

## VII. Home Rule Charter and Optional Plans Law

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### 53 Pa. C.S. 2901 to 3171

*(Includes amendments through September 1, 1999)*

#### Subpart E Home Rule and Optional Plan Government Subchapter A Preliminary Provisions

#### Section 2901. Short title and scope of subpart

- (a) **Short title of subpart.** – This subpart shall be known and may be cited as the Home Rule Charter and Optional Plans Law.
- (b) **Scope of subpart.** – This subpart applies to all municipalities except cities of the first class and counties of the first class.

#### Section 2902. Definitions

Subject to additional definitions contained in subsequent provisions of this subpart which are applicable to specific provisions of this subpart, the following words and phrases when used in this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Council.” County commissioner, city council, borough council, town council, township commissioner in a township of the first class and supervisor in a township of the second class.

“Election officials.” The county boards of elections.

“Electors.” The registered voters of any municipality involved in proceedings relating to the adoption and repeal of optional forms of government.

“Governing body.” Board of county commissioners, city council, borough or incorporated town council, commissioners of a township of the first class and supervisors of a township of the second class or their successor forms of government.

“Government study commission” or “commission.” The body elected under the provisions of Subchapter B (relating to procedure for adoption of home rule charter or optional plan of government).

“Home rule charter.” A written document defining the powers, structure, privileges, rights and duties of the municipal government and limitations thereon. The charter shall also provide for the composition and election of the governing body, which in all cases shall be chosen by popular elections.

“Local municipality.” Municipal corporation except a city of the first class.

“Nonresident.” Any person or entity not a resident within the meaning of this subpart.

“Optional forms.” Includes home rule charters and optional plans.

“Optional plans.” Optional municipal powers, procedures and administrative structures as provided by this subpart.

“Rate of taxation.” The amount of tax levied by a municipality on a permissible subject of taxation.

“Resident.” Any person, or other entity living in or maintaining a permanent or fixed place of abode in a municipality or conducting or engaging in a business for profit within a municipality.

“Subject of taxation.” Any person, business, corporation, partnership, entity, real property, tangible or intangible personal property, property interest, transaction, occurrence, privilege, transfer, occupation or any other levy which is determined to be taxable by the General Assembly. The term shall not be construed to mean the rate of tax which may be imposed on a permissible subject of taxation.

## **Subchapter B**

### **Procedure for Adoption of Home Rule Charter or Optional Plan of Government**

#### **Section 2911. Submission of question for election of government study commission**

- (a) **General rule.** – Whenever authorized by ordinance of the governing body or upon petition of the electors to the county board of electors of the county wherein the municipality is located, an election shall be held upon one of the following questions:
- Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality, to consider the advisability of the adoption of an optional form of government and to recommend whether or not an optional plan of government should be adopted?
- Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality, to consider the advisability of the adoption of a home rule charter, and if advisable, to draft and to recommend a home rule charter?
- Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality, to consider the advisability of the adoption of an optional form of government or a home rule charter, to recommend the adoption of an optional form of government or to draft and recommend a home rule charter?
- (b) **Petition for election.** – The petition calling for the election shall be in the form required by subsection (e) and shall be signed by electors comprising 5% of the number of electors voting for the office of Governor in the last gubernatorial general election.
- (c) **Ordinance authorizing election.** – Within five days after the final enactment of an ordinance authorizing the election, the municipal clerk or secretary shall file a certified copy of the ordinance with the county board of elections, together with a copy of the question to be submitted to the electors.
- (d) **Duty of election board.** – At the next general or municipal or primary election occurring not less than the 13th Tuesday after the filing of the ordinance or the petition with the county board of elections, it shall cause the appropriate question to be submitted to the electors as other questions are submitted under the act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code.
- (e) **Requirements for petitions.** – A referendum petition under this section shall be filed not later than the 13th Tuesday prior to the election, and the petition and the proceedings therein shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions insofar as those provisions are applicable. No referendum petition may be signed or circulated prior to the 20th Tuesday before the election nor later than the 13th Tuesday before the

election. No candidate's nomination petition may be signed or circulated prior to the 13th Tuesday before the election nor later than the tenth Tuesday before the election. Any petition under this section shall be filed on or before the tenth Tuesday before the election.

### **Section 2912. Election of members of commission**

- (a) **General rule.** – A governmental study commission of seven, nine or eleven members, as designated in the question, shall be elected by the qualified voters at the same election the question is submitted to the electors.
- (b) **Nomination of candidates.** – Each candidate for the office of member of the commission shall be nominated and placed upon the ballot containing the question in the manner provided by and subject to the provisions of the act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code, which relate to the nomination of a candidate nominated by nomination papers filed for other offices elective by the voters. Each candidate shall be nominated and listed without any political designation or slogan, and no nomination papers shall be signed or circulated prior to the 13th Tuesday before the election, nor later than the tenth Tuesday before the election. No signature shall be counted unless it bears a date within this period.
- (c) **Instructions to electors.** – Each elector shall be instructed to vote on the question and, regardless of the manner of his vote on the question, to vote for the designated number of members of a government study commission who shall serve if the question is or has been determined in the affirmative.
- (d) **Insufficient number of candidates or members.** – If an insufficient number of nominating papers is filed to fill all of the designated positions on the study commission, the question of establishing a commission shall be placed on the ballot, and, unless a sufficient number of study commission members are elected by receiving at least as many votes as signatures are required to file a nominating position, then the question of creating a study commission shall be deemed to have been rejected.

### **Section 2913. Nomination of candidates**

- (a) **General rule.** – All candidates for the government study commission shall be electors. Each candidate shall be nominated by nomination papers signed by a number of electors equal at least to 2% of the number of electors voting for the office of Governor in the last gubernatorial general election or 200 electors, whichever is less, and filed with the county board of elections not later than the tenth Tuesday prior to the date of the election.
- (b) **Content and signing of nomination papers.** – Each nomination paper shall set forth the name, place of residence and post office address of the candidate thereby nominated, that the nomination is for the office of government study commissioner and that the signers are legally qualified to vote for the candidate. An elector may not sign nominations papers for more candidates for the commission than he could vote for at the election. Every elector signing a nomination paper shall write his place of residence, post office address and street number, if any, on the petition.
- (c) **Acceptance of candidates.** – Each nomination paper shall, before it may be filed with the county board of elections, contain under oath of the candidate an acceptance of the nomination in writing, signed by the candidate therein nominated, upon or annexed to the paper, or, if the same person be named in more than one paper, upon or annexed to one of the papers. The acceptance shall certify that the candidate is an elector, that the nominee consents to run as a candidate at the election and that, if elected, the candidate agrees to take office and serve.

- (d) **Verification of nomination papers.** – Each nomination paper shall be verified by an oath of one or more of the signers, taken and subscribed before a person qualified under the laws of this Commonwealth to administer an oath, to the effect that the paper was signed by each of the signers in his proper handwriting, that the signers are, to the best knowledge and belief of the affiant, electors and that the nomination paper is prepared and filed in good faith for the sole purpose of endorsing the person named therein for election as stated in the paper.

### **Section 2914. Results of election**

The result of the votes cast for and against the question as to the election of a government study commission shall be returned by the election officers, and a canvass of the election had, as is provided by law in the case of other public questions put to the electors. The votes cast for members of the commission shall be counted and the result returned by the county board of electors, and a canvass of the election had, as is provided by law in the case of election of members of municipal councils or boards. The designated number of candidates receiving the greatest number of votes shall be elected and shall constitute the commission. If a majority of those voting on the question vote against the election of a commission, none of the candidates shall be elected. If two or more candidates for the last seat shall be equal in number of votes, they shall draw lots to determine which one shall be elected.

### **Section 2915. Oath of office of members of commission**

- (a) **Members elected on countywide basis.** – As soon as possible, and in any event no later than ten days after its certification of election, the members of a government study commission elected on a countywide basis shall, before a judge of a court of common pleas, make oath to support the Constitution of the United States and the Constitution of Pennsylvania, and to perform the duties of the office with fidelity.
- (b) **Other members.** – A soon as possible and in any event no later than ten days after its certification of election, the members of a government study commission elected on other than a countywide basis shall, before a district justice or a justice of the peace, make oath to support the Constitution of the United States and the Constitution of Pennsylvania, and to perform the duties of the office with fidelity.

### **Section 2916. First meeting of commission**

- (a) **Procedure.** – As soon as possible and in any event no later than 15 days after its certification of election, the government study commission shall organize and hold its first meeting and elect one of its members chairman and another member vice chairman, fix its hours and place of meeting and adopt rules for the conduct of its business it deems necessary and advisable.
- (b) **Quorum.** – A majority of the members of the commission shall constitute a quorum for the transaction of business, but no recommendations of the commission shall have any legal effect unless adopted by a majority of the whole number of the members of the commission.

### **Section 2917. Vacancies**

In case of a vacancy in the government study commission, the remaining members of the commission shall fill it by appointing thereto some other properly qualified elector.

## **Section 2918. Function and duty of commission**

The government study commission shall study the form of government of the municipality to compare it with other available forms under the laws of this Commonwealth and determine whether or not in its judgment the government could be strengthened or made more clearly responsible or accountable to the people or whether its operation could become more economical or efficient under a changed form of government.

## **Section 2919. Compensation and personnel**

- (a) **Compensation and expenses of members.** – Members of the government study commission shall serve without compensation, but shall be reimbursed by the municipality for their necessary expenses incurred in the performance of their duties. Council shall appropriate moneys necessary for this purpose.
- (b) **Appointment and compensation of personnel.** – Within the limits of the appropriations and other public and privately contributed funds and services made available to it, the commission may appoint one or more consultants and clerical and other assistants to serve at the pleasure of the commission and may fix reasonable compensation therefor to be paid the consultants and clerical and other assistants.

## **Section 2920. Hearings and public forums**

The government study commission shall hold one or more public hearings, may hold private hearings and sponsor public forums and generally shall provide for the widest possible public information and discussion respecting the purposes and progress of its work.

