

REPORT
AND
RECOMMENDED HOME RULE CHARTER
FOR THE BOROUGH OF MALVERN
CHESTER COUNTY, PENNSYLVANIA

Prepared by
The Borough of Malvern Local Government Study Commission
February 11, 2008

BOROUGH OF MALVERN
LOCAL GOVERNMENT STUDY COMMISSION

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BOROUGH OF MALVERN LOCAL GOVERNMENT STUDY COMMISSION

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1 East First Avenue
Malvern, Pennsylvania 19355

February 11, 2008

TO THE CITIZENS OF THE BOROUGH OF MALVERN:

The Borough of Malvern Local Government Study Commission is pleased to present its Report and Home Rule Charter.

The Report and Home Rule Charter reflect more than a year's worth of extensive study, research and deliberation by the Commission. During this time, the current form of borough government under the Borough Code was examined, deficiencies identified, and alternatives considered. The proposed Home Rule Charter offers a new form of local government that the Commission believes will provide for increased professionalism, accountability, efficiency and cooperation in the administration of the Borough as well as expanded representation and empowerment of the citizens. The Commission held more than nineteen meetings, all of which were open to the public and offered opportunities for public input. A public hearing was held on February 4, 2008 at which the public was afforded the opportunity to express their views on borough government and the work of the Commission. The Commission benefited greatly from the input of the public, experts in local governance, and the perspectives of past and present borough officials.

The recommended Home Rule Charter will improve our structure of government in many positive ways but the ultimate benefit is that Home Rule will free Malvern from the limitations presently imposed by the Borough Code. A home rule charter will place the control of Malvern's municipal government in the hands of its citizens, so that the Borough may adapt and respond to the changes and challenges facing boroughs today and into the future.

The question to adopt the Home Rule Charter will be on the April 22, 2008 ballot.

The Commission expresses its appreciation to all of those who assisted in the Commission's work. We are grateful for the trust that the voters placed in us and hope that they will appreciate and embrace the product of our labors.

Respectfully submitted,
Malvern Local Government Study Commission

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**RECOMMENDATION TO THE CITIZENS OF THE BOROUGH OF MALVERN AND
QUESTION TO BE PLACED ON THE APRIL 22, 2008 PRIMARY ELECTION
BALLOT**

The Borough of Malvern Local Government Study Commission unanimously recommends that the Borough of Malvern adopt the Home Rule Charter prepared by the Commission as authorized by the Pennsylvania Home Rule Charter and Optional Plans Law. Based upon this recommendation, a question will be placed on the April 22, 2008 ballot at which time the voters of the Borough of Malvern will vote on the following question:

“Shall the Home Rule Charter contained in the report dated February __, 2008 of the Borough of Malvern Local Government Study Commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by the Borough of Malvern.”

Yes_____ No_____

The following interpretative statement will accompany the question on the ballot:
“A vote of YES is a vote to change the form of government of the Borough of Malvern from a Borough to a HOME RULE CHARTER; a vote of NO is a vote that the form of government not be changed.”

BOROUGH OF MALVERN LOCAL GOVERNMENT STUDY COMMISSION: AN OVERVIEW OF THE PROCESS

Malvern Borough Council adopted an ordinance in August of 2006 calling for the election of a Study Commission to look at the possibility of establishing a Home Rule Charter for the Borough of Malvern. The seven members of the Borough of Malvern Local Government Study Commission were elected in the November 2006 general election. They were sworn into office at their first meeting held on February 24, 2007 in Malvern Borough Council Chambers. At their organizational meeting held on February 24, 2007, they chose James Vike as Vice Chairman, and Sandra Kelley as Treasurer. Regularly scheduled meetings of the Commission were set for the second and fourth Monday of each month. A public hearing was held on February 4, 2008 for the purpose of receiving public input on the work of the Commission. All meetings of the Commission were open to the public and properly sunshined in accordance with state law. Much of the Commission’s work in 2007 was spent studying the Borough of Malvern’s current form of government (Borough Code) and reviewing available documents, including: the Borough Code and home rule charters from other Pennsylvania municipalities. The Commission also reviewed extensive materials concerning taxing options and civil service options of home rule charter communities.

The Commission early on agreed to a series of goals to be achieved by adoption of a Home Rule Charter for the Borough of Malvern, should the Commission agree to recommend a Home Rule Charter as the proper course of action. Those goals are as follows:

- 1) To address potential tax shortfalls in the collection of the Borough's earned income tax ("EIT") should the Great Valley School District exercise its right to take up to 50% of the Borough's EIT by adopting a similar tax on earned income.
- 2) Provide for the constant revitalization and accountability of leadership through the imposition of term limits for the office of Mayor and Borough Council.
- 3) Provide expanded participation and civic involvement of the public in Borough government through the adoption of referendum and initiative provisions in the Charter.
- 4) Provide a structure of government that allows for greater flexibility over time by removing the Borough from the complex and restrictive bounds of the current Borough Code.
- 5) To ensure a continued effort of ethical government through the imposition of professional and ethical standards for public service for all elected and appointed officials.

The Commission undertook a process of identifying key deficiencies in the Borough's current form of government. The Commission proposed recommendations for reform, and identified whether those recommendations required a home rule charter in order to create the change. The Commission members analyzed a range of topics including, but not limited to, the basic form of government, more flexible taxing schemes to confront the realistic possibility that the Borough will face tax shortfalls if the Great Valley School District adopts a tax on earned income, the creation of term limits for members of Council and the Mayor, the creation of appropriate avenues to afford citizens a greater voice in Borough government, whether to eliminate the position of Tax Collector and whether to retain the Civil Service Commission. Based upon express preferences in those areas, the Commission members agreed that in order to create the change it wanted, a home rule charter was necessary. The Borough Code did not allow for the key elements of change the Commission identified as necessary for the Borough's future financial, social or political success.

Having agreed to draft a home rule charter, Commission members agreed to hire a legal advisor, Vincent M. Pompo, Esquire, of the firm of Lamb McErlane PC of West Chester. Mr. Pompo brought to the Commission his experience in representing home rule charter communities and boroughs, and assisted in guiding the commission members through a lengthy process of consideration, negotiation and cooperation.

The Commission was facilitated in its work by the appropriation of \$17,300.00 by Malvern Borough Council which, to date, has gone for the legal services of Mr. Pompo, the purchase of publications to assist the Commission in its work, as well as other minor expenses all of which are outlined in the financial statement of our expenditures included with this report. The

Commission anticipates using the remainder of the funds appropriated to pay the outstanding fee owed to Mr. Pompo, for the printing of copies of the proposed Home Rule Charter to be distributed to the citizens of Malvern, and to assist the Commission in its efforts at public education on the charter. The Commission intends to spend the remaining months of its existence on public education of the charter and drafting a list of recommendations to the Borough Council that we believe will provide guidance on a variety of matters pertaining to the Administrative Code and transitional aspects of the new form of government, should the Charter be adopted by the voters in April.

The proposed Home Rule Charter was adopted by the Commission for recommendation to the voters of the Borough of Malvern on February 11, 2008 by a unanimous vote.

