If by that certificate the petition is shown to be insufficient it may be amended within ten days from the date of said certificate. The municipal clerk shall, within five days after such amendment, make a similar examination and determination of the amended petition, and if the certificate shall show the same to be insufficient, it shall be returned to the person filing it without prejudice to the filing of a new petition to the same effect.

40:69A-171. Notice to officer; recall election; notice of filing of petition

If the petition shall be sufficient the municipal clerk shall within two days notify the mayor, councilman or councilmen whose recall is

sought thereby. If such notice cannot be served personally upon the mayor, councilman or councilmen affected, service may be made by registered mail addressed to the officer's last known address. If within five days after the service of the notice by the municipal clerk the mayor, councilman or councilmen sought to be recalled by such petition do not resign, or having tendered their resignation it shall not have been accepted by the municipal council, the municipal clerk shall order and fix a date for holding a recall election not less than sixty nor more than ninety days from the filing of the petition. Notice of the filing of the petition and of the date of the election shall be posted for public view in the office of the municipal clerk and he shall also insert the notice forthwith in a newspaper published in the municipality, or if there be no such newspaper, then in a newspaper having general circulation in such municipality.

40:69A-172. Ballots

The ballots at the recall election shall conform to the requirements respecting the election of municipal officers in the municipality, as provided in this article or in Title 19 of the Revised Statutes (Elections), whichever shall apply in the municipality in accordance with the provisions of this act, except that the words "recall election" shall appear on the ballot. The recall features of the ballot shall appear at the top thereof and shall be separated from the portion of the ballot for the election of officers by a heavy black line. The proposal for recall shall be placed on the ballot in the following manner:

"Shall (here insert name of incumbent) be removed from office by recall?" This matter shall occupy two lines in boldface type. Immediately below the above wording shall appear the phrase "for recall," and immediately underneath such phrase the words "against recall." Immediately at the left of each of these two phrases shall be printed a square, in which the voter may make a cross (X) or plus (+) or a check (/) mark. Immediately below the foregoing shall appear the following:

"Indicate your vote by placing a cross (X) or plus (+) or a check (/) mark in one of the squares above."

40:69A-173. Removal of more than one officer

If the removal of more than one officer is sought the same provisions for submitting to the electors the question and direction hereinbefore described shall be repeated in the case of each officer concerned and their position on the ballot for their recall shall be in the order of the filing of the petition with the municipal clerk.

40:69A-174. Election of successor; use of recall ballot

The same ballot used for submitting the question or questions of recall shall be used for the election of a successor to the incumbent sought to be removed and immediately under the black line following the recall question shall appear the phrase "Nominees for successors of . . . (here insert name of incumbent) in the event he is recalled." The names of all persons nominated as successors shall be placed upon the ballot in the same manner provided for other elections of municipal officers in the municipality.

40:69A-175. Laws governing recall elections; selection of candidate for successor of recalled incumbent

The provisions of this article or of Title 19 of the Revised Statutes (Elections), whichever shall apply in the municipality in accordance with the provisions of this act, concerning the nomination of municipal officers, preparation of the ballot, election of municipal officers, counting and canvassing of the results of the election of such officers, shall apply to the election for the recall of officers and the election of their successors. Where the plan of government in effect in the municipality provides for partisan elections, the county committee of each political party shall be authorized to select a candidate for successor of a recalled incumbent in the same manner as provided by Title 19 of the Revised Statutes for nominations to fill a vacancy after the last day for filing petitions for nominations in the primary elections.

40:69A-176. Publication of notices of arrangements for recall elections; conduct

The municipal clerk shall cause to be made due publication of notices of arrangements for holding all recall elections and they shall be conducted as are other elections for municipal officers in the municipality.