## **Section 2921. Report of findings and recommendations**

- (a) **General rule.** – The government study commission shall report its findings and recommendations to the citizens of the municipality within nine months from the date of its election except that it shall be permitted an additional nine months if it elects to prepare and submit a proposed home rule charter and an additional two months if it chooses to elect its municipal council by districts. It shall publish or cause to be published sufficient copies of its final report for public study and information and shall deliver to the municipal clerk or secretary sufficient copies of the report to supply it to any interested citizen upon request. If the commission recommends the adoption of a home rule charter or any of the optional plans of government as authorized in this subpart, the report shall contain the complete plans as recommended.
- (b) **List of resources used.** – There shall be attached to each copy of the report of the commission, as a part thereof, a statement sworn to by the members of the commission listing in detail the funds, goods, materials and services, both public and private, used by the commission in the performance of its work and the preparation and filing of the report. In addition, the list shall identify specifically the supplier of each item thereon.
- (c) **Filing copy with Department of Community and Economic Development.** – A copy of the final report of the commission with its findings and recommendations shall be filed with the Department of Community and Economic Development.
- (d) **Disposition of records.** – All the records, reports, tapes, minutes of meetings and written discussions of the commission shall, upon its discharge, be turned over to the municipal clerk or secretary for permanent safekeeping and made available for public inspection at any time during regular business hours.

## Section 2922. Discharge of petition and amended reports

- (a) **General rule.** – The government study commission shall be discharged upon the filing of its report, but if the commission’s recommendations require further procedures in the form of a referendum on the part of the electors, the commission shall not be discharged until the procedure has been finally concluded. At any time prior to 60 days before the date of the referendum, the commission may modify or change any recommendation set forth in the final report by publishing an amended report.
- (b) **Effect of amended report.** – Whenever a commission issues an amended report pursuant to subsection (a), the amended report shall supersede the final report and the final report shall cease to have any legal effect.
- (c) **Procedure under amended report.** – The procedure to be taken under the amended report shall be governed by the provisions of this subpart applicable to the final report of a commission submitted pursuant to section 2921 (relating to report of findings and recommendations).

## Section 2923. Types of action recommended

The government study commission shall report and recommend in accordance with the question presented to the electorate as provided in section 2911 (relating to submission of question for election of government study commission):

- (1) That a referendum shall be held to submit to the electors the question of adopting one of the optional plans of government authorized by this subpart to be specified by the commission.
- (2) That a referendum shall be held to submit to the electors the question of adopting a home rule charter as prepared by the commission and as authorized by this subpart.
- (3) That the form of government shall remain unchanged.
- (4) Such other action as it deems advisable consistent with its function as set forth in this subpart.

## Section 2924. Specificity of recommendations

- (a) **Optional plan of government.** –
  - (1) If the government study commission report recommends the adoption or the amendment of any of the optional plans of government set forth in this subpart, except the optional county plan, the report of the commission may specify the following:
    - (i) That the municipal council shall consist of three, five, seven, or nine members, except that under the small municipality plan and under the optional county plan the number of council members shall be as provided in sections 3073 (relating to election of council members) and 3092 (relating to county officers).
    - (ii) That the office of treasurer shall be omitted or that it shall be filled by election by the electors rather than by appointment.
    - (iii) That the office of controller shall be omitted or that it shall be filled by election by the electors rather than by appointment.
  - (2) If a commission report, initiative petition or ordinance shall recommend any optional plan, except for the optional county plan, it may specify that the then existing basis for electing council members shall be changed to an at-large or district or combination at-large and district basis.

- (3) If a commission report, initiative petition or ordinance recommends the adoption of the council-manager form of government, it may specify that the mayor or president of council or chairman be elected directly by the electors rather than by council.
  - (4) If a commission report, initiative petition or ordinance for a county recommends the adoption of any of the optional plans, except the optional county plan, it may specify that the sheriff be elected directly by the voters of the county as provided in section 3094 (relating to additional options for election of county sheriff).
  - (5) In all cases, except for the council-manager plan, the commission report, initiative petition or ordinance shall specify whether the executive (mayor) shall be called “executive” or “mayor.”
- (b) **Home rule charter.** – If the commission recommends the adoption of a home rule charter, it shall specify the number to be on the municipal council, all offices to be filled by election and whether elections shall be on an at-large, district or combination district and at-large basis.
  - (c) **Election in new or revised districts.** – Notwithstanding any other provisions of this subpart, if an approved home rule charter or optional plan of government or other form of government adopted pursuant to the provisions of this subpart specifies that the election of the municipal council shall be on an at-large or district or combination district and at-large basis, and the basis recommended differs from the existing basis and therefore requires eliminating districts or establishing revised or new districts, then election of municipal officials shall not take place on the new basis until the municipal election following the next primary election taking place more than 180 days after the election at which the referendum on the question of a new form of government has been approved by the electorate. The new form of government shall not go into effect until the first Monday in January following the election of municipal officials on the new basis. New or revised districts shall be established by the government study commission and included in the proposed charter.

**Section 2925. Form of question on form of government**

The question to be submitted to the voters for the adoption of a home rule charter or any of the optional plans of government authorized by this subpart shall be submitted in one of the following forms or such part of them as shall be applicable.

Shall the Home Rule Charter contained in the report, dated (insert date), of the government study commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by the (insert type and name of municipality)?

Shall (insert name of plan), including recommendations pertaining to optional provisions contained in the report of the government study commission, date (insert date), as authorized by the Home Rule Charter and Optional Plans Law, be adopted by the (insert type and name of municipality)?

Shall the (Home Rule Charter) (Optional Plan) of the (insert type and name of municipality) be repealed, and the form of government recommended in the report of the government study commission, dated (insert date), be adopted as authorized by the Home Rule Charter and Optional Plans Law?

Shall an Optional Plan for the (insert type and name of municipality) be amended as specified in the report of the government study commission filed with the election officials of the County (insert name of county), on (insert date), as authorized by the Home Rule Charter and Optional Plans Law?

## **Section 2926. Submission of question on form of government**

If the government study commission recommends that the question of adopting a home rule charter or one of the optional plans of government authorized by this subpart shall be submitted to the electors, the municipal clerk or secretary shall, within five days thereafter, certify a copy of the commission's report to the county board of elections, which shall cause the question of adoption or rejection to be placed upon the ballot or voting machines at the time as the commission specifies in its report. The commission may cause the question to be submitted to the electors at the next primary, municipal or general election occurring not less than 60 days following the filing of a copy of the commission's report with the county board of elections, at the time the commission's report directs. At the election, the question of adopting that form of government recommended by the commission shall be submitted to the electors by the county board of elections in the same manner as other questions are submitted to the electors under the act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code. The commission shall frame the question to be placed upon the ballot as provided for in section 2925 (relating to form of question on form of government) and, if it deems appropriate, an interpretative statement to accompany the question.

## **Section 2927. Limitations on enactment of ordinance or filing of petition**

- (a) **General rule.** – An ordinance may not be passed and a petition may not be filed for the election of a government study commission pursuant to section 2911 (relating to submission of questions for election of government study commission) while proceedings are pending under any other petition or ordinance filed or passed under the authority of this subpart nor on the same question if it has been defeated within four years after an election has been held pursuant to any such ordinance or petition passed or filed.
- (b) **Time for commencement of proceedings.** – For the purpose of this section, proceedings shall be considered as having started:
  - (1) In the case of an ordinance, upon the final vote of council in favor of the ordinance, notwithstanding the fact that the ordinance cannot take effect until a certain number of days thereafter.
  - (2) In the case of petition, as soon as it is properly signed by one-third of the number of registered voters required for the petition and written notice thereof filed in the office of the county board of elections and in the office of the municipal clerk or secretary, who shall cause the notice to be immediately posted in a conspicuous place in the office, open to public inspection.

## **Section 2928. Time when change of form of government takes effect**

Whenever the electors by a majority of those voting on the question vote in favor of adopting a change in their form of government pursuant to this subpart, the proposed form shall take effect according to its terms and the provisions of this subpart.

## **Section 2929. Limitation on changing new form of government**

The voters of any municipality which has adopted a home rule charter or an optional plan of government pursuant to this subpart may not vote on the question of changing the form of government until five years after the home rule charter or optional plan became effective.



## **Section 2930. Status of forms of government provided in subpart**

For the purposes of this subpart, each of the optional forms of government provided by this subpart and each of those optional forms as modified by any available provisions concerning size of council, election of municipal officials and the basis for electing councilmen is hereby declared to be a complete and separate form of government provided by the General Assembly for submission to the electors.

## **Subchapter C Amendment of Existing Charter or Optional Plan**

### **Section 2941. Procedure for amendment of charter or optional plan**

- (a) **Procedure.** – The procedure for amending a home rule charter or optional plan of government shall be through the initiative procedure and referendum or ordinance of the governing body as provided for in this subpart.
- (b) **Changes in method of election.** – Changes in the method of election of a municipal governing body from at-large elections to elections by district, maintain at-large elections or a combination of at-large elections and elections by district may be implemented by amending a home rule charter or optional plan without creation of a government study commission.
- (c) **Conflict in the question.** – If two or more questions appear on the ballot at the same election and such questions are in conflict and more than one receives the approval of the voters, the question which receives the largest number of affirmative votes shall prevail over the other.
- (d) **Initial apportionment.** – If the referendum on the question results in the approval by the voters to amend the home rule charter or optional plan to provide for the election of the governing body either by districts or partially by districts and partially at large or in a change in the number of members of the governing body, the initial apportionment of the districts shall be made by an apportionment commission consisting of seven members, all of whom shall reside in such municipality. Two members of the apportionment commission shall be appointed by the mayor. Two members of the apportionment commission shall be appointed by the governing body; one shall be appointed by the mayor from a list of at least three qualified persons recommended by the municipal committee of the political party whose mayoral candidate received the highest number of votes cast in the most recent mayoral election and one shall be appointed by the mayor from a list of at least three qualified persons recommended by the municipal committee of the political party whose mayoral candidate received the second highest votes in the most recent mayoral election. The seventh member of the commission shall be elected at large by a majority vote of the other six members and shall serve as chairman of the commission.