OVERVIEW OF THE MAIN FEATURES OF THE PROPOSED HOME RULE CHARTER:

The proposed charter provides for a legislative body consisting of seven Council members elected at large and a Mayor elected at large. An appointed professional Borough Manager will be the chief administrative and operating officer responsible for the day-to-day operation of the Borough. The Borough Manager and Borough Solicitor are appointed and removable by the Council. The elected position of Tax Collector is abolished, and the Tax Collector's duties are assumed by the Borough Treasurer. The Civil Service Commission which governs certain matters regarding full time police officers is retained, while flexibility is provided for the future hiring and recruitment of police officers. The charter provides for citizen Initiative and Referendum as a way to permit fuller citizen participation in enacting ordinances and as a means to amend the charter. The charter also contains enhanced professional and ethical standards and guidelines. The document is markedly shorter and more readable than the current Borough Code and, it is hoped, easier to understand. The document provides the flexibility to change as required over time.

The Commission has identified four key advantages to the proposed charter:

1 Sound Fiscal and Planning Management.

-The Borough receives approximately 50% of its income from a 1% Earned Income Tax (EIT). The Great Valley School District currently does not impose an EIT, but is allowed by Pennsylvania law to collect a .5% EIT at any time. The Borough will lose 25% of its income should that happen.

The Home Rule Charter reduces limitations on tax rates and so provides greater flexibility to counter this potential loss of revenue.

2. Citizen Empowerment.

-Initiative/Referendum provisions to allow citizens the right to propose or repeal ordinances.

-Initiative/Referendum provisions to allow citizens the right to propose amendments to the Charter.

3. Revitalization of Leadership.

-The creation of term limits for Council members and the Mayor (two four year terms).

-The adoption of a vacancy replacement system that is more inclusive for the citizens of the Borough.

4. Accountable and Efficient Administration.

-Eliminating the complex and burdensome bureaucratic system imposed under the current Borough Code.

-Creating more flexibility for the bidding of public contracts than that afforded under the current Borough Code.

-Borough Treasurer responsible for Real Estate Tax collection.

-Flexible civil service requirements associated with the recruitment and hiring of police officers.

-Enhanced ethical requirements for elected and appointed officials.

-Explicit provisions regarding the role and responsibilities of the Borough Manager.

-Eliminating the Vacancy Board and subjecting the Shade Tree Commission to the oversight of Council.

CONCLUSION:

It is now up to the voters of the Borough of Malvern to decide whether or not to opt for the Home Rule Charter that we have drafted after many hours of thoughtful deliberation and full debate. It is the expressed hope of the Commission that the citizens of Malvern will adopt this charter which would grant the Borough the benefits of local control and new ways to support its financial, social, and political future through this improved form of local government that we believe can make a positive difference in the governance of our community. We call upon our fellow citizens to study and discuss this report and recommended charter, turn out to vote on the Charter question on April 22, 2008, and continue to take an active role in the civic lives of Malvern.

Respectfully submitted by,

Commission Members and Malvern Residents:

**List of Resources Used
Appropriated Funds & Expenses
January 1, 2007 through February 11, 2008**

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
3/2/07	Daily Local News – Public Mtg Notices	73.08
4/5/07	Daily Local News – Ad for Minute Taker for GSC	87.29
8/17/07	Daily Local News – Public Mtg Notices	73.08
8/30/07	Lamb McErlane PC	950.00
9/27/07	Lamb McErlane PC	2,462.50
10/23/07	Reed Smith Shaw & McClay LLP	1,446.72
10/31/07	Lamb McErlane PC	3,256.79
11/27/07	Lamb McErlane PC	2,304.41
12/28/07	Lamb McErlane PC	550.00
1/9/08	Daily Local News – Public Mtg Notice of 1/14/08	61.26
1/31/08	Lamb McErlane PC	900.00
2/1/08	Dolores Magee	225.45
2/1/08	Joan Fogarty	120.00
	Daily Local News – Publish Public Hearing Notice	
	Daily Local News – Publish Public Notice of HRC	371.20
	Lamb McErlane PC	
	Jen Guy – Public Hearing 2/4/08 (Court Reporter)	

**HOME RULE CHARTER OF THE
BOROUGH OF MALVERN**

**ARTICLE I
General Powers and Provisions**

Section 101. Name.

The Borough of Malvern shall continue as a municipal corporation under the name of “Borough of Malvern”. As used in this Charter, the words Borough, Municipality, and Malvern shall mean the Home Rule Municipality of the Borough of Malvern, Chester County, Pennsylvania.

Section 102. Continuation.

All powers and functions contained in any ordinance and resolutions which were in force on the effective date of this Charter, and not inconsistent herewith, shall continue in force until amended or repealed.

Section 103. Powers and Functions.

- A. The Borough may exercise any power and function not denied it by the Constitution of the Commonwealth of Pennsylvania, by the General Assembly of the Commonwealth, or by this Charter.
- B. The powers and functions of the Borough under this Charter shall be broadly construed in favor of the Borough with the greatest possible power of self-government. Except as limited in Section 103.A, all possible powers and functions of the Borough are to be considered as if specifically and individually set forth in this Charter, whether such powers are presently available or may hereafter become available. The designation of specific powers in this Charter shall not be construed as limiting in any way the general powers of the Borough granted by this Article.

Section 104. Election Procedures.

The procedure for nomination and election of officials shall be in accordance with the applicable provisions of the Pennsylvania Election Code, 25 P.S. §§ 2601 *et seq.*, as amended.

Section 105. Definitions.

- A. “Administrative Code.” An ordinance that provides for the administrative organization of the Borough government, the assignment of duties and responsibilities to officers and employees, and the procedural requirements set forth in General Law or in this Charter.

- B. “Borough Code.” An Act by the General Assembly of the Commonwealth of Pennsylvania, as amended, concerning boroughs, and revising, amending and consolidating the law relating to boroughs.
- C. “Borough official.” Any person elected by the residents of the Borough or elected or appointed by any elected or appointed officer prescribed by this Charter, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense, or to otherwise exercise the power of the Borough.
- D. “Business.” Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.
- E. “Business with which he or she is associated.” Any business in which the person or a member of the person’s immediate family is a director, officer, owner, employee or has a financial interest.
- F. “Confidential information.” Information not obtainable from reviewing a public document or from making inquiry to a publicly available source of information.
- G. “Conflict” or “conflict of interest.” Use by a Borough official or Borough employee of the authority of his or her office or employment or any confidential information received through his or her holding Borough office or employment for the private pecuniary benefit of himself, a member of his or her immediate family or a business with which he or she or a member of his or her immediate family is associated. “Conflict” or “conflict of interest” does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the Borough official or Borough employee, a member of his or her immediate family or a business with which he or she or a member of his or her immediate family is associated.
- H. “De minimis economic impact.” An economic consequence which has an insignificant effect.
- I. “Financial interest.” Any financial interest in a legal entity engaged in business for profit which comprises more than five percent (5%) of the equity of the business or more than five percent (5%) of the assets of the economic interest in indebtedness.
- J. “General Law.” Acts of the General Assembly of Pennsylvania that are uniform and applicable throughout the Commonwealth.
- K. “Immediate family.” A parent, spouse, child, brother, sister, stepchild, stepbrother, stepsister, in-law or life partner.
- L. “Person.” A business, government body, individual, corporation, union, association, firm, partnership, committee, club, or other organization or group of persons.