40:69A-177. Results of election

- (a) If a majority of votes in connection with the recall of any officer be in favor of the recall, the term of office of such officer shall terminate upon the certification of the results of election by the municipal clerk.
- (b) If the results of such recall election shall, by the certificate of the municipal clerk, be shown to be against the recall of the officer he shall continue in office as if no recall election had been held, and the vote for the election for the successor of such officer taken at the time of such attempted recall shall be void.

40:69A-178. Successor where incumbent resigns or is recalled

If the office of the incumbent shall become vacant either by his resignation or by the result of the recall election, his successor shall be the nominee receiving the greatest number of votes at the recall election. The person so elected shall serve for the remainder of the unexpired term.

E. Local Legislation

40:69A-179. Meetings of council; journal

The council shall by ordinance or resolution designate the time of holding regular meetings, which shall be at least monthly. The mayor may, and upon written request of a majority of the members of the council, shall, call a special meeting of the council. In the call he shall designate the purpose of the special meeting and no other business shall be considered. All meetings of the council shall be open to the public. The municipal clerk shall keep a journal of its proceedings and record the minutes of every meeting.

40:69A-180. Rules of procedure; quorum; ordinances and resolutions; presiding officer; compensation

- (a) Council shall determine its own rules of procedure, not inconsistent with ordinance or statute. A majority of the whole number of members of the council shall constitute a quorum, but no ordinance shall be adopted by the council without the affirmative vote of a majority of all the members of the council.
- (b) Each ordinance or resolution shall be introduced in written or typewritten form and shall be read and considered as provided by general law. The vote upon every motion, resolution or ordinance shall be taken by roll call and the yeas and nays shall be entered on the minutes. The minutes of each meeting shall be signed by the officer presiding at such meeting and by the municipal clerk.
- (c) The council at its organization meeting shall elect a president of the council from among the members thereof and he shall preside at its meetings and perform such other duties as the council may prescribe. In the absence of the president, the council shall elect a temporary presiding officer. The compensation of the mayor, councilmen and department heads shall be fixed by the council immediately after its organization.

Amended P.L. 1954, c. 69.

40:69A-181. Adoption and publication of ordinances; effective date

- (a) Except as may otherwise be provided in this act, all ordinances shall be adopted and published in the manner required by general law; provided, however, that any ordinance may incorporate by reference any standard technical regulations or code, official or unofficial, which need not be so published whenever ten copies of said regulations or code have been placed on file in the office of the municipal clerk and in the office of the body or department charged with the enforcement of said ordinance for the examination of the public so long as said ordinance is in effect.
- (b) No ordinance other than the local budget ordinance shall take effect less than twenty days after its final passage by council and approval by the mayor where such approval is required, unless the council shall adopt a resolution declaring an emergency and at least two-thirds of all the members of the council vote in favor of such resolution.

40:69A-182. Recording of ordinances, and resolutions

The municipal clerk shall record all ordinances and resolutions adopted by council and at the close of each year, with the advice and assistance of the municipal attorney, shall bind, compile or codify all the ordinances and resolutions, or true copies thereof, of the municipality which then remain in force and effect. He shall also properly index the record books, compilation or codification of ordinances and resolutions.

40:69A-183. Rules and regulations; filing; publication

No rule or regulation made by any department, officer, agency or authority of the municipality, except such as relates to the organization or internal management of the municipal government or a part thereof, shall take effect until it is filed either with the municipal clerk or in such other manner as may be provided by ordinance. The council shall provide for the prompt publication of such rules and regulations.

F. Initiative and Referendum

40:69A-184. Petition; percentage of registered voters required

The voters of any municipality may propose any ordinance and may adopt or reject the same at the polls, such power being known as the initiative. Any initiated ordinance may be submitted to the municipal council by a petition signed by a number of the legal voters of the municipality equal in number to at least 15% of the total votes cast in the municipality at the last election at which members of the General

Assembly were elected. An initiated ordinance may be submitted to the municipal council by a number of the legal voters of the municipality equal in number to at least 10% but less than 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected, subject to the restrictions set forth in section 17-43 (C. 40:69A-192) of this act.