### **Section 2942. Initiation of amendment by electors or council**

A referendum on the question of amendment of a home rule charter or an optional plan of government may be initiated by petition of the electors or such a referendum may be initiated by an ordinance of the governing body. A proposal for amendment of an optional plan shall be limited to the additional options provided for in section 2924 (relating to specificity of recommendations).

### **Section 2943. Petition for referendum or ordinance proposing amendment**

- (a) **Filing.** – A petition containing a proposal for referendum on the question of amending a home rule charter or an optional plan of government signed by electors comprising 10% of the number of electors voting for the office of Governor in the last gubernatorial general election in the municipality, or an

ordinance of the municipal governing body proposing amendment of a home rule charter or an optional plan, shall be filed with the election officials not later than the 13th Tuesday prior to the next primary, municipal or general election. The petition and the proceedings therein shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions insofar as such provisions are applicable, except that no referendum petition shall be signed or circulated prior to the 20th Tuesday before the election nor later than the 13th Tuesday before the election. The name and address of the person filing the petition shall be clearly stated on the petition.

- (b) **Review and disposition of petition.** – The election officials shall review the initiative petition as to the number and qualifications of signers. If the petition appears to be defective, the election officials shall immediately notify the persons filing the petition of the defect. When the election officials find that the petition as submitted in proper order, they shall send copies of the initiative petition without signature thereon to the governing body and to the Department of Community and Economic Development. The initiative petition as submitted to the election officials, along with a list of signatories, shall be open to inspection in the office of the election officials.

### **Section 2944. Time and manner of submission of question**

A referendum on the question of the amendment of a home rule charter or an optional plan of government shall be held when the election officials find that the initiative petition or ordinance of the governing body is in proper order. The referendum shall be governed by the provisions of the act of June 3, 1937 (P.L. 1333, No. 320) known as the Pennsylvania Election Code. The election officials shall cause the question to be submitted to the electors at the next primary, general or municipal election occurring not less than the 13th Tuesday following the filing of the initiative petition or ordinance with county board of elections. At the election, the question shall be submitted to the voters in the same manner as other questions are submitted under the Pennsylvania Election Code. The county board of elections shall frame the question to be placed upon the ballot.

## **Subchapter D Conduct of Election**

### **Section 2951. Conduct and results of election**

All elections provided for in this subpart shall be conducted by the election officials for such municipality in accordance with the act of June 3, 1937 (P.L. 1933, No. 320), known as the Pennsylvania Election Code. The election officials shall count the votes cast and make return thereof to the county board of elections. The results of the election shall be computed by the county board of election in the same manner as is provided by law for the computation of similar returns. Certificates of the results of the election shall be filed by the county board of elections with the municipal council or board, the Department of State and the Department of Community and Economic Development.

### **Section 2952. Notice of election**

At least 30 days' notice of each election provided for under this subpart shall be given by the clerk or secretary of the municipality. A copy of the notice shall be posted at each polling place on the day of the election and shall be published in at least one newspaper of general circulation in the municipality once a week for three consecutive weeks during the period of 30 days prior to the election.

## Subchapter E

### General Powers and Limitations of Home Rule Charter Municipalities

#### Section 2961. Scope of powers of home rule

A municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.

#### Section 2962. Limitation on municipal powers

- (a) **Powers granted by statute.** – With respect to the following subjects, the home rule charter shall not give any power or authority to the municipality contrary to, or in limitation or enlargement of, powers granted by statutes which are applicable to a class or classes of municipalities:
- (1) The filing and collection of municipal tax claims or liens and the sale of real or personal property in satisfaction of them.
  - (2) The procedures in the exercise of the powers of eminent domain and the assessment of damages and benefits for property taken, injured or destroyed.
  - (3) Boundary changes.
  - (4) Regulation of public schools.
  - (5) The registration of electors and the conduct of elections.
  - (6) The fixing of subjects of taxation.
  - (7) The fixing of the rates of nonproperty or personal taxes levied upon nonresidents.
  - (8) The assessment of real or personal property and persons for taxation purposes.
  - (9) Defining or providing for the punishment of any felony or misdemeanor.
  - (10) Municipal planning under the act of July 31, 1968 (P.L. 805, No.247), known as the Pennsylvania Municipalities Planning Code.
- (b) **Taxing power.** – Unless prohibited by the Constitution of Pennsylvania, the provisions of this subpart or any other statute or its home rule charter, a municipality which has adopted a home rule charter shall have the power and authority to enact and enforce local tax ordinances upon any subject of taxation granted by statute to the class of municipality of which it would be a member but for the adoption of a home rule charter at any rate of taxation determined by the governing body. No home rule municipality shall establish or levy a rate of taxation upon nonresidents which is greater than the rate which a municipality would have been authorized to levy on nonresidents but for the adoption of home rule charter. The governing body shall not be subject to any limitation on the rates of taxation imposed upon residents.
- (c) **Prohibited powers.** – A municipality shall not:
- (1) Engage in any proprietary or private business except as authorized by statute.
  - (2) Exercise powers contrary to, or in limitation or enlargement of, powers granted by statutes which are applicable in every part of this Commonwealth.
  - (3) Be authorized to diminish the rights or privileges of any former municipal employees entitled to benefits or any present municipal employee in his pension or retirement system.

- (4) Enact or promulgate any ordinance or regulation with respect to definitions, sanitation, safety, health, standards of identity or labeling pertaining to the manufacture, processing, storage, distribution and sale of any foods, goods, or services subject to any Commonwealth statutes and regulations unless the municipal ordinance or regulation is uniform in all respects with the Commonwealth statutes and regulations thereunder. This paragraph does not affect the power of any municipality to enact and enforce ordinances relating to building codes or any other safety, sanitation or health regulation pertaining thereto.
- (5) Enact any provision inconsistent with any statute heretofore enacted prior to April 13, 1972, affecting the rights, benefits or working conditions of any employee of a political subdivision of this Commonwealth.
- (d) **Reduction of police force.** – Notwithstanding any provision of this subpart or any other statute to the contrary, any municipality that is or was a city of the second class A may reduce its police force or its firefighting force for economic reasons, as determined by ordinance.
- (e) **Statutes of general application.** – Statutes that are uniform and applicable in every part of this Commonwealth shall remain in effect and shall not be changed or modified by the subpart. Statutes shall supersede any municipal ordinance or resolution on the same subject.
- (f) **Regulation of business and employment.** – A municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers, including the duty to withhold, remit or report taxes or penalties levied or imposed upon them or upon persons in their employment, except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities. This subsection shall not be construed as a limitation in fixing rates of taxation on permissible subjects of taxation.
- (g) **Regulation of firearms.** – A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.
- (h) **Levying taxes.** – This section does not limit or take away any right of a municipality which adopts a home rule charter from levying any tax which it had the power to levy had it not adopted a home rule charter.
- (i) **Establishment of rates of taxation.** – No provision of this subpart or any other statute shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7).
- (j) **Retroactive fee increase prohibited.** – A municipality which adopts a home rule charter may not retroactively increase any fee or charge for any municipal service which has been provided.

### **Section 2963. Exercise of municipal powers by home rule county**

A county which has adopted a home rule charter shall not at any time thereafter exercise within any municipality in the county a power of function being exercised by that municipality, except under all of the following conditions:

- (1) The exercise of such power or function by the county shall be authorized by ordinance of the governing body of the county, which ordinance, in addition to such other filings as may be required by law, shall be filed with the clerk or secretary of each local municipality within the county within 30 days of its enactment.

- (2) The transfer of a power or function to the county from any local municipality within the county, as authorized by the ordinance, shall not become effective for at least 15 months from the date of adoption of the ordinance.
- (3) Within 120 days from the adoption of the ordinance, the governing body of any local municipality, exercising on the date of the adoption of the ordinance any power or function authorized by ordinance of the county to be exercised by the county, may elect by ordinance to be excluded from the county's exercise of the power or function. Within 60 days after the date of adoption by the governing body of a local municipality of an ordinance excluding the local municipality from the exercise by the county of a power or function, or in the absence of any action of the governing body, the qualified electors of the local municipality may initiate a petition requiring that the question of inclusion or exclusion from the exercise of the power or function by the county be submitted to a referendum of the electorate at the election held on the date of the next ensuing primary, municipal or general election not less than 60 days after the filing of the initiative petition with the county board of elections. The initiative and referendum procedures set forth in this subchapter or Subchapter F (relating to general provisions and limitations for optional plan municipalities) shall be followed, except where the same may be inconsistent with any of the provisions of this section. In the event the county determines there is insufficient interest or that it is not feasible to establish the proposed municipal function or power as provided for in the ordinance passed by the county, the county may repeal the county ordinance prior to the effective date of the ordinance.
- (4) The governing body of any local municipality may by ordinance, subsequent to the time limit for action as set forth in paragraph (3), request the county to be included in a municipal power or function being exercised by the county. However, the county may specify the terms and conditions for acceptance or denial of the power or function requested by the local municipality to be exercised by the county, which shall be subject to court review if the local municipality determines that the terms and conditions as set forth by the county are unreasonable.
- (5) No assessment, tax, fee or levy in the nature thereof made by the governing body of a county in support of the exercise of a power or function as authorized by ordinance of the county shall be applicable in any local municipality within the county which is providing the same municipal power or function.
- (6) If the electors of a local municipality by referendum vote to exclude the local municipality from the exercise of a power or function by the county, a petition may not be initiated nor may a referendum be held on the same question more often than every five years thereafter.
- (7) A local municipality may, by action of the governing body, or by initiative and referendum, withdraw from a power or function which it was exercising at the date of the adoption of the county home rule charter which it transferred to a county, provided it again assumes and exercises the power or function, but may not vote on the question of withdrawing sooner than four years from the time the county assumed the power or function of the local municipality.