- M. "Political subdivision." Any county, city, borough, incorporated town, township, school district, vocational school, county institution district, and any authority, entity or body organized by the aforementioned.
- N. "Regular Meetings." Any prearranged gathering of the Council not advertised as a work session which is attended or participated in by a quorum of the members of Council held for the purpose of deliberating Borough business or taking official action.
- O. "Resident." An individual who resides in the aggregate more than one-hundred eighty-three (183) days of the calendar year in the Borough.

ARTICLE II
The Borough Council

Section 201. Status and Title.

The legislative branch of the government of the Borough shall consist of an elected governing body which shall be known as the Borough Council, and hereinafter in this Charter may also be referred to as "Council." The Council, when lawfully convened, shall constitute the legislative, appropriating, policy-making and governing body of the Borough.

Section 202. Powers and Duties.

All powers of the Borough, now in existence or conferred upon the Borough by the Constitution or the laws of the Commonwealth of Pennsylvania, shall be exercised by the Borough Council, except as otherwise provided for in this Charter.

Section 203. Composition.

The Council shall be composed of seven members elected at large by the qualified voters of the Borough.

Section 204. Terms and Election.

- A. The terms of all Members of Council shall be four (4) years, commencing on the first Monday in January following the calendar year in which they were elected, except that a Member of Council appointed to fill a vacancy shall serve only until the first regularly scheduled meeting of the Council at which an elected successor assumes office.
- B. Members of Council shall be nominated and elected each four (4) years in a staggered and alternating fashion so that four (4) Members of Council shall be elected in 2009 and every four years thereafter, and three (3) Members of Council shall be elected in 2011 and every four (4) year thereafter.
- C. Any vacancy shall be filled by a qualified resident of the Borough.

Section 205. Terms Limits.

No Member of Council shall consecutively serve more than two (2) complete four-year terms and the balance of an unexpired term of a vacant Council seat. Thereafter, no such person shall be elected or appointed to serve as a Member of Council for at least two (2) years. Terms commencing prior to the effective date of the Charter shall not be included in the term limit calculation.

Section 206. Qualifications.

Members of Council shall be registered voters of the Borough and shall have been residents continuously for at least one (1) year preceding their election, or appointment, and must remain continuous residents during their terms of office. A Member of Council shall not have been convicted of embezzlement of public monies, bribery, perjury or a felony, and not otherwise disqualified from office by the terms of this Charter or by the Constitution or the laws of the Commonwealth of Pennsylvania. The qualifications set forth herein shall apply to any person appointed to fill a vacancy in the office of Council Member.

Section 207. Salaries.

- A. Each Member of Council may receive compensation to be fixed by ordinance, which shall be enacted prior to the fifteenth day of February of any year in which Members of Council are normally elected, as prescribed in Section 204.B. Such compensation shall not exceed the maximum established by the Borough Code. No ordinance shall change the salary of any Member of Council after his or her election or appointment.
- B. Members of Council shall receive no other compensation from the Borough, direct or indirect. They may, however, receive reimbursement of expenses actually incurred in the performance of their duties. The Administrative Code shall prescribe the scope and the procedure for the authorization and approval of such expenses.
- C. Compensation for any Member of Council shall equal that of the Mayor.

Section 208. Prohibitions.

- A. No Member of Council shall hold any other employment by the Borough.
- B. No Member of Council may serve as a paid consultant to the Borough for a period of at least one year following his or her resignation or termination from Council or the expiration of his or her term of office, without the approval of the Council.
- C. No Member of Council shall in any manner dictate the appointment or removal of a Borough officer or employee whom the Manager or any of the Manager's subordinates are empowered to appoint, but Members may express their views and fully and freely discuss with the

Manager anything pertaining to the appointment and removal of such officers and employees.

- D. Except for the purpose of inquiries and investigations, the Council shall deal with Borough officers and employees who are subject to the direction and supervision of the Manager solely through the Manager, and the Council shall not give orders to any such officer or employee, either publicly or privately.
- E. No Member of Council shall individually exercise or attempt to exercise any power of Council unless such authority shall be specifically delegated to the Member by Council or by this Charter.
- F. No individual shall at the same time hold more than one elected Borough office.

Section 209. Vacancies.

The office of a Member of Council shall become vacant upon his or her death, legal incompetency, resignation, forfeiture, no longer being a resident of the Borough or removal from office in any manner authorized by this Charter or General Law.

Section 210. Filling of Vacancies.

Whenever a vacancy exists in the office of a Member of Council, the vacancy shall be filled by the following procedure:

- A. Following a vacancy in the office of a Member of Council, Borough Council shall advertise the vacancy, one time in a newspaper of general circulation or as otherwise authorized by law, then take nominations at the next Regular Meeting, no earlier than fourteen (14) days from the date of the vacancy. At the following Regular Meeting, no later than sixty (60) days after the vacancy occurs, a replacement should be selected. If the Council shall fail to fill any vacancy due to a deadlock vote, then the Mayor shall vote on the appointment.
- B. Should the Council, for any reason, fail to fill a vacancy within sixty (60) days after the vacancy occurs, the Court of Common Pleas, upon petition of any Member of Council or any five registered voters of the Borough, shall make the interim appointments to fill the vacancies which may exist.
- C. Should sufficient vacancies exist so that the Council lacks the necessary majority to make the appointment, the Court of Common Pleas, upon petition of any Member of Council or any five registered voters of the Borough, shall make the interim appointments to fill the vacancies, one by one until a majority of seats are filled.
- D. The person appointed to fill a vacancy shall be entitled to hold the office for the balance of the unexpired term, so long as he shall continue to possess the qualifications pertinent to the office, except when the vacancy shall occur no sooner than four months prior to the date of the next municipal primary or municipal general election, than a successor for the vacant

office shall be elected at the immediately succeeding municipal primary or municipal general election and shall take office upon the certified election results thereof.

Section 211. Forfeiture of Office.

A. The office of a Member of Council shall be forfeited, for cause, if Council determines, in accordance with the procedure set forth in Section 211.B, that the Member of Council:

- (1) Lacks any qualifications for the office prescribed by this Charter or by General Law;
- (2) Willfully violates any express prohibition of the Charter;
- (3) Is convicted for an offense which would disqualify an individual from holding public office pursuant to Section 6 of Article II of the Constitution of Pennsylvania, or, any conviction for a violation of state or federal laws relating to misapplication of entrusted property and property of government, or, conviction for a violation of state or federal laws relating to bribery and corrupt influence, or, conviction for a violation of state or federal laws relating to falsification and intimidation, or, conviction for a violation of state or federal laws relating to obstructing governmental operations, or, conviction for a violation of state or federal laws relating to abuse of office, or any other violation of General Law for which an individual has been convicted within the preceding ten (10) years and which is classified as a felony, and any similar violations of the laws of any other state or the Federal Government, or;
- (4) Fails to attend three (3) consecutive Regular Meetings of the Council or forty percent (40%) of all scheduled Council meetings in a twelve (12) months period.