Amended P.L. 1982, c. 145, § 1.

40:69A-185. Power of referendum; time for filing petition

The voters shall also have the power of referendum which is the power to approve or reject at the polls any ordinance submitted by the council to the voters or any ordinance passed by the council, against which a referendum petition has been filed as herein provided. No ordinance passed by the municipal council, except when otherwise required by general law or permitted by the provisions of section 17-32(b) of this act, (40:69A-181)* shall take effect before twenty days from the time of its final passage and its approval by the mayor where such approval is required. If within twenty days after such final passage and approval of such ordinance a petition protesting against the passage of such ordinance shall be filed with the municipal clerk and if the petition shall be signed by a number of the legal voters of the municipality equal in number to at least 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected, the ordinance shall be suspended from taking effect until proceedings are had as herein provided.

The provisions of this section shall not apply to any ordinance which by its terms or by law cannot become effective in the municipality unless submitted to the voters or which by its terms authorizes a referendum in the municipality concerning the subject matter thereof.

Amended P.L. 1982, c. 145, § 2.

*Material in brackets added for clarity.

40:69A-186. Petition papers; affidavits

All petition papers circulated for the purposes of an initiative or referendum shall be uniform in size and style. Initiative petition papers shall contain the full text of the proposed ordinance. The signatures to initiative or referendum petitions need not all be appended to one paper, but to each separate petition there shall be attached a statement of the circulator thereof as provided by this section. Each signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition paper the names and addresses of five voters, designated as the Committee of the Petitioners, who shall be regarded as responsible for the circulation and filing of the petition and for its possible withdrawal as hereinafter provided. Attached to

each separate petition paper there shall be an affidavit of the circulator thereof that he, and he only, personally circulated the foregoing paper, that all the signatures appended thereto were made in his presence, and that he believes them to be the genuine signatures of the persons whose names they purport to be.

40:69A-187. Filing of petition papers; examination; certification of result

All petition papers comprising an initiative or referendum petition shall be assembled and filed with the municipal clerk as one instrument. Within twenty days after a petition is filed, the municipal clerk shall determine whether each paper of the petition has a proper statement of the circulator and whether the petition is signed by a sufficient number of qualified voters. After completing his examination of the petition, the municipal clerk shall certify the result thereof to the council at its next regular meeting. If he shall certify that the petition is insufficient he shall set forth in his certificate the particulars in which it is defective and shall at once notify at least two members of the Committee of the Petitioners of his findings.

40:69A-188. Amendment of initiative or referendum petition

An initiative or referendum petition may be amended at any time within ten days after the notification of insufficiency has been served by the municipal clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. The municipal clerk shall, within five days after such an amendment is filed, examine the amended petition and, if the petition be still insufficient, he shall file his certificate to that effect in his office and notify the Committee of the Petitioners of his findings and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

40:69A-189. Suspension of ordinance

Upon the filing of a referendum petition with the municipal clerk, the ordinance shall be suspended until ten days following a finding by the municipal clerk that the petition is insufficient or, if an amended petition be filed, until five days thereafter; or, if the petition or amended petition be found to be sufficient, until it be withdrawn by the Committee of the Petitioners or until repeal of the ordinance by vote of the council or approval or disapproval of the ordinance by the voters.

40:69A-190. Submission to municipal council

Upon a finding by the municipal clerk that any petition or amended petition filed with him in accordance with this act is sufficient, the clerk shall submit the same to the municipal council without delay. An

initiative ordinance so submitted shall be deemed to have had a first reading and provision shall be made for a public hearing.

40:69A-191. Submission of ordinance to voters; withdrawal of petition

If within twenty days of the submission of a certified petition by the municipal clerk the council shall fail to pass an ordinance requested by an initiative petition in substantially the form requested or to repeal an ordinance as requested by a referendum petition, the municipal clerk shall submit the ordinance to the voters unless, within ten days after final adverse action by the council or after the expiration of the time allowed for such action, as the case may be, a paper signed by at least four of the five members of the Committee of the Petitioners shall be filed with the municipal clerk requesting that the petition be withdrawn. Upon the filing of such a request, the original petition shall cease to have any force or effect.