## **Section 2964. General powers of municipalities**

Municipalities adopting a home rule charter shall have the power to:

- (1) Sue and be sued.
- (2) Have a corporate seal.
- (3) Contract and be contracted with.

- (4) Buy, sell, lease, hold and dispose of real and personal property.
- (5) Appropriate and expend moneys.
- (6) Adopt, amend and repeal any ordinances and resolutions as may be required.

### **Section 2965. Recording and filing of charter**

The municipal clerk or secretary shall have the new charter as approved by the qualified electors recorded in the ordinance books and shall also file a certified copy of the charter with the Department of State, the Department of Community and Economic Development and the county board of elections.

### **Section 2966. Continuation of office of existing elective officials**

All elective officials in office at the time of the adoption of a home rule charter shall continue in office until their terms expire.

### **Section 2967. Repeal of home rule charter**

- (a) **General rule.** – The procedure for repeal of a home rule charter shall be the same as for adoption of a home rule charter. Whenever the electors, by a majority vote of those voting on the question, vote in favor of repeal of a home rule charter and the establishment of a particular form of government, the municipality shall be governed under the form of government selected by the electors from the first Monday of January following the municipal election at which the elective officials of the form of government selected by the electors shall have been elected. The government study commission shall provide in its report for the new form of government to be established.
- (b) **Election of new officials.** – The elective officials under a new form of government selected by the electors shall be elected at the first municipal election held after the referendum on the repeal of a home rule charter or at a later date as may be specified by the commission in its report.

## **Subchapter F**

### **General Provisions and Limitations for Optional Plan Municipalities**

#### **Section 2971. Law applicable to optional plan**

Upon the adoption by the electors of any of the optional plans of government as set forth in this subpart, the municipality shall thereafter be governed by the plan adopted and by the provisions of general law applicable to that class or classes of municipality except as otherwise provided in this subpart. Until the municipality adopts another form of government, the plan adopted and the provisions of general law applicable to that class or classes of municipality shall be law. All statutes affecting the organization, government and powers of the municipality which are not inconsistent or in conflict with this subpart shall remain in full force until modified or repealed.

#### **Section 2972. Recording and filing of plan**

The municipal clerk or secretary shall immediately cause the new plan of government as adopted to be recorded in the ordinance book of the municipality and shall also file a certified copy thereof with the Department of State, the Secretary of Community and Economic Development and the county board of elections.

### **Section 2973. Scope of powers of optional plan**

The general grant of municipal power under this subpart is intended to confer the greatest power of self government consistent with the Constitution of Pennsylvania and with the provisions of and the limitations prescribed by this subpart. Any specific enumeration of municipal powers contained in this subpart or in other statutes does not limit the general description of power contained in this subpart. Any specifically enumerated municipal powers are in addition and supplementary to the powers conferred in general terms by this subchapter. All grants of municipal power to municipalities governed by an optional plan under this subpart, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.

### **Section 2974. Limitation on powers of optional plan**

The optional plan of any municipality adopted in accordance with this subpart shall not give any power or authority to diminish any rights or privileges of any present municipal employee in his pension or retirement system. No municipality shall exercise any powers or authority beyond the municipal limits except those conferred by statute, and no municipality shall engage in any proprietary or private business except as authorized by the General Assembly.

## **Subchapter G Miscellaneous Provisions**

### **Section 2981. Limitation on local municipality**

No local municipality within a county shall supersede or exercise any power, function or service presently exercised by the county.

### **Section 2982. Retention of existing form of government**

Each municipality which does not adopt a home rule charter or an optional plan under this subpart shall retain its existing form of government as otherwise provided by law.

### **Section 2983. Retention of existing of government when electors disapprove proposal**

In case the electors of any municipality disapprove a proposal to adopt a home rule charter or an optional plan of government, the municipality shall retain its existing form of government.

### **Section 2984. Assumption of functions previously assumed by other municipality**

- (a) **Assumption of indebtedness.** – A municipality assuming a function previously performed by another municipality under the terms of this subchapter shall also assume all the indebtedness and obligations of the municipality relating to the function. If property, indebtedness or obligations of another municipality not within the boundaries of the municipality assuming the function is involved, the governing bodies of the respective municipalities shall make an adjustment and apportionment of all public property involved.
- (b) **Procedure for adjustment and apportionment.** – The adjustment and apportionment shall be reduced to a written agreement which shall be filed with the court of common pleas of the county and the Department of Community and Economic Development.

- (c) **Petition for adjustment and apportionment.** – In case the municipalities cannot make an amicable adjustment and apportionment of the property, obligations and indebtedness within six months after the function is assumed, any of the municipalities may present a petition to the court of common pleas. The court shall then appoint three disinterested commissioners, all residents and taxpayers of the county, but none residing in or owners of real property in any of the municipalities. After hearing, notice of which shall be given to the municipalities as the court shall direct, the commissioners shall file a report with the court making an adjustment and apportionment of all the property as well as the obligations or indebtedness. The report shall state the amount that shall be due and payable from each municipality, the forms of payment and the amount of obligations and indebtedness that shall be assumed by each.
- (d) **Notice to municipalities.** – The commissioners shall give the municipalities at least five days’ written notice of the filing of their report. Unless exceptions are filed to the report with 30 days after the date of the filing, the report shall be confirmed by the court absolutely. Any sum awarded by the report shall be a legal and valid claim in its favor against the municipality charged. Any real or personal property given to a municipality shall become its property. Any claim or indebtedness charged against the municipality may be collected from it.
- (e) **Exceptions to report.** – If exceptions are filed to the report of the commissioners, the court shall dispose of them, taking testimony if it deems advisable. The court shall enter its decree confirming the award of the commissioners or modifying the same as appears just and proper.
- (f) **Compensation to commissioners.** – The commissioners shall be allowed any compensation and expenses for their services as the court shall fix. The costs of the proceedings, including the compensation and expenses of the commissioners, shall be apportioned by the court between the municipalities as it deems proper.
- (g) **Jurisdiction of court.** – If a municipality or part of a municipality is located in two or more counties, the court of common pleas of the county where the larger part of the municipality assuming the function is located shall have exclusive jurisdiction over the proceedings.

**Chapter 30**  
**Types of Optional Plans of Government**  
**Subchapter A**  
**Executive (Mayor) - Council Plan A**

**Section 3001. Designation and applicability of plan**

The form of government provided in this subchapter shall be known as the “Executive (Mayor) - Council Plan A” and shall, together with the laws applicable to that class of municipality and Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities) and Chapter 31 (relating to general provisions common to optional plans), govern any municipality the electors of which have adopted it under this subpart.

**Section 3002. Officers and employees**

Each municipality under this subchapter shall be governed by an elected council, an elected executive who may be called mayor, as determined by the government study commission, an elected district attorney in the case of counties and, when recommended by the commission and adopted by the voters, an elected treasurer, an elected controller and by such other officers and employees as may be duly appointed pursuant to this subchapter or other applicable law.



### **Section 3003. Election and term of office of officials**

The executive (mayor), the treasurer, if elected, the district attorney in the case of counties and the controller, if elected, shall be elected by the electors at a regular municipal election and shall serve for a term of four years beginning on the first Monday of January next following his election.

### **Section 3004. Election and term of office of council members**

The council shall consist of five members unless, under the authority granted under section 2924 (relating to specificity of recommendations), the municipality shall be governed by a council of three, seven, or nine members. Members of the council shall be elected at large by the electors unless, under the authority granted pursuant to section 2924, members shall be elected on a district basis in which each district is as equal in population as is feasible, or on a combination at-large and district basis as determined by the government study commission, or as specified in an initiative petition or ordinance of the governing body under the provisions of section 2942 (relating to initiations of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question) at a regular municipal election and shall serve for a term of four years, except as otherwise provided in this subchapter, beginning on the first Monday of January next following their elections.

### **Section 3005. First election of council members**

At the first municipal election following the adoption of this plan, council members shall be elected and shall serve for the terms as provided in section 3162 (relating to status and term of office of officials).

### **Section 3006. Legislative power vested in council**

The legislative power of the municipality as provided by laws applicable to that class of municipality shall be exercised by the municipal council, except as may otherwise be provided for under this subpart.

### **Section 3007. Organization of council**

On the first Monday of January following the regular municipal election, the members of council shall assemble at the usual place of meeting, organize and elect a president from among its members, who shall preside at its meetings and perform such other duties as council may prescribe, and a vice president, who shall preside in the absence of the president. If the first Monday is a legal holiday, the meeting shall be held on the next day.

### **Section 3008. Powers of council concerning officers and agencies**

The council, in addition to other powers and duties as may be conferred upon it by general law, may require any municipal officer to prepare and submit sworn statements regarding the performance of the officer's official duties and may otherwise investigate the conduct of any department, office or agency of the municipal government.

### **Section 3009. Appointment and duties of municipal clerk or secretary**

A municipal clerk or secretary shall be appointed in the manner set forth in the administrative ordinance as provided pursuant to section 3146 (relating to passage of administrative ordinance). The municipal clerk or secretary shall serve as clerk of the council, keep its minutes and records of its proceedings, maintain and compile its ordinances and resolutions as this subpart requires and perform such functions as may be required by law or by local ordinance. The municipal clerk shall, prior to the appointment, have been qualified by training or experience to perform the duties of the office.

## **Section 3010. Executive power vested in executive**

The executive power of the municipality shall be exercised by the executive (mayor).

## **Section 3011. Powers and duties of executive**

The executive (mayor) shall enforce the plan and ordinances of the municipality and all general laws applicable to them. The executive shall, annually, report to the council and the public on the work of the previous year and on the condition and requirements of the municipal government and shall, from time to time, make these recommendations for action by the council as he deems in the public interest. He shall supervise the departments of the municipal government and shall require each department to make annual and other reports of its work as he deems desirable.

