

CHAPTER 31
GENERAL PROVISIONS COMMON TO OPTIONAL PLANS

Subchapter

- A. Officers and Employees
- B. Treasurer
- C. Appointment Power and Personnel
- D. Filling Vacancies in Elected Office
- E. Legislation by Council
- F. Audit and Control
- G. Transition to Optional Plan Government
- H. Repeal of Optional Plan

Enactment. Chapter 31 was added December 19, 1996, P.L.1158, No.177, effective in 60 days.

Cross References. Chapter 31 is referred to in section 3001 of this title; section 14406.1 of Title 11 (Cities).

SUBCHAPTER A
OFFICERS AND EMPLOYEES

Sec.

- 3101. Adverse interest in contracts for purchase or services.
- 3102. Acceptance of services at more favorable terms.
- 3103. Gift or promise of thing of value to influence political support.
- 3104. Refusal or failure to appear or testify before court.

Cross References. Subchapter A is referred to in sections 3031, 3041, 3051, 3071, 3091, 3095 of this title.

§ 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.

§ 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.

§ 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.

§ 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

Sec.

3111. Selection and duties of municipal treasurer.

§ 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 of 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

Sec.

3121. Appointment of members of boards and commissions.

3122. Appointment of subordinate officers and employees.

§ 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.

§ 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 positions.

(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.

Cross References. Section 3122 is referred to in sections 3013, 3062, 3078 of this title.

SUBCHAPTER D
FILLING VACANCIES IN ELECTED OFFICE

Sec.

3131. Applicability of subchapter.

3132. Manner of filling vacancies in office.

§ 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).

§ 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

Sec.

3141. Regular and special meetings of council.

3142. Procedure and functions of council.

3143. Adoption of ordinances.

3144. Recording and compilation of ordinances and resolutions.

3145. Filing and publication of rules and regulations.

3146. Passage of administrative ordinance.

§ 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.

§ 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 procedures 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.

§ 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.

§ 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.

§ 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.

§ 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.

Cross References. Section 3146 is referred to in sections 3009, 3057, 3076 of this title.

SUBCHAPTER F
AUDIT AND CONTROL

Sec.

3151. Exercise of financial management control functions.

3152. Post audits by independent auditor.

3153. Selection of controller.

§ 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 auditor 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.

§ 3152. Post audits 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.

§ 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

Sec.

3161. Applicability of plan.

3162. Status and term of office of officials.

3163. Compensation of elected officials.

3164. Status of existing ordinances and resolutions.

3165. Abolishment of existing appointive offices.

3166. Pending actions and proceedings.

§ 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).

Cross References. Section 3161 is referred to in section 3162 of this title.

§ 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 subsections (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 his 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 of 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.

Cross References. Section 3162 is referred to in sections 3005, 3055 of this title.

§ 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 of 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.

§ 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.

§ 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 not later than 60 days after the effective date of the optional plan.

§ 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

Sec.

3171. Repeal of optional plan and establishment of new form of government.

§ 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 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.