Amended P.L. 1982, c. 145, § 3.

40:69A-192. Referendum or initiative election

Any ordinance to be voted on by the voters in accordance with section 17-36 or section 17-42 of this act (C. 40:69A-185 or c. 40:69A-191) shall be submitted at the next general or regular municipal election occurring not less than 40 days after the final date for withdrawal of the petition as provided for in section 17-42 of this act (C. 40:69A-191), provided that if no such election is to be held within 90 days the council shall provide for a special election to be held not less than 40 nor more than 60 days from the final date for withdrawal of the petition as provided for in section 17-42 (C. 40:69A-191) of this act.

In the case of an initiated petition signed by not less than 10% nor more than 15% of the legal voters, the ordinance shall be submitted at the next general or regular municipal election occurring not less than 40 days after the final date for withdrawal of the petition as provided for in section 17-42 (C. 40:69A-191) of this act. In any instance where a referendum election is to be held as result of an ordinance of the council which by its terms or by law cannot become effective in the municipality unless submitted to the voters, or which by its terms authorizes a referendum in the municipality concerning the subject matter thereof, the time for submission of the question to the voters shall be calculated for the purposes of this section and section 17-44 of P.L. 1950, c. 210 (C. 40:69A-193) from the date of final passage and approval of the ordinance.

Amended P.L. 1982, c. 145, § 4.

40:69A-193. Number of proposed ordinances voted upon; time between special elections

Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this article, but there shall not be more than one special election in any period of 6 months for such purpose.

During that 6 month period, any ordinance which would otherwise be submitted to the voters at a special election if one were not already scheduled, shall be submitted at the scheduled special election if at least 30 days shall remain prior thereto from the final date for withdrawal of the petition, otherwise, the ordinance shall be submitted at the next general election or regular municipal election, whichever shall first occur.

Amended P.L. 1982, c. 145, § 5.

40:69A-194. Publication of ordinance

Whenever an ordinance is to be submitted to the voters of the municipality at any election in accordance with this article, the clerk shall cause the ordinance to be published in at least two of the newspapers published or circulated in the municipality. The publication shall be not more than twenty nor less than five days before the submission of the ordinance or proposition to be voted on.

40:69A-195. Ballots

The ballots to be used at such election shall be in substantially the following form:

"To vote upon the public question printed below, if in favor thereof mark a cross (X) or plus (+) or check (/) in the square at the left of the word Yes, and if opposed thereto mark a cross (X) or plus (+) or a check (/) in the square to the left of the word No."

Yes.	"Shall the ordinance (indicate whether submitted by council or initiative or referendum petition) providing for (here state nature of proposed ordinance or proposition) be adopted?"
No.	

40:69A-196. Results of election; majority vote for adoption; amendment or repeal within 3 years; conflicting measures

If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the municipality and be published

as in the case of other ordinances. No such ordinance shall be amended or repealed within 3 years immediately following the date of its adoption by the voters, except by a vote of the people. The council may, within 3 years immediately following the date of adoption of the ordinance, submit a proposition for the repeal or amendment of that ordinance to the voters at any succeeding general election or regular municipal election. If the proposition submitted shall receive a majority of the votes cast at that election, the ordinance shall be repealed or amended accordingly. If the provisions of two or more measures approved or adopted at the same election conflict then the measure receiving the greatest affirmative vote shall control.

Amended P.L. 1982, c. 145, § 6.

G. Wards

40:69A-197 through 40:69A-204. Repealed by P.L. 1980, c. 496.