## **Section 3012. Approval or veto of ordinances**

- (a) **General rule.** – Ordinances adopted by the council shall be submitted to the executive (mayor) who shall, within ten days after receiving any ordinance, either approve the ordinance by affixing his signature thereto, or veto the ordinance by delivering it to the municipal clerk together with a statement setting forth his objections. The clerk shall immediately notify the council of the veto. No ordinance or any item or part thereof shall take effect without the executive's (mayor's) approval, unless the executive (mayor) fails to return an ordinance to the clerk within ten days after it has been presented to him, or unless council upon reconsideration of the veto on or after the third day following its return by the executive (mayor) shall override the executive's (mayor's) veto by a vote of a majority plus one of the members.
- (b) **Attendance at meetings of council.** – The executive (mayor) may attend meetings of council and may take part in discussions of council but shall have no vote except in the case of a tie on the question of filling a vacancy in the council, in which case he may cast the deciding vote.

## **Section 3013. Mayor, departments and department heads**

- (a) **Inability of executive to perform duties.** – The executive (mayor) shall designate any department head to act as executive (mayor) whenever the executive (mayor) shall be prevented, by absence from the municipality, disability or other cause, from attending to the duties of his office. During such time the person so designated by the executive (mayor) shall possess all the rights, powers and duties of the executive (mayor). Whenever the executive (mayor) has been unable to attend to the duties of his office for a period of 60 consecutive days for any of the reasons stated in this subsection, a member of council shall be appointed by the council as acting executive (mayor), who shall succeed to all the rights, powers and duties of the executive (mayor) or the then acting executive (mayor), until he shall return or his disability ceases.
- (b) **Establishment and exercise of functions of department.** – The municipality may have a department of administration and shall have such other departments as council may establish by ordinance. All of the administrative functions, powers and duties of the municipality, other than those vested in the office of the clerk, treasurer, if elected, and controller, shall be assigned among and within the departments.
- (c) **Appointment and term of department heads and solicitor.** – Each department shall be headed by a director who shall be appointed by the executive (mayor) with the advice and consent of the council. Each municipality shall also have a solicitor who shall be appointed by the executive (mayor) with the advice and consent of council. Each department head and the solicitor shall serve during the term of office of the executive (mayor) appointing him, and until the appointment and qualification of his successor. No member of municipal council shall head a department.

- (d) **Removal of department head.** – The executive (mayor) may remove any department head after notice and an opportunity to be heard. Prior to removing a department head, the executive (mayor) shall first file written notice of his intention with the council. The removal shall become effective 20 days after the filing of the notice.
- (e) **Department officers and employees.** – Department heads shall appoint subordinate officers and employees within their departments under procedures established in section 3122 (relating to appointment of subordinate officers and employees).

### **Section 3014. Department of administration**

- (a) **Department heads.** – Where a department of administration is established, it shall be headed by a director. The director shall be chosen solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office. At the time of appointment, the director need not be a resident of the municipality or this Commonwealth. He shall have, exercise and discharge the functions, powers and duties of the department.
- (b) **Department functions.** – The department, under the direction and supervision of the executive (mayor), shall have the following powers and duties:
  - (1) To assist in the preparation of the budget.
  - (2) To administer a centralized purchasing system.
  - (3) To establish and administer a centralized personnel system.
  - (4) To establish and maintain a centralized accounting system which shall be so designed as to accurately reflect the assets, liabilities, receipts and expenditures of the municipality.
  - (5) To perform any other duties as council may prescribe through the administrative ordinance or as the executive (mayor) may direct.

### **Section 3015. Budget**

The municipal budget shall be prepared by the executive (mayor) with the assistance of the director of the department of administration or other officer designated by the executive (mayor).

### **Section 3016. Form and adoption of budget**

The budget shall be in the form required by council and shall have appended to it a detailed analysis of the various items of expenditure and revenue. The budget as submitted and adopted shall be balanced. Council may reduce any item or items in the executive's (mayor's) budget by a vote of a majority of the council, but an increase in any item or items therein shall become effective only upon an affirmative vote of a majority plus one of the members of council. Council shall, upon the introduction of the proposed budget, fix a date for adoption, which shall except as otherwise provided be not later than December 31 immediately following.

### **Section 3017. Amended budget**

During January next following any municipal election, the executive (mayor) may submit an amended budget to council. Council shall consider it in the same manner as provided in section 3016 (relating to form and adoption of budget), but final consideration of the amended budget shall be completed by February 15 of the same year.

## **Section 3018. Council amendments to budget**

Council may amend the budget during January next following any municipal election. Final adoption of the amended budget shall be completed by February 15 of the same year.

## **Subchapter B Executive (Mayor) - Council Plan B**

### **Section 3031. Designation and applicability of plan**

The form of government provided in this subchapter shall be known as the “Executive (Mayor) - Council Plan B” and shall, together with Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities), Subchapter A of Chapter 30 (relating to executive (mayor) council plan A) and Subchapter A of Chapter 31 (relating to officers and employees), with the exception of section 3013(b) (relating to mayor, departments and department heads), govern any municipality the voters of which have adopted it pursuant to this subpart.

### **Section 3032. Departments**

The municipality shall have a department of administration and shall have such other departments as council may establish by ordinance. The administrative functions, powers and duties of the municipality, other than those vested in the office of the clerk, treasurer and controller, if provided for, shall be allocated and assigned among and within the departments except that the functions specified in section 3014 (relating to department of administration) shall be assigned to the department of administration.

### **Section 3033. Mandatory department of administration**

Under Executive (Mayor) - Council Plan B a department of administration shall be established.

## **Subchapter C Executive (Mayor) - Council Plan C**

### **Section 3041. Designation and applicability of plan**

The form of government provided in this subpart shall be known as the “Executive (Mayor) - Council Plan C” and shall, together with Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities), Subchapter A of Chapter 30 (relating to executive (mayor) - council plan A) and Subchapter A of Chapter 31 (relating to officers and employees), with the exception of section 3011 (relating to powers and duties of executive), govern any municipality the voters of which have adopted it pursuant to this subpart.

### **Section 3042. Powers and duties of executive**

The executive (mayor) shall enforce the plan and ordinances of the municipality and all general laws applicable thereto. The executive shall, annually, report to other council and the public of the work of the previous year and on the condition and requirements of the municipal government and shall, from time to time, make those recommendations for action by the council he deems in the public interest.

## **Section 3043. Appointment and duties of managing director**

- (a) **General rule.** – The executive (mayor) shall appoint, with the advice and consent of the council, a managing director who shall supervise the departments of government and who shall be the contact officer between the mayor and the departments. The managing director shall make periodic reports with those recommendations as he deems appropriate to the executive (mayor) concerning the affairs of municipal government and particularly of the departments.
- (b) **Removal.** – The executive (mayor) may remove a managing director after notice and an opportunity to be heard. Prior to removing a managing director, the executive (mayor) shall first file written notice of his intention with the council. The removal shall become effective 20 days after the filing of the notice.

## **Subchapter D Council - Manager Plan**

### **Section 3051. Designation and applicability of plan**

The form of government provided in this subchapter shall be known as the “Council-Manager Plan” and shall, together with Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities) and Subchapter A of Chapter 31 (relating to officers and employees), govern any municipality the voters of which have adopted this plan pursuant to this subpart.

### **Section 3052. Officers and employees**

Each municipality under this subchapter shall be governed by an elected council, one member of which shall be the mayor, or president of council, or chairman chosen under sections 2924 (relating to specificity of recommendations) and 3056 (relating to selection of mayor, council president or chairman), an elected district attorney in the case of counties, and an appointed municipal manager, and, if so provided under the plan, an elected treasurer, an elected controller and by those other officers and employees as may be duly appointed pursuant to this subchapter, general law or ordinance.

### **Section 3053. Election and term of office of elected officials**

The district attorney in the case of counties and the treasurer and controller, if provided for and if elected, shall be elected by the electors at a regular municipal election and shall serve for a term of four years beginning the first Monday of January next following the election.

### **Section 3054. Election and term of office of council members**

The municipal council shall consist of five members, unless under the authority granted pursuant to section 2924 (relating to specificity of recommendations), the municipality shall be governed by a council of three, seven or nine members. Members of the municipal council shall be elected at large by the electors unless, pursuant to the authority granted under section 2924, members shall be elected on a district basis in which each district is as equal in population as is feasible, or on a combination at large and district basis as determined by the charter study commission or as specified in an initiative petition or ordinance of the governing body under the provisions of sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question), at a regular municipal election. The members shall serve for a term of four years except as provided in this subchapter, beginning on the first Monday of January next following their election.

### **Section 3055. First election of council members**

At the first municipal election following the adoption by a municipality of this charter plan, council members shall be elected and shall serve for the terms as provided in section 3162 (relating to status and term of office of officials).

### **Section 3056. Selection of mayor, council president or chairman**

- (a) **General rule.** – On the first Monday in January following the municipal election, the members of the municipal council shall assemble at the usual place of meeting, organize and elect one of their number as mayor or president of council or chairman unless otherwise provided. The mayor or president of council or chairman shall be chosen by ballot by majority vote of all members of the municipal council. If the members shall be unable, within five ballots to be taken within two days of the organization meeting, to elect a mayor or president of council or chairman, then the member who in the election for members of the municipal council received the greatest number of votes shall be the mayor, president of council or chairman. If that person declines to accept the office, then the person receiving the next highest vote shall be the mayor, president of council, or chairman, and so on, until the office is filled. The mayor, or president of council, or chairman shall preside at all meetings of the municipal council and shall have a vote in its proceedings.
- (b) **Election of mayor.** – On the recommendation of the government study commission as provided under section 2924 (relating to specificity of recommendations), or as specified in an initiative petition or ordinance of the governing body as authorized by sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question), the mayor shall be elected directly by the electors at the regular municipal election in lieu of being chosen as provided in subsection (a).