B. The following procedure shall be followed to determine whether a forfeiture has occurred:

- (1) Council shall hold a public hearing and decide by resolution whether the office of the Member of Council has been forfeited for cause.
- (2) Notice of such public hearing with the purpose, date, time and place thereof shall be advertised at least once in one (1) or more newspapers of general circulation, or as otherwise authorized by law, not more than thirty (30) days or less than ten (10) days prior to the hearing. Council shall cause such notice to be sent by registered mail to the named Member of Council not less than thirty (30) days prior to the hearing. The Member of Council and other interested parties shall be given an opportunity to testify at such public hearing.
- (3) No later than the next Regular Meeting of Council, Council shall at a public hearing, by the affirmative vote of four Members of Council, render its decision as to whether or not it has been demonstrated and proven that the office of Member of Council has been forfeited for cause. Copies of the written decision shall be mailed within forty-eight (48) hours of the date of said decision, to the Member of Council and to other

interested parties who filed a written request therefore during the hearing. The decision of Council shall be subject to review by the Court of Common Pleas of Chester County, Pennsylvania, on appeal filed within thirty (30) days of the date of said decision by the Member of Council or any interested party.

Section 212. Organization.

- A. The Council shall organize on the first Monday of January of each even-numbered year. If the first Monday is a legal holiday the meeting and organization shall take place on the first day following which is not a legal holiday. The Council at this organization meeting shall elect from its membership a President and a Vice President, who shall hold such office at the pleasure of the Council. The President, or in his or her absence the Vice President, shall preside at all meetings of the Council. The President and Vice President shall exercise the vote to which each is entitled as a Member of Council on all questions before the Council. Council shall, at its organizational meeting, establish a schedule of regular meetings of the Council.
- B. The Mayor shall preside over the organization of Council until it has elected a President. In the case of the absence of the Mayor at the organization meeting, Council shall choose one of its members to preside.

Section 213. Powers and Duties of the President of Council.

- A. The President of Council shall preside over the meetings of Council in accordance with the rules and procedures agreed to by Council.
- B. The President of Council authenticates with his or her signature the actions of Council.
- C. Appoint all committees of Council.
- D. Have no power to bind Council, but in all administrative functions shall be bound by policies established by Council.
- E. Have all necessary incidental powers to perform and exercise any of the duties and functions as set forth in this Charter or legally delegated to the President of Council.
- F. Whenever the Mayor is absent, only the emergency duties described in Section 401.I shall be temporarily discharged by the President of Council, or in his or her absence, by the Vice President of Council. If the Mayor is incapacitated or there is a vacancy in the office, all duties of the Mayor shall be temporarily discharged by the President or Vice President of Council. Only when discharging all duties of the Mayor shall the President or Vice President of Council have the power to veto any ordinance or to break any tie vote, but shall not be able to vote as a Member of Council.

Section 214. Meetings.

- A. The Council shall convene in Regular Meetings not less than once a month. The dates of Regular Meetings of Council shall be published at least annually in a newspaper of general circulation or as otherwise authorized by law. At its first meeting each year, the Council shall designate and advertise the calendar of regular monthly meetings for the remainder of the year.
- B. Council may adjourn to a stated time for general business or for special business.
- C. Special meetings may be called by the President of Council or upon written request by at least three (3) of the Members of Council. Members shall be given at least twenty-four (24) hours written notice of special meetings. The notice shall contain a statement of the nature of the business to be considered. Presence at a meeting constitutes waiver of notice.
- D. All meetings of the Council shall be open to the public, except that the Council may discuss matters as permitted by the Pennsylvania Sunshine Act, 65 Pa.C.S. §§ 701 *et seq.*, as amended, in executive session. It is the intent of this Charter that all provisions of the Pennsylvania Sunshine Act shall be adhered to by Council, including, but not limited to, open meetings and public notice.
- E. Council shall provide reasonable and timely opportunity for interested citizens and taxpayers to address the Council on matters of general or special concern. Citizens' right to be heard shall be an order of business at all public meetings.

Section 215. Quorum

A majority of the Members of Council shall constitute a quorum. The Council shall conduct no business except in the presence of a quorum. If no quorum is present at a regular or adjourned meeting, a majority of the Members of Council who are present may agree upon another date for a meeting, and Members so present may continue to so agree until a meeting can be held with a quorum in attendance.

Section 216. Majority Action.

The action of a majority of the Members of Council present and entitled to vote shall be binding upon and constitute the action of the Council, except as otherwise provided in this Charter.

Section 217. Form of action of Council.

- A. All official actions of the Council shall be taken by the adoption of an ordinance, resolution or motion. All legislation shall be enacted by the adoption of an ordinance. All ordinances and resolutions must be in written form and enacted only after reasonable notice to Members of Council, except as otherwise provided in this Charter.

- B. All Members of Council present at the meeting shall be required to vote in either the affirmative or the negative on all issues and questions put to a vote of the Council, except as restricted by this Charter, or unless a Member of Council shall have a conflict of interest in the matter, in which case the Member of Council shall abstain and inform the Council in public session of the reason for abstaining.

Section 218. Oath of Councilmen.

Before entering upon the duties of their office, the members of Council shall take and subscribe an oath or affirmation to support the Constitution of the United States and of the Commonwealth of Pennsylvania, to perform the duties of their office with fidelity, and to represent all the citizens of the Borough, together with such loyalty oath as is prescribed and required by law. The oath or affirmation may be taken before any judge, district magistrate or notary public of Chester County, or before the Mayor of the Borough when he has qualified, and shall be filed with the Borough Secretary and be preserved among the records of the Borough for a period of six years.

Section 219. Non-Interference.

Neither the Council, nor any Member of Council, unless acting as Mayor, shall either publicly or privately, give orders to or in any way interfere with the work or duties of any police officer or employee under the jurisdiction of the Mayor. The Council may conduct an inquiry into any portion of the police services of the Borough under the supervision of the Mayor.

**ARTICLE III
Ordinances**

Section 301. Action Requiring an Ordinance.

A. Actions of the Council shall be by Ordinance which:

- (1) Levy taxes or change the fiscal year.
- (2) Adopt or amend zoning regulations, a zoning map, subdivision regulations, or land development and land use regulations.
- (3) Establish, alter or abolish rates charged for any utility service supplied by the Borough.
- (4) Authorize the borrowing of money.
- (5) Provide for a fine or other penalty, or establish a rule or regulation for violation of which a fine or penalty is imposed.
- (6) Grant, revoke, renew or extend a franchise.

- (7) Convey, sell, lease or authorize the conveyance, sale or lease of any lands of the Borough.
- (8) Adopt or amend such ordinances and such other codes as may be required from time to time to protect the safety and welfare of the citizens; alter or abolish any Borough department, office or agency, except agencies, boards and commissions related to municipal planning operating under terms and conditions set forth in the Pennsylvania Municipalities Planning Code, 53 P.S. §§ 10101 *et seq.*, as amended.
- (9) Fix the compensation of Members of Council and the Mayor.
- (10) Pursue an action of eminent domain.
- (11) Are required by the laws of the Commonwealth of Pennsylvania.