H. Succession In Government

40:69A-205. Schedule of installation of optional plan adopted

The schedule of installation of an optional plan adopted pursuant to this act shall, as provided herein, take the following course:

(a) An election to submit the question of adoption of an optional plan may be held at any time in accordance with the provisions of article 1 of this act;

(b) In the event of a favorable vote of the voters at the above election, the first election of officers under the adopted plan shall take place on (1) the second Tuesday in May occurring not less than 75 days next following the adoption of one of the optional plans in municipalities adopting a charter providing for the holding of regular municipal elections at which all members of the council are to be elected at large; (2) the second Tuesday in May occurring not less than 120 days following the adoption of one of the optional plans in municipalities adopting a charter providing for the holding of regular municipal elections and for the division of the municipality into wards; (3) at the next general election occurring not less than 75 days next following the adoption of one of the optional plans in municipalities adopting a charter providing for the holding of general elections at which all members of the council are to be elected at large; or (4) at the next general election occurring not less than 120 days next following the adoption of one of the optional plans in municipalities adopting a charter providing for the holding of general elections and for the division of the municipality into wards.

Whenever a municipality has adopted a charter referred to in subsection (3) above, within 10 days, or subsection (4) within 40 days, prior to the last day fixed for the filing of nominating petitions for the primary election, the candidates to be first elected shall be

nominated in the manner provided by chapter 27 of Title 19 of the Revised Statutes with respect to the filling of certain vacancies in nominations for county or municipal offices to be filled at the general election.

(c) An optional plan shall take effect, in accordance with the further provisions of this article at (1) 12 o'clock noon on July 1 next following the first election of officers in municipalities adopting a charter providing for the holding of regular municipal elections, or (2) 12 o'clock noon on January 1 next following the first election of officers in municipalities adopting a charter providing for the holding of general elections.

Amended P.L. 1981, c. 465, § 37.

40:69A-206. Charters; amendments and supplements superseded; existing ordinances and resolutions remaining in force where not inconsistent

Upon the effective date of an optional charter adopted pursuant to this act, any other charter and its amendments and supplements theretofore applicable to the municipality shall be superseded with respect to such municipality. All ordinances and resolutions of the municipality to the extent that they are not inconsistent with the provisions of this act shall remain in full force and effect until modified or repealed as provided by law.

40:69A-207. Existing offices abolished on effective date of optional plan; exceptions

At 12 o'clock noon on the effective date of an optional plan adopted pursuant to this act, all offices then existing in such municipality shall be abolished and the terms of all elected and appointed officers shall immediately cease and determine; provided, that nothing in this section shall be construed to abolish the office or terminate the term of office of any member of the board of education, board of fire commissioners of a township fire district, trustees of the free public library, commissioners of a local housing authority, members of a municipal shade tree commission, board of managers of a municipal hospital, municipal magistrates or of any official or employee now protected by any tenure of office law, or of any policeman, fireman, teacher, principal or school superintendent whether or not protected by a tenure of office law. If the municipality is operating under the provisions of Title 11 of the Revised Statutes (Civil Service) at the time of the adoption of an optional plan under this act, nothing herein contained shall affect the tenure of office of any person holding any position or office coming within the provisions of said Title 11, as it applies to said officers and employees. If the municipal clerk has, prior to the effective date of the optional plan, acquired a protected tenure of office pursuant to law, he shall become the first municipal clerk under the optional plan.

Provisions for officers and for the organization and administration of the municipal government under the optional plan may be made by resolution pending the adoption of ordinances, but any such resolution shall expire not later than 30 days after the effective date of the optional plan.

Amended P.L. 1977, c. 392, § 1.

40:69A-207.1. Local industrial commissions; continuance or re-establishment.

The governing body of any municipality governed by a form of government authorized by the "Optional Municipal Charter Law" may by ordinance provide for the continuance or re-establishment, as the case may be, of any local industrial commission which was established in said municipality pursuant to P.L. 1962, c. 96 (C. 40:106-1(123) to 40:106-1(132)) and which commission was performing its functions, powers, and duties under said law immediately prior to the adoption by the municipality of its form of government under the Optional Municipal Charter Law.