### **Section 3057. Appointment and duties of municipal clerk or secretary**

A municipal clerk or secretary shall be appointed in the manner set forth in the administrative ordinance as provided in section 3146 (relating to passage of administrative ordinance). The municipal clerk or secretary shall serve as clerk of the council, keep its minutes and records of its proceedings, maintain and compile its ordinances and resolutions as this subpart requires and perform any functions as may be required by law or ordinance. The municipal clerk shall, prior to his appointment, have been qualified by training or experience to perform the duties of the office.

### **Section 3058. Powers and duties of council**

- (a) **General rule.** – All powers as provided by laws applicable to that class of municipality shall be vested in the municipal council, except as otherwise provided by this subchapter, and the council shall provide for the exercise thereof and for the performance of all duties imposed on the municipality by law.
- (b) **Adoption of administrative ordinance.** – The council shall by ordinance adopt an administrative ordinance defining the responsibilities of the municipal departments and agencies as it deems necessary and proper for the efficient conduct of municipal affairs.
- (c) **Appointment of municipal manager.** – The municipal council shall appoint a municipal manager. The office of municipal manager and municipal clerk or secretary may be held by the same person.
- (d) **Investigations.** – The council may make investigations into the affairs of the municipality and the conduct of any municipal department, office or agency.

- (e) **Administrative departments, boards and offices.** – The municipal council shall continue or create, and determine and define, the powers and duties of any executive and administrative departments, boards and offices, in addition to those provided for in this subpart, as it deems necessary for the proper and efficient conduct of the affairs of the municipality, including the office of deputy manager. Any department, board or office so continued or created may be abolished by the municipal council. No member of municipal council shall head an administrative department.
- (f) **Additional powers and limitations.** – It is the intention of this subchapter that the municipal council shall act in all matters as a body, and it is contrary to the spirit of this subchapter for any of its members to seek individually to influence the official acts of the municipal manager or any other officer, or for the council or any of its members to direct or request the appointment of any person to or his removal from office, or to interfere in any way with the performance by the officers of their duties. The council and its members shall deal with the administrative service solely through the municipal manager and shall not give orders to any subordinates of the municipal manager, either publicly or privately. This subchapter does not prevent the municipal council from appointing committees of its own members or of citizens to conduct investigations into the conduct of any officer or department, or any matter relating to the welfare of the municipality, and delegating to those committees such powers of inquiry as the municipal council deems necessary.

### **Section 3059. Qualifications of municipal manager**

The municipal manager shall be chosen by the council on the basis of his executive and administrative qualifications. At the time of his appointment, he need not be a resident of the municipality or this Commonwealth. The municipal manager shall not hold any elective governmental office.

### **Section 3060. Removal of municipal manager from office**

The municipal manager shall be appointed for an indefinite term and may be removed by a majority vote of the council. At least 30 days before the removal becomes effective, the council shall notify the municipal manager of its decision to remove him from office, by a majority vote of its members, stating the reasons for his removal. The municipal manager may reply in writing and may request a public hearing, which shall be held not earlier than 20 days nor later than 30 days after the filing of the request. After the public hearing, if one is requested, and after full consideration, the council by majority vote of its members may adopt a final resolution of removal. By the preliminary resolution, the council may suspend the municipal manager from duty, but may, in any case, cause to be paid immediately any unpaid balance of his salary and his salary for the next three calendar months.

### **Section 3061. Inability of municipal manager to perform duties**

The municipal manager may designate a qualified administrative officer of the municipality to perform his duties during his temporary absence or disability. In the event of his failure to make a designation, or if the absence or disability continues more than 30 days, the council may appoint an officer of the municipality to perform the duties of the manager during the absence or disability until the manager returns or his disability ceases.

### **Section 3062. Powers and duties of municipal manager**

The municipal manager shall have the following powers and duties:

- (1) To be the chief executive and administrative official of the municipality.

- (2) To execute all laws and ordinances.
- (3) To appoint and remove department heads and the deputy manager, if one is authorized by council, and appoint subordinate officers and employees under procedures established in section 3122 (relating to appointment of subordinate officers and employees).
- (4) To negotiate contracts for the municipality, subject to the approval of the municipal council, make recommendations concerning the nature and location of municipal improvements and execute municipal improvements as determined by the municipal council.
- (5) To assure that all terms and conditions imposed in favor of the municipality or its inhabitants in any statute, public utility franchise or other contract are faithfully kept and performed and, upon knowledge of any violations, to call the same to the attention of the municipal council.
- (6) To prepare the agenda for and attend all meetings of the municipal council with the right to take part in the discussions, but without the right to vote.
- (7) To make such recommendations to the council concerning policy formulation as he deems desirable and keep the council and the public informed as to the conduct of municipal affairs.
- (8) To prepare and submit the annual budget to the council together with such explanatory comment as he deems desirable and to administer the municipal budget.
- (9) To perform such other duties as may be required of the municipal manager by ordinance or resolution of the municipal council.
- (10) To be responsible to the council for carrying out all policies established by it and for the proper administration of all affairs of the municipality within the jurisdiction of the council.

### **Section 3063. Preparation and adoption of budget**

The municipal manager shall submit to council his recommended budget, together with any explanatory comment or statement he deems desirable. The budget shall be in such form as is required by council for municipal budgets and shall in addition have appended thereto a detailed analysis of the various items of expenditure and revenue. The budget as submitted and adopted shall be balanced. Council shall upon introduction of the proposed budget fix a date for adoption thereof which shall be not later than December 31 immediately following submission.

### **Section 3064. Amended budget**

During January next following any municipal election, council may request the manager to submit an amended budget to council which shall consider it in the same manner as provided in section 3063 (relating to preparation and adoption of budget), except that final adoption of the amended budget shall not be later than February 15 of the same year.

## **Subchapter E Small Municipality Plan**

### **Section 3071. Designation and applicability of plan**

The form of government provided in this subchapter shall be known as the "Small Municipality Plan." It may be adopted by any municipality having a population of less than 7,500 inhabitants by the last Federal census. The plan, together with Subchapter F of Chapter 29 (relating to general provisions and limitations for optional



plan municipalities) and Subchapter A of Chapter 31 (relating to officers and employees), shall govern any municipality the voters of which have adopted it pursuant to this subpart.

### **Section 3072. Officers**

Each municipality shall be governed by an elected executive (mayor) and council members, an elected district attorney in the case of counties and, if so provided under the plan, an elected treasurer or elected controller and any other officers as shall be appointed pursuant to this subchapter, general law or ordinance.

### **Section 3073. Election of council members**

The council shall consist of the executive (mayor), who shall be elected at large, and two council members unless pursuant to the authority granted under section 2924 (relating to specificity of recommendations) the municipality is governed by an executive (mayor) and four council members, and executive (mayor) and six council members, or an executive (mayor) and eight council members. Members of the council shall be elected at large unless the plan provides that members shall be elected on a district basis in which each district is as equal in population as is feasible, or on a combination at large and district basis as determined by the government study commission or as specified in an initiative petition or ordinance of the governing body under the provisions of sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question), at a regular municipal election by the voters of the municipality. The members of its council shall serve a term of four years beginning on the first Monday in January next following their election, except as provided in this subpart.

### **Section 3074. Organization of council**

On the first Monday of January following the regular municipal election, the members of the council shall assemble at the usual place of meeting and organize. The executive (mayor) shall preside at all meetings of the council and shall have a voice and vote on its proceedings. The council shall select from among its members a president of the council who shall serve in place of the executive (mayor) in the event of his absence or disability.

### **Section 3075. Powers and duties of council**

The legislative power of the municipality shall be exercise by the council, except as may be otherwise provided by general law. A majority of the whole number of the council shall constitute a quorum for the transaction of business, but a smaller number may meet and adjourn from time to time.

### **Section 3076. Municipal clerk or secretary, solicitor and agencies**

- (a) **Municipal clerk or secretary.** – A municipal clerk or secretary shall be appointed in the manner set forth in the administrative ordinance, as provided pursuant to section 3146 (relating to passage of administrative ordinance). The municipal clerk or secretary shall serve as clerk of the council, keep its minutes and records of its proceedings, maintain and compile its ordinances and resolutions as this subpart requires and perform any functions as may be required by law. The clerk shall, prior to his appointment, have been qualified by training or experience to perform the duties of the office.
- (b) **Solicitor and agencies.** – The council may, consistent with statutes applicable to that class of municipality, provide for the manner of appointment of a solicitor, any planning board, zoning board of adjustment, zoning hearing board or personnel board in the municipality and may create commissions and other bodies with advisory powers.

## **Section 3077. Powers and duties of executive**

The executive power of the municipality shall be exercised by the executive (mayor). The executive shall 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 any other times as he deems desirable, on the condition of the municipality and upon its problems of government. The executive (mayor) shall also appoint a finance committee of the council, which shall consist of one or more council members, and may appoint and designate other committees of council of similar composition.

## **Section 3078. Appointment of officers and employees by executive**

The executive (mayor) shall appoint subordinate officers and employees with the advice and consent of council under procedures established in section 3122 (relating to appointment of subordinate officers and employees), except that, in counties, the office of prothonotary and clerk of courts, register of wills and clerk of orphans court shall be filled by appointment by the president judge of the appropriate court with advice and consent of a majority of the council.

## **Section 3079. Preparation and adoption of budget**

The municipal budget shall be prepared by the executive (mayor) and shall be submitted to council in the form required by council. The budget as submitted and adopted shall be balanced. Council shall, upon introduction of the proposed budget, fix a date for adoption thereof which shall be not later than December 31 immediately following.

## **Section 3080. Amended budget**

During the month of January next following any municipal elections, the executive (mayor), upon his own initiative or at the request of council, may submit an amended budget to council, which shall consider it in the same manner as provided in section 3079 (relating to preparation and adoption of budget), except that final adoption of the amended budget shall not be later than February 15 of the same year.