B. Actions other than those referred to in this section may be done either by ordinance, by resolution or by motion.

Section 302. Procedure – General Ordinance Requirements.

- A. A proposed ordinance may be introduced by any Member of Council or the Mayor. A written summary of each proposed ordinance or a proposed amendment to an ordinance shall be provided for each Member of Council and the Mayor at the time of its introduction, and copies shall be made available for the public at that meeting.
- B. If the proposed ordinance or amendment is approved by Council upon introduction and first consideration, the Borough Secretary shall cause the full text to be prepared. After the full text is prepared, it shall be advertised and made available for public inspection in accordance with Section 302.C.
- C. Each proposed ordinance, except for temporary 90-day parking and traffic orders, shall be published in a newspaper of general circulation, or as otherwise permitted by law, at least seven (7) but not more than thirty (30) days prior to its final adoption. The public notice of any proposed ordinance shall include at least the title and a brief summary setting forth all of the provisions in reasonable detail, shall specify the date at which Council proposes to act further on the ordinance, and shall specify a time and place within the Borough where copies of the full text of the proposed ordinance may be examined.
- D. Persons interested in a proposed ordinance shall be given an opportunity to speak and be heard before the Council at any meeting during which Council considers said ordinance, in accordance with such rules and regulations as Council may adopt.
- E. Provided that citizens of the Borough have been given the opportunity to express their views, the Council may, on the date of the meeting stated in the advertisement:
 - (1) Adopt the ordinance as advertised;

- (2) Postpone action until a later meeting; or,
 - (3) Amend a proposed ordinance before final adoption.
- F. If the Council amends a proposed ordinance which constitutes a change in substance, the proposed ordinance as amended shall be re-advertised as prescribed in Section 302.C before further consideration by Council.
- G. If the Council postpones action without specifying the date when further action will be considered, then no further action may be taken by Council until the proposed ordinance is re-advertised in accordance with Section 302.C.
- H. Notwithstanding the foregoing provisions, the adoption of a zoning ordinance and amendments thereto, the adoption of zoning maps and amendments thereto, and the adoption of land development and land use regulations shall be in accordance with the Pennsylvania Municipalities Planning Code, as amended.
- I. To meet a public emergency affecting life, health, property or public safety, the Council may adopt an emergency ordinance at the meeting at which it is introduced and the Council may make it effective immediately, except that no such ordinance may be used to levy taxes, grant or extend a franchise or authorize the borrowing of money except as provided by this Charter or by General Law. An emergency ordinance shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. After the adoption of an emergency ordinance, the Council shall have it publicized in full within ten (10) days in at least one (1) newspaper of general circulation or as otherwise permitted by law. Every emergency ordinance shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may be repealed at any time.

Section 303. Penalty.

The penalty for the violation of any ordinance shall be that prescribed by Council for each violation. However, any ordinance may provide that for continuing violations, each day that a violation exists may be regarded as a separate offense and punishable as such. The limit of fines may be increased by the Council to the extent of the maximum fine that may be levied by any non-charter municipality in the Commonwealth as that limit is from time to time established by the General Assembly.

Section 304. Authorization and Enactment.

- A. All ordinances and resolutions of the Borough shall be certified by the signature of the Borough Secretary.

- B. Every ordinance and every resolution of legislative character except as herein otherwise provided, adopted by Council, shall be presented to the Mayor for his or her approval. If the Mayor approves, he or she shall sign it; but, if he or she shall not so approve, he or she shall return it with his or her objections to the Council at its next regular meeting occurring at least ten (10) days after the meeting at which such ordinance was adopted by the Council, when the objections shall be entered into the minutes and the Council shall proceed to a reconsideration thereof either at the meeting at which the vetoed ordinance was returned, or at any other regular, special, or adjourned meeting held not later than ten (10) days thereafter. If, after such reconsideration, a majority of the Council shall vote to adopt such ordinance or resolution, it shall become of as full force and effect as if it had received the approval of the Mayor. If any such ordinance or resolution shall not be returned by the Mayor at the regular meeting of the Council occurring at least ten (10) days next succeeding its presentation to him or her, it shall likewise have as full force as if it had been approved.
- C. The enactment date of an ordinance shall be the date when the Mayor shall approve it, or the date of adoption by the Council over the veto of the Mayor.

Section 305. Effective Date of Ordinance.

The effective date of the ordinance shall be at the date of enactment of the ordinance, according to Section 304.C, unless a later date is specified in the ordinance or the ordinance is enacted as an emergency measure.

Section 306. Recording of Ordinances and Resolutions.

All ordinances and resolutions shall promptly be entered verbatim in permanent separate record books for ordinances and resolutions. It shall not be necessary, however, to record in the ordinance book the full text of any ordinance where there is a specific provision in General Law permitting adoption and recording by reference, or in the case of any ordinance adopting, with or without amendment or modification, any building code, plumbing code or other code complete in itself, for the regulation of any trade, occupation or line of activity or undertaking, but the ordinance adopting the same by reference shall be entered and the entry shall indicate where the complete code or ordinance is available for record. These books shall be in the custody and control of the Borough Secretary and all entries made therein shall be at the direction of the Secretary. A certified copy of all enacted ordinances shall be forwarded to the Chester County Law Library.

ARTICLE IV

Mayor

Section 401. Powers and Duties.

The Mayor, in addition to any other powers and duties expressly provided in this Charter, shall be recognized as head of the Borough government for all ceremonial purposes and shall:

- A. Supervise the administration of the Police Department and its employees subject to the provisions of the Administrative Code.
- B. Recommend candidates for the Chief of Police to Council for approval.
- C. Have the responsibility through the Police Department to preserve order in the Borough, and enforce all resolutions and ordinances that do not delegate enforcement authority to other individual(s) in which case enforcement be secured through said individual(s).
- D. Prepare and submit to Council through the Borough Manager for inclusion in the annual Borough budget, the Police Department operating budget and capital program for the ensuing year.
- E. Report monthly to the Borough Council on matters related to the activities of the Police Department.
- F. Attend meetings of the Council, with an equal right to advise and participate in its deliberations, subject to any restrictions applicable to Members of Council contained in the Council procedures, rules and regulations. The Mayor shall have no right to vote except to break a tie vote of Council or to vote in or veto matters as otherwise specifically authorized by this Charter.
 - (1) In all cases where, by reason of a tie or split vote, the Council shall be unable to enact or pass any ordinance, resolution, or motion, or to declare or fill any vacancy in its membership, or in any other Borough office, or to take any action on any matter lawfully brought before it, the Mayor, if in attendance at the meeting, may at his or her option cast the deciding vote, or request that the matter be tabled until the next regular or special meeting of Council held within not less than five (5) days, at which time the matter shall be reconsidered by Council and, if a tie or split vote still exists, it shall be the duty of the Mayor at that time to cast the deciding vote.
 - (2) If such a tie or split vote shall occur at any meeting when the Mayor is not in attendance the matter shall be tabled to the next regular or special meeting held within not less than five (5) days, for which the Mayor shall be given at least five (5) days notice of such meeting, at which meeting it shall be the duty of the Mayor to cast the tie-breaking vote.
 - (3) The Mayor may attend meetings of the Borough's committees, and all boards and commissions of the Borough with the exception of the Civil Service Commission.
- G. Have power to administer oaths and affirmations in matters pertaining to Borough affairs.
- H. Have necessary and incidental powers to perform and exercise any of the duties and functions as set forth in this Charter or lawfully delegated to the Mayor.
- I. Until appropriate action can be taken by Council, to declare a state of emergency, when a serious threat to life, health, or safety of the citizens of the Borough shall occur within the

Borough, and to take appropriate actions in such circumstances in accordance with the Pennsylvania Emergency Management Services Code, 35 Pa.C.S. §§ 7101 *et seq.*, as amended.