P.L. 1972, c. 170, § 1.

40:69A-208. Appointments between election and time of taking office under optional plan; pending actions and proceedings

(a) No subordinate board, department, body, office, position or employment shall be created and no appointments shall be made to any subordinate board, department or body, or to any office, employment or position, including without limitation patrolmen and firemen, between the date of election of officers and the date the newly elected officers take office under any optional plan.

(b) All actions and proceedings of a legislative, executive or judicial character which are pending upon the effective date of an optional plan adopted pursuant to this act may continue, and the appropriate officer or employee under such optional plan shall be substituted for the officer or employee theretofore exercising or discharging the function, power or duty involved in such action or proceeding.

Amended P.L. 1954, c. 69.

40:69A-208.1. Continuance of charter adopted prior to January 9, 1982 of municipality with mayor-council plan

Any municipality having adopted, prior to the effective date of this amendatory and supplementary act, a charter encompassing a mayor-council plan of government heretofore authorized pursuant to P.L. 1950, c. 210 shall continue to be governed, after the effective date of this act, by the charter and plan of government so adopted, until such time as the charter is abandoned or altered pursuant to article 1 of that act

(C. 40:69A-1 through 40:69A-25), or amended pursuant to section 7 [40:69A-25.1]* of this amendatory and supplementary act. During such time as the municipality shall continue to be governed by that charter, any provisions of, or supplements to, P.L. 1950, c. 210 enacted or amended after the effective date of this amendatory and supplementary act, which would have pertained to that charter if the provisions of this amendatory and supplementary act had not been enacted, shall pertain to that charter and govern that municipality.

Amended P.L. 1981, c. 465, § 20.

*Material in brackets added for clarity.

40:69A-208.2. Continuance of charter adopted prior to January 9, 1982 of municipality with council-manager plan

Any municipality having adopted, prior to the effective date of this amendatory and supplementary act, a charter encompassing a council-manager plan of government heretofore authorized pursuant to P.L. 1950, c. 210 shall continue to be governed, after the effective date of this act, by the charter and plan of government so adopted, until such time as the charter is abandoned or altered pursuant to article 1 of that act (C. 40:69A-1 through 40:69A-25), or amended pursuant to section 7 [40:69A-25.1]* of this amendatory and supplementary act. During such time as the municipality shall continue to be governed by that charter, any provisions of, or supplements to, P.L. 1950, c. 210 enacted or amended after the effective date of this amendatory and supplementary act, which would have pertained to that charter if the provisions of this amendatory and supplementary act had not been enacted, shall pertain to that charter and govern that municipality.

Amended P.L. 1981, c. 465, § 28.

*Material in brackets added for clarity.

40:69A-208.3. Continuance of charter adopted prior to January 9, 1982 of municipality with small municipality plan

Any municipality having adopted, prior to the effective date of this amendatory and supplementary act, a charter encompassing a small municipality plan of government heretofore authorized pursuant to P.L. 1950, c. 210 shall continue to be governed, after the effective date of this amendatory and supplementary act, by the charter and plan of government so adopted, until such time as the charter is abandoned or altered pursuant to article 1 of P.L. 1950, c. 210 (C. 40:69A-1 through 40:69A-25), or amended pursuant to section 7 [40:69A-25.1]* of this amendatory and supplementary act. During such time as the municipality shall continue to be governed by that charter, any provisions of, or supplements to P.L. 1950, c. 210 enacted or amended after the effective date of this amendatory and supplementary act, which would have pertained

to that charter if the provisions of this amendatory and supplementary act had not been enacted, shall pertain to that charter and govern that municipality.

Amended P.L. 1981, c. 465 § 35.

*Material in brackets added for clarity.

I. General Provisions

40:69A-209. Partial invalidity

If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have rendered.

40:69A-210. Short title

This act shall be known as the Optional Municipal Charter Law.