## **Subchapter F Optional County Plan**

### **Section 3091. Designation and applicability of plan**

The form of government provided in this subpart shall be known as the “Optional County Plan” and shall, together with Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities) and Subchapter A of Chapter 31 (relating to officers and employees), govern any county the voters of which have adopted this plan pursuant to this subpart. This option shall be available only to counties.

Section 3092. County officers

- (a) **Enumeration.** – The county officers shall be as follows:
  - (1) County commissioner.
  - (2) Controller or auditor.
  - (3) District attorney.
  - (4) Public defender.

- (5) Treasurer.
- (6) Sheriff.
- (7) Register of wills.
- (8) Recorder of deeds.
- (9) Prothonotary.
- (10) Clerk of the courts.

- (b) **Election and term of office.** – County officers, except for public defenders, who shall be appointed as provided by law, shall be elected at the municipal election and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors are duly qualified. Vacancies shall be filled in the manner provided by law.
- (c) **Salaries and fees.** – County officers shall be paid only by salary as provided by law for services performed for the county or any other governmental unit. Fees incidental to the conduct of any county office shall be payable directly to the county or the Commonwealth or as otherwise provided by law.
- (d) **County commissioners.** – Three county commissioners shall be elected in each county. In the election of these officers, each qualified elector shall vote for not more than two persons, and the three persons receiving the highest number of votes shall be elected.
- (e) **Coroner or medical examiner.** – The coroner or medical examiner shall be a statutory office elected at the municipal election and shall hold the office for the term of four years, beginning on the first Monday of January next after election, and until his successor is duly qualified. He shall be paid only by salary as provided by law. Vacancies shall be filled in the manner provided by law.
- (f) **Jury commissioners.** – Jury commissioners shall be statutory officers and shall be elected at the municipal election and shall hold their office for the term of four years, beginning on the first Monday of January, next after election, and until their successors are duly qualified. The salary board shall fix the salary of the jury commissioners. Vacancies in the office of jury commissioner shall be filled by the president judge of the court of common pleas.

### **Section 3093. Powers**

All county officers may exercise those powers granted by general law to county offices of the class of county to which it belongs.

### **Section 3094. Additional options for election of county sheriff**

A government study commission created and constituted as provided in Subchapter B of Chapter 29 (relating to procedure for adoption of a home rule charter or optional plan of government) for counties, or an initiative petition or ordinance of the governing body as authorized by sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question), may recommend and cause to be placed on the ballot, as a part of the question submitted to the voters for approval, additional options as part of the optional plans as set forth in this chapter providing for the election of the county sheriff.

## **Section 3095. Approval of plan**

If the optional plan, including an additional option or options as provided in section 3091 (relating to designation and applicability of plan), is approved by the voters, the county shall be governed by the provisions of the subchapter providing the basic optional plan and by the provisions of Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities) and Subchapter A of Chapter 31 (relating to officers and employees), except that the elected sheriff shall be subject to the provisions pertaining to that office as provided in this subchapter.

## **Chapter 31**

### **General Provisions Common to Optional Plans**

#### **Subchapter A**

#### **Officers and Employees**

### **Section 3101. Adverse interest in contracts for purchase or services**

- (a) **General rule.** – If a municipal officer or official elected or appointed knows or by the exercise of reasonable diligence should know that he is interested to any appreciable degree, either directly or indirectly, in any contract for the sale or furnishing of any personal property for the use of the municipality, or for any services to be rendered for the municipality involving the expenditure of more than \$300 in any year, he shall notify council. Any such contract shall not be passed and approved by council except by an affirmative vote of at least three-fourths of the members. If the interested officer is a member of council, he shall refrain from voting upon the contract.
- (b) **Exception.** – This section does not apply to cases where the officer or official is an employee of the person, firm or corporation to which money is to be paid in a capacity with no possible influence on the transaction and in which he cannot possibly be benefited either financially or in any other material manner.
- (c) **Penalties.** – Any officer or official who knowingly violates this section shall be liable to the municipality upon his bond, if any, or personally, to the extent of the damage shown to be sustained by the municipality and to ouster from office, and commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine not exceeding \$500, or imprisonment not exceeding one year, or both.

### **Section 3102. Acceptance of services at more favorable terms**

An officer or employee shall not accept or receive, directly or indirectly, from any person operating within the territorial limits of a municipality any interurban railway, bus line, 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 the prohibition of free transportation shall not apply to police officers or firefighters in uniform. Free service to the municipal officials provided by any franchise or ordinance shall not be affected by this section.

### **Section 3103. Gift or promise of thing of value to influence political support**

- (a) **General rule.** – A candidate for office, appointment or employment, or an officer, appointee or employee in any municipality shall not, directly or indirectly, give or promise to 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.

- (b) **Penalty.** – Any person who violates subsection (a) shall be disqualified to hold the office or employment to which he may be or may have been elected or appointed.

### **Section 3104. Refusal or failure to appear or testify before court**

Any person elected or appointed to any office or position in a municipality governed under this subpart who, after lawful notice or process, willfully refuses or fails to appear before any court, any legislative committee or the Governor, or having appeared refuses 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 refuses to waive immunity from prosecution on account of any matter in relation to which he may be asked to testify, may be removed from office by the council of the municipality.

## **Subchapter B Treasurer**

### **Section 3111. Selection and duties of municipal treasurer**

- (a) **General rule.** – Under any of the optional plans as set forth in this subpart, except for the plan set forth in Subchapter F of Chapter 30 (relating to optional county plan), the office of municipal treasurer may be omitted, or may be filled by appointment or by election, as provided in the plan. If the office of municipal treasurer is to be filled by appointment, the appointment shall be made in accordance with the appointment procedures for other department heads.
- (b) **Powers and duties of elected treasurer.** – The municipal treasurer, if elected shall perform the functions and duties and have the powers relating to the collection, receiving, safekeeping and payment over the public moneys, including municipal, county, institution district and school district taxes, as provided by law and shall have any other functions, powers and duties assigned to him by the executive of the municipality.

## **Subchapter C Appointment Power and Personnel**

### **Section 3121. Appointment of members of boards and commissions**

The appointment power of the chief executive of the municipality under any of the plans authorized by this subpart shall include the appointment of members of boards and commissions authorized by this subpart, by law, or by action of municipal council. All such appointments shall be with the advice and consent of a majority of municipal council.

### **Section 3122. Appointment of subordinate officers and employees**

- (a) **General rule.** – Appointments and promotions of subordinate officers and employees within departments shall be made by the department head on the basis of a personnel system which shall include written procedures for appointment and promotion based on merit and fitness as demonstrated by examination or other evidence of competence for the position.

- (b) **Personnel rules.** – The personnel system shall be governed by personnel rules which shall be prepared by the executive (mayor) or manager and submitted to the municipal council which shall adopt them with or without amendments unless otherwise provided for or arrived at by collective bargaining. The personnel rules may provide for:
- (1) The classification of all municipal positions, based on the duties, authority and responsibility of each position, with adequate provision for reclassification of any position whenever warranted by change of circumstances.
  - (2) A pay plan for all municipal position.
  - (3) Methods for determining the merit and fitness of candidates for appointment or promotion.
  - (4) The policies and procedures regulating reduction in force and disciplinary action, including suspension and removal of employees.
  - (5) The hours of work and provisions for sick and vacation leave and holidays and overtime compensation.
  - (6) Grievance procedures, including procedures for the hearing of grievances.
  - (7) Other practices and procedures necessary to the administration of the municipal personnel system.

## **Subchapter D Filling Vacancies in Elected Office**

### **Section 3131. Applicability of subchapter**

This subchapter shall apply to the filling of vacancies in elected office in all optional plans and options except those set forth in Subchapter F of Chapter 30 (relating to optional county plan).

### **Section 3132. Manner of filling vacancies in office**

- (a) **Members of council.** –
- (1) If a vacancy exists in the municipal council, the municipal council shall, by a majority of its remaining members, fill the vacancy, within 30 days thereafter, by electing a qualified person to serve until that first Monday of January when his successor is duly sworn into office for the remainder of the term of the person originally elected to the office. The successor shall be elected at the next municipal election occurring at least 50 days after the vacancy begins.
  - (2) In case vacancies should exist whereby the offices of a majority or more members of the municipal council become vacant, the remaining members shall fill the vacancies, one at a time, giving each new appointee reasonable notice of his appointment as will enable him to meet and act with the then qualified member or members of the municipal council in making further appointments until a bare majority of members of municipal council members have been qualified. At that time these members shall appoint persons to fill the remaining vacancies at a meeting attended by the majority members of municipal council, such appointees to receive a majority of the votes of the members present at the meeting. Each person selected to fill the vacancy or vacancies shall hold his office as provided in this subsection.
  - (3) If, by reason of a tie vote or otherwise, the vacancy shall not have been filled by the remaining members of municipal council within the time as limited in this subsection, the court of common pleas, upon the petition of ten or more qualified electors, shall fill the vacancy by the appointment of a qualified person for the portion of the unexpired term as provided in this subsection.

(b) **Other officers.** –

- (1) If a vacancy occurs in the office of executive (mayor), municipal treasurer, if elected, municipal controller, if elected, county district attorney or county sheriff, if elected, the municipal council shall fill the vacancy within 30 days thereafter by choosing an executive (mayor), a municipal treasurer, a municipal controller, a county district attorney or a county sheriff, as the case may be, to serve until his successor is elected by the qualified electors at the next municipal election, occurring at least 50 days after the vacancy occurs, and is duly sworn into office. The person so elected shall serve from the first Monday of January next succeeding his election for the remainder of the term of the person originally elected to the office.
- (2) If, by reason of a tie vote or otherwise, a vacancy in the office of executive (mayor), treasurer, controller, county district attorney or county sheriff has not been filled by council within the time as limited in this subsection, the court of common pleas, upon petition of ten or more qualified electors, shall fill the vacancy by the appointment of a qualified person for the portion of the unexpired term as provided in this subsection.