Section 402. Term and Election.

- A. The term of the Mayor shall be four (4) years, commencing on the first Monday in January following the calendar year in which he or she was elected, except that a Mayor appointed to fill a vacancy shall serve only until the first regularly scheduled meeting of the Council at which an elected successor assumes office.
- B. The Mayor shall be nominated and elected every four (4) years, so that he or she shall be elected in 2009 and every four years thereafter.
- C. Any vacancy shall be filled by a qualified resident of the Borough.

Section 403. Term Limits.

No Mayor shall consecutively serve more than two (2) complete four-year terms and the balance of an unexpired term. Thereafter, no such person shall be elected or appointed to serve as Mayor for at least two (2) years. Terms commencing prior to the effective date of the Charter shall not be included in the term limit calculation.

Section 404. Qualifications.

The Mayor shall be a registered voter of the Borough and shall have been a resident continuously for at least one (1) year preceding his or her election, or appointment, and must remain a continuous resident during their term of office. The Mayor shall not have been convicted of embezzlement of public monies, bribery, perjury or a felony, and not otherwise disqualified from office by the terms of this Charter or by the Constitution or the laws of the Commonwealth of Pennsylvania. The qualifications set forth herein shall apply to any person appointed to fill a vacancy in the office of Mayor.

Section 405. Salary.

- A. The Mayor may receive compensation to be fixed by ordinance equal to that of Members of Council, which shall be enacted prior to the fifteenth day of February of any year in which the Mayor is normally elected, as prescribed in Section 402.B. No ordinance shall change the salary of the Mayor after his or her election or appointment.
- B. The Mayor shall receive no other compensation from the Borough, direct or indirect. He or she may, however, receive reimbursement of expenses actually incurred in the performance of his or her duties. The Administrative Code shall prescribe the scope and the procedure for the authorization and approval of such expenses.
- C. The Mayor shall receive no other compensation for performing any mayoral duties.

Section 406. Prohibitions.

The same prohibitions set forth in Section 208 relating to Members of Council shall apply to the Mayor.

Section 407. Vacancy.

The office of Mayor shall become vacant upon his or her death, legal incompetency, resignation, forfeiture, no longer being a resident of the Borough or removal from office in any manner authorized by this Charter or General Law.

Section 408. Filling of Vacancy.

Whenever a vacancy exists in the office of Mayor, the vacancy shall be filled under the following procedures:

- A. Following a vacancy in the office of Mayor, Borough Council shall advertise the vacancy, one time in a newspaper of general circulation, or as otherwise authorized by law, then take nominations at the next Regular Meeting, no earlier than fourteen (14) days from the date of the vacancy. At the following Regular Meeting, no later than sixty (60) days after the vacancy occurs, a replacement shall be selected.
- B. Should the Council, for any reason, fail to fill a vacancy within sixty (60) days after the vacancy occurs, the Court of Common Pleas, upon petition of any Member of Council or any five registered voters of the Borough, shall make the interim appointments to fill the vacancy.
- C. The person appointed to fill a vacancy shall be entitled to hold the office for the balance of the unexpired term, so long as he shall continue to possess the qualifications pertinent to the office, except when the vacancy shall occur no sooner than four months prior to the date of the next municipal primary or municipal general election, then a successor for the vacant office shall be elected at the immediately succeeding municipal primary or municipal general election and shall take office upon the certified election results thereof.

Section 409. Forfeiture of Office.

The office of Mayor shall be forfeited, for cause, if the Mayor: (i) lacks any qualifications for the office prescribed by this Charter or by General Law; (ii) violates any express prohibition of the Charter; (iii) is convicted for any offense or violation described in Section 211.A(3); or (iv) fails or neglects to perform the duties of Mayor.

Section 410. Eligibility of Mayor.

No mayor shall hold any other Borough office or appointment during the term for which he is elected. The Mayor shall not be a member of Council, nor shall the Mayor preside over or vote at any meeting of the Council, except as provided in Section 401.F herein.

Section 411. Incompatible Offices.

No member of Congress or any person holding any office or appointment of profit or trust under the Government of the United States, or any person holding the office of district magistrate shall at the same time be capable of holding the office of Mayor.

Section 412. Oath of Mayor.

The Mayor, before exercising the duties of his or her office, shall take and subscribe an oath or affirmation, to support the Constitution of the United States and of the Commonwealth of Pennsylvania, to perform the duties of his or her office with fidelity, and to represent all the citizens of the Borough, together with such loyalty oath required by any other act. The oath or affirmation may be taken before any judge, district magistrate or notary public of Chester County, and shall be filed with the Borough Secretary, and be preserved among the records of the Borough for a period of six years.

Section 413. Hiring of Outside Counsel.

In the case of a legal dispute between the Mayor and Council, or in any other case where representation of the Mayor and Council by the Borough's solicitor would create a conflict of interest for the Borough solicitor, the Mayor is authorized to employ outside counsel at the Borough's expense, in an amount not to exceed that as established in the Administrative Code, to perform necessary legal services.

**ARTICLE V
Borough Manager**

Section 501. Appointment. Compensation and Qualifications.

The Council shall appoint the Manager and fix his or her compensation by a majority vote of the total members of Council. The Manager shall be appointed with regard to merit only, and solely on the basis of his or her executive and administrative qualifications. He or she need not be a resident of the Borough.

Section 502. Powers and Duties.

The executive duties of the government of the Borough shall be administered by the Manager. The Manager, in addition to any other powers and duties provided in this Charter shall:

- A. Supervise, either directly or through subordinate employees, the administration of all departments or other administrative units, except as otherwise provided by this Charter.
- B. Execute and enforce all resolutions, ordinances and orders of the Council.
- C. Appoint the heads of departments pursuant to this Charter and the Administrative Code.
- D. Appoint, suspend and remove municipal employees, except as otherwise provided by this Charter.
- E. Attend meetings of the Council and its committees, and may participate in their deliberations, except that he or she shall have no right to vote on or veto any matter before Council.
- F. Prepare and submit to the Council the annual budget and the capital improvement program of the Borough.
- G. In conjunction with the Mayor, assure that the General Laws relating to the affairs and government of the Borough are duly executed and enforced within the Borough.
- H. Present to the Council from time to time such information concerning the business and affairs of the Borough as he or she may deem necessary, and recommend such measures for legislative action as may be in the best interest of the Borough.
- I. Negotiate and supervise intergovernmental cooperation agreements, pursuant to General Law and subject to final approval of the Borough Council.
- J. Cause to be signed all deeds, contracts and other instruments, subject to their approval by Council if so provided in this Charter.
- K. Have all necessary incidental powers to perform and exercise any of the duties and functions as set forth in this Charter or lawfully delegated to him or her.
- L. Perform such other duties as required by Council.