## **Subchapter E Legislation by Council**

### **Section 3141. Regular and special meetings of council**

The council shall, by ordinance or resolution, designate the time of holding regular meetings which shall be at least monthly. The executive (mayor) or the president of council 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 or secretary shall keep a journal of its proceedings and record the minutes of every meeting.

### **Section 3142. Procedure and functions of council**

- (a) **Rules of procedure.** – 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, and no ordinance shall be adopted by the council without the affirmative vote of a majority of all the members of the council.
- (b) **Adoption of ordinances and resolutions.** – Each ordinance or resolution shall be presented and considered as determined by council rules of procedure. 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 the meeting and by the municipal clerk or secretary.
- (c) **Administrative ordinance.** – Council shall adopt by ordinance an administrative ordinance which shall provide for the establishment and filling of additional administrative offices which it deems necessary and shall provide for administrative procedure not otherwise provided for in this subpart or by general law.
- (d) **Compensation of controller and treasurer.** – The compensation of the controller and treasurer shall be fixed by the council.

### **Section 3143. Adoption of ordinances**

- (a) **General rule.** – Except as may otherwise be provided in this subpart, all ordinances shall be adopted and published as provided by law. Any ordinance may incorporate by reference any standard technical regulation or code, official or unofficial, which need not be so published whenever ten copies of the regulations or code have been placed on file in the office of the municipal clerk or secretary and in the office of the body or department charged with the enforcement of the ordinance.
- (b) **Effective date.** – No ordinance, other than the local budget ordinance, shall take effect less than ten days after its final passage by council and approval by the executive (mayor) where that approval is required, unless the council adopts a resolution declaring an emergency and at least a majority plus one of all the members of the council vote in favor of the resolution.

### **Section 3144. Recording and compilation of ordinances and resolutions**

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

### **Section 3145. Filing and publication of rules and regulations**

No rule or regulation made by any department, officer, agency or authority of the municipality, except as it 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 secretary or in any other manner provided by ordinance. The council shall provide for the prompt publication of such rules and regulations.

### **Section 3146. Passage of administrative ordinance**

The council shall prepare and pass an administrative ordinance which shall provide for the manner of appointment of a solicitor, clerk or secretary, may create commissions and other bodies with advisory powers and may include additional provisions relating to the internal structure of the municipality as long as the provisions of the administrative ordinance are not in conflict with this subpart.

## **Subchapter F Audit and Control**

### **Section 3151. Exercise of financial management control functions**

The council shall provide by separate ordinance or in the administrative ordinance for the exercise of a control function in the management of the finances of the municipality by the municipal controller or an independent audit or, in the case of the optional plan set forth in Subchapter F of Chapter 30 (relating to optional county plan), by the controller or auditors.

### **Section 3152. Post audit by independent auditor**

The council may provide for annual post audits of all accounts by an independent auditor who shall be a certified public accountant registered in this Commonwealth or a firm of certified public accountants registered in this Commonwealth.



## **Section 3153. Selection of controller**

Under any of the optional plans as set forth in this subpart, except for the plans set forth in Subchapter F of Chapter 30 (relating to optional county plan), the office of controller may be omitted or it may be filled by election by the electors rather than by appointment when recommended by the government study commission and adopted by the electors. If the office of controller is to be filled by appointment, a controller shall be appointed for an indefinite term by a majority of the members of the governing body.

## **Subchapter G Transition to Optional Plan Government**

### **Section 3161. Applicability of plan**

Whenever the electors of a municipality adopt any of the optional plans provided by this subpart at any election for that purpose, the municipality shall be governed under the provisions of that plan, the provisions of law applicable to that class of municipality and this subpart from the first Monday in January following the municipal election occurring after the next succeeding primary election, except as provided in section 2924(c) (relating to specificity of recommendations).

### **Section 3162. Status and term of office of officials**

- (a) **Existing elected official.** – Any elected municipal official in office at the time of the adoption of any optional plan provided by this subpart shall continue in office only until the new plan of government goes into effect as provided in section 3161 (relating to applicability of plan), except as otherwise provided in subsection (c) and (d).
- (b) **Members of council.** – At the municipal election next succeeding the adoption of one of the optional plans provided for in this subpart, if four or fewer council members are elected, they shall serve for terms of four years. If five are elected, the four successful candidates receiving the highest percentage of the votes cast for the office to which they are elected shall serve for terms of four years, and the candidate receiving the next highest percentage of votes shall serve for a term of two years. If six or more council members are elected, the five candidates receiving the highest percentage of the votes cast for the office to which they are elected shall serve for terms of four years, and the remaining successful candidates receiving the next highest percentage of votes shall serve for terms of two years. Thereafter, all council members shall be elected for terms of four years. Where the term of office for council members under the adopted plan is different from the term of office for council members under an existing form of government, the terms of office for council members so elected shall be established so that, at each subsequent municipal election at which council members are elected, the number of council members to be elected shall be as nearly equal as possible to the number of council members to be elected at every other regular municipal election at which council members are elected.
- (c) **Treasurer, controller, district attorney and sheriff.** – If an elected municipal treasurer or elected municipal controller, elected county district attorney or elected county sheriff is in office at the time of the adoption of an optional plan under the provisions of this subpart, a treasurer, controller, district attorney or sheriff, as the case may be, shall not be elected or appointed to take office until after the resignation, death, removal or expiration of the term of the incumbent in the office. At the expiration of the term of the incumbent, a treasurer, controller, district attorney or sheriff, as the case may be, shall be elected or appointed for the full term for the office as provided by the optional plan adopted.
- (d) **Continuation of existing members of council in office.** – Any member of a municipal governing body in office at the time of the adoption of an optional plan shall remain in office, continuing as an at-large

or district council member, as the case may be, until the expiration of this term in office and shall receive the compensation provided by law at that time:

- (1) If that council member was elected on an at-large basis, the newly adopted optional plan provides for a total number of at-large council members equal to or exceeding the total number of at-large council members under the existing form of government.
- (2) If that council member was elected on a district basis, the district from which that council member was elected remains unchanged and continues to encompass the exact same geographical area under the newly adopted optional plan as under the existing form of government and the number of council members to be elected from that district under the newly adopted optional plan is equal to or exceeds the number elected from that district under the existing form of government.

Any council member may, by writing filed with the municipal treasurer, direct that any portion of this annual compensation for serving in office be returned to the municipal treasury. For the purpose of this section, an executive or mayor who is also a member of the council under an existing plan shall be considered as a member of the council, and after the new plan goes into effect, his duties shall be only those of a member of council as prescribed by the new plan.

- (e) **Number of members of council to be elected.** – At the municipal election next succeeding the adoption of one of the optional plans provided for in this subpart, the number of council members prescribed by the terms in the plan less the number of council members then in office whose terms do not expire on the first Monday in January next following, as may be determined by subsection (d), shall be elected.
- (f) **Filling vacancies on council existing prior to election.** – If there are vacancies in council occurring by reason of resignation, death, or removal 90 days or more before the election, they shall be filled for the remainder of the term of the person originally elected to that office.

### **Section 3163. Compensation of elected officials**

- (a) **Officials elected prior to transition year.** – The annual compensation of the executive (mayor) and council members elected to their offices in the year prior to the transition year under any of the optional plans, except the plan set forth in Subchapter F of Chapter 30 (relating to optional county plan), adopted pursuant to this subpart, shall be established by the commission as part of its recommendations or by the initiative petition or ordinance of the governing body authorized by sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner submission of question).
- (b) **Officials elected subsequent to transition.** – The compensation of the executive (mayor), council members, controller and treasurer elected to their offices subsequent to the transition to any of the optional plans set forth in this subpart, except for the plan set forth in Subchapter F of Chapter 30, shall be fixed by ordinance of council adopted at least two days prior to the last day fixed by law for candidates to withdraw their names from nomination previous to the municipal election. After the compensation is fixed by ordinance, only an increase or decrease thereof need be fixed by the ordinance.

### **Section 3164. Status of existing ordinances and resolutions**

On the effective date of an optional plan adopted pursuant to this subpart, all ordinances and resolutions of the municipality to the extent that they are not inconsistent with the provisions of this subpart shall remain in full force and effect.

## **Section 3165. Abolishment of existing appointive offices**

- (a) **General rule.** – On the effective date of an optional plan adopted pursuant to this subpart, all appointive offices then existing in such municipality shall be abolished and the terms of all appointed officers shall immediately cease and terminate. This section does not abolish the office or terminate the terms of office of any alderman or constable or of any official or employee now protected by any tenure of office or civil service law, or of any police officer or firefighter, whether or not protected by a tenure of office law.
- (b) **Use of resolution to govern interim proceedings.** – 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 no later than 60 days after the effective date of the optional plan.

## **Section 3166. Pending actions and proceedings**

All actions and proceedings of a legislative, executive or judicial character, pending upon the effective date of an optional plan, may continue. The appropriate officer or employee under the optional plan shall be substituted for the officer or employee exercising or discharging the function, power or duty involved in the action or proceeding before the effective date.

## **Subchapter H Repeal of Optional Plan**

### **Section 3171. Repeal of optional plan and establishment of new form of government**

- (a) **General rule.** – The procedure for repeal of an optional plan shall be the same as for adoption of an optional plan as provided in Subchapter B of Chapter 29 (relating to procedure for adoption of a home rule charter or optional plan of government), excluding the procedure provided in sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question). Whenever the electors, by a majority vote of those voting on the question, vote in favor of repeal of an optional plan and the establishment of a particular form of government, the municipality shall be governed under the form of government selected by the electors. The form of government so approved shall take effect on the first Monday of January following the municipal election at which the elective officials of the form of government selected by the electors shall have been elected. The government study commission shall provide in its report for the new form of government to be established.
- (b) **Amendment procedure.** – This section does not prohibit or limit the procedure provided in sections 2942, 2943 and 2944 to amend an optional plan.