Section 503. Prohibitions.

The Manager shall devote full time to the office. The Manager may serve as Borough Secretary. He or she shall hold no other appointment or elected public office, nor hold any other employment in which he or she receives a salary or other form of compensation, without the approval of Council.

Section 504. Absence or Incapacity.

In the event of Manager's absence, he or she shall designate a Borough employee to serve as Acting Manager. In the event of the Manager's incapacity, or of a vacancy in the office, Council

shall designate an employee of the Borough to serve as Acting Manager. The Acting Manager shall have the powers and duties of the Manager.

Section 505. Removal.

The Council may at any time, by resolution, request the resignation of the Manager, and thereafter may at any time remove the Manager in accordance with the procedures which follow:

- A. The Council shall adopt, by majority vote of its total membership in a regular or special meeting, a preliminary resolution which states the specific facts upon which the removal is based. The Council may thereafter suspend the Manager from duty for a period not to exceed forty-five (45) days. A copy of this resolution shall be delivered promptly to the Manager.
- B. Within ten (10) days after a copy of the preliminary resolution is delivered, the Manager may file with the Council a written request for an opportunity to respond and comment on the resolution at a special meeting of the Council, which shall be held not earlier than twenty-one (21) days nor later than thirty (30) days after the filing of such a request by the Manager. Public notice of the date and time of such meeting shall be given in accordance with the provisions of Section 214.C. The Manager may file a written statement of position with respect to the preliminary resolution not later than seven (7) days before the special meeting.
- C. At the special meeting, if one is requested, the Manager may make an oral statement in addition to the written statement of position. After full consideration, the Council may, by majority vote of its total membership, adopt a final resolution of removal, specifying the effective date of such removal. If such meeting is not requested and the Manager has not submitted a resignation, the Council may adopt a final resolution of removal by a majority vote of its total membership at any regular or special meeting which takes place fourteen (14) days or more following the date of delivery of the preliminary resolution by the Manager. This final resolution shall specify the effective date of removal.
- D. The Manager shall continue to receive a salary until the effective date of removal. The Council shall provide such severance pay as it deems appropriate. The decision of the Council shall be final.

Section 506. Non-Interference.

Neither the Mayor, the Council, nor any Member of Council shall direct or request the appointment of any person to, or his or her removal from, an office or position under the jurisdiction of the Manager or any officials under his or her jurisdiction, or in any manner take part in the appointment or removal of officers, or employees in the administrative service of the Borough who are subject to the jurisdiction of the Manager. The Council may conduct an inquiry into any portion of the administrative services of the Borough under the supervision of the Manager, but it shall do so solely through the Manager. Neither the Mayor, the Council, nor any Member of Council shall, either publicly or privately, give orders to or in any way interfere with the work or duties of any administrative officer or employee under the jurisdiction of the Manager.

ARTICLE VI
Administration

Section 601. General Provisions.

The Council shall, by ordinance, create, alter, or abolish Borough departments, agencies, and offices, and shall prescribe their functions, consistent with General Law and the provisions of this Charter.

Section 602. Administrative Code.

The Council, shall, by ordinance, adopt an Administrative Code which shall provide for the administrative organization of the Borough government, the assignment of duties and responsibilities to officers and employees, and the procedural requirements set forth in General Law or in this Charter. All changes in organization and procedures set forth in the Administrative Code shall be effected by amendment to the Administrative Code in the same manner as other ordinances are enacted and amended.

Section 603. Appointment and Qualifications of Heads of Departments.

- A. Heads of departments, except the Police Chief, shall be appointed by the Manager.
- B. Heads of departments shall be appointed on the basis of executive and administrative qualifications appropriate to the duties of their departments.

Section 604. Secretary and Treasurer.

The Borough staff shall include, but not be limited to the following officers:

- A. Secretary. The Borough Secretary or designee appointed by Council shall keep minutes of Council meetings and keep its records and shall perform other duties and functions as the President of Council shall assign from time to time and/or as established by the Administrative Code.
- B. Treasurer. The Borough Treasurer shall be the head of the Finance Department, shall administer the financial affairs of the Borough and shall:
 - (1) Receive, collect, or cause to be collected account for and deposit into the Borough treasury all taxes, fees, funds, assessments or charges that are levied, established or received by the Borough for general or special purposes.
 - (2) Disburse Borough funds pursuant to authorization for payment made by Council and sign, along with the individual specified in the Administrative Code, all checks, drafts or instruments which disburse Borough funds. The Administrative Code shall designate the

individual who shall sign all checks, drafts or other instruments in the absence of the Borough Treasurer.

- (3) Assist the Manager in the preparation of the budget.
- (4) Arrange for investments of Borough funds in the manner provided by this Charter and General Law.
- (5) Deposit the funds of the Borough in reputable independent financial institutions designated by the Council and as required by General Law. All such accounts shall be in the name of the Borough.
- (6) Perform other duties and functions as the Manager shall assign from time to time and/or as established by the Administrative Code.

ARTICLE VII Police Department

Section 701. Police Department.

The Council may, by ordinance, establish or disband a Borough Police Department.

Section 702. Jurisdiction and Control.

- A. The Police Department shall be under the jurisdiction and control of the Mayor.
- B. The Borough Council shall, in consultation with the Mayor, designate the Chief of Police.

Section 703. Duties.

The Police Department shall preserve the public peace, prevent and detect crime, police the streets and highways, and enforce traffic statutes, ordinances and regulations relating thereto. The Police Department and its personnel shall at all times aid in the administration and enforcement within the Borough of the laws of the United States, and of the Commonwealth of Pennsylvania and the ordinances of the Borough.

Section 704. Powers.

Police officers shall have all the powers and protection conferred by statute and ordinance upon members of the police force of the Borough and upon constables of the Commonwealth of Pennsylvania. They shall have the power to make lawful searches, seizures, and arrests for violations of any statutes or ordinances in effect in the Borough, to serve subpoenas when ordered so to do by their superior officers, and to do such other acts as may be required of them by statute or ordinance.

Section 705. Special Police.

Special police may be appointed by the Mayor with full police powers and jurisdiction for the duration of an emergency in which the safety and welfare of the Borough and the public is endangered.

Section 706. Auxiliary Police.

Auxiliary police may be appointed by the Mayor with the approval of Council and as provided by general law.

Section 707. Civil Service for Police.

- A. There is hereby created a Civil Service Commission which shall consist of three (3) commissioners who shall meet the same qualifications set forth in Section 208 relating to Members of Council and shall be appointed by the Borough Council for terms of six (6) years. The same prohibitions set forth in Section 208 relating to Members of Council shall apply to the commissioners. The office of commissioner shall be forfeited for cause for the same grounds as set forth in Section 409 relating to the office of Mayor. Any vacancy occurring on the commission shall be filled by the Borough Council for the unexpired term within the period of sixty (60) days after such vacancy occurs. Each commissioner before exercising the duties of his office shall take the oath set forth in Section 208 relating to Members of Council. The commissioners shall receive no compensation. The Administrative Code shall also provide minimum training requirements for commissioners.
- B. The Council shall, in the Administrative Code, provide civil service rules and regulations for the appointment and promotion, of police officers.
- C. The Council shall, in the Administrative Code, provide for the administration of the civil service rules and regulations pertaining to appointment and promotion of police officers by the Civil Service Commission, the Council, the Mayor or the Borough Manager, or any combination thereof.
- D. The Civil Service Commission shall have the power and authority to hold hearings on the demotion, suspension, removal or discipline of police officers as prescribed in the Borough Code.
- E. Nothing in this Charter shall affect or impair the rights or benefits of persons who are full-time police officers of the Borough at the time of adoption of this Charter.

ARTICLE VIII
Authorities, Boards and Commissions

Unless otherwise required by applicable General Law, all members of authorities, boards and commissions shall be appointed by Council by a majority vote of the total members of Council eligible to vote.

ARTICLE IX
Financial Procedures

Section 901. Fiscal Year.

The fiscal year of the Borough shall be the calendar year.

Section 902. Financial Projections.

The Manager shall, at the time of submitting the proposed budget to Council, submit as an annex to the budget, tentative financial projections for a period of at least five (5) years, such projections beyond the year budgeted to be advisory only for the purpose of long range planning. The projections shall include:

- A. Comparative figures for actual and estimated revenues and expenditures for the current fiscal year and actual revenues and actual expenditures for the preceding fiscal year.
- B. The proposed operating budget for the next fiscal year, in such form as Council shall prescribe.
- C. The forecast of revenue and expenditures for a period of at least five (5) years, individually stated, to be advisory only for the purpose of long-range planning. The information to be provided shall be stated in general categories only.
- D. Estimating a capital program as further set forth in Section 904 hereby, including the proposed method of financing each capital project or purchase, but in no case less than the next five (5) fiscal years; a schedule for the amortization of all existing capital projects; and proposed funding for any proposed new capital projects to finance capital expenditures, showing both separately and inclusively for each capital item the payments for principal and interest.

Section 903. Operating Budget.

- A. At least by the first Regular Meeting in November, the Manager shall prepare and submit to the Council a proposed budget for the following fiscal year. The Council shall prescribe the form in which the annual operating budget is to be prepared, which shall include, in addition to the major classification of appropriations by which expenditures are to be allocated and

controlled, a detailed analysis of the various items of revenues and expenditures. All appropriations shall be made a lump sum amounts and according to the following classes of expenditures for each office, department, major operating unit, board of commission.

- (1) Personal Services;
- (2) Contractual services;
- (3) Materials, supplies, and equipment;
- (4) Debt service;
- (5) Capital expenditures; and
- (6) Such additional classes as the Council may prescribe.

- B. At least by the first Regular Meeting in December, the Council shall complete consideration of the Manager's proposed budget, modify the Manager's proposal in such manner as it sees fit, and adopt a preliminary budget. The budget must be balanced so that appropriations are matched by anticipated revenues and available surplus. A summary of the preliminary budget shall be advertised at least once in two or more newspapers of general circulation, or as otherwise authorized by law, at least ten days before the date set for the final adoption. In advertising the preliminary budget, the Council shall state the date set for final adoption. Copies of the detailed preliminary budget shall be available at the Borough office for public inspection and copies shall be available for purchase by any interested citizens for a reasonable fee to be set by the Council. After advertisement, the Council shall hold at least one public hearing on the preliminary budget, which may take place at any regular or special meeting of the Council.
- C. The Council shall finally adopt a balanced budget before the start of the fiscal year to which it applies, except that in the year immediately following a municipal election, the new Council may, within forty-five days after the start of the fiscal year, adopt a revised budget. The budget ordinance shall be effective as of the start of the fiscal year. In the event that the Council fails to adopt a budget by the start of the fiscal year, the amounts appropriated for the previous fiscal year shall be considered appropriated temporarily, prorated on a month-to-month basis, until a final budget is adopted.
- D. The Manager shall cause the appropriations voted by the Council to be entered in the accounting records of the Borough and shall approve no contract or expenditure which would exceed the unencumbered balance of appropriations in any account. The Council may at any time amend the allocations within each appropriation, but changes in appropriations either increases or decreases, in any items on which budgetary controls are maintained, shall be made only pursuant to an ordinance of the Council authorizing such changes. Ordinances amending the budget may be adopted and take effect immediately at any regular or special public meeting of the Council. The provisions of Section 302 will not apply to ordinances amending the budget appropriations. Supplemental appropriations may be made by the

Council at any time in the event that revenues are found and certified by the Manager to exceed estimates in the budget. If revenues are found and certified by the Manager to fall short of estimates in the budget, the Council shall make necessary reductions in appropriations in order to maintain a balanced budget. All unexpended appropriations shall lapse at the end of the fiscal year.

E. In the event of genuine emergencies, unanticipated at the time the operating budget was adopted, the Council may make supplemental appropriations to meet the emergency conditions. To the extent that there are no available unappropriated revenues to meet such emergency appropriations, the Council may authorize the issuance of temporary notes which shall constitute unfunded debt to be funded and repaid in accordance with the Local Government Unit Debt Act, 53 Pa.C.S. §§ 8001 *et seq.*, as amended. It is the intent of this Charter that operating expenditures shall neither be appropriated nor paid out of loan funds except to meet genuine emergencies.

F. Levy of Taxes.

(1) Upon completion of the annual budget and the adoption thereof by Council, it shall be the duty of Council to adopt an ordinance levying sufficient taxes from authorized sources that, with other revenues, and available receipts and balances, shall provide for a balanced budget.

(2) The Borough of Malvern shall have the power to levy and collect taxes as a borough has, or shall in the future have, under the Borough Code, 53 P.S. §§ 45101 *et seq.*, as amended, the Local Tax Enabling Act, 53 P.S. §§ 6901 *et seq.*, as amended, or under any existing or future act enabling a borough to levy taxes, at such rates as may be imposed by the Council under law.

(3) The Borough shall use the assessment valuations of real property and assessment ratios fixed by the County of Chester.

Section 904. Capital Program and Capital Budget.

On or before the adoption of the operating budget, the Council shall adopt a capital program and a capital budget. The capital program shall set forth all capital expenditures amounting to \$10,000 or more (except for maintenance of existing facilities, which shall be included in the operating budget), identified by project, the year in which acquisition or construction is to be scheduled, the means by which the capital program is to be financed, the effect of any proposed capital expenditures on future operating expenses, and the effect of any proposed new indebtedness on the amortization schedule of existing debt and debt limits. The capital program shall incorporate all anticipated capital projects to be initiated within a period of three or more years. Following approval by the Council of the capital program, the Council shall adopt a capital budget providing appropriations for the next fiscal year, which shall be the first year of the capital program. The capital budget may be financed from unused appropriations of current revenues or monies borrowed as authorized by this Charter or general law. All unused appropriations for the capital budget shall lapse at the end of the

fiscal year. The Manager shall control expenditures in relation to appropriations in the capital budget in the same manner as required for the operating budget in Section 903.D. The Council may amend the capital budget at any time during the fiscal year, but before doing so must amend the capital program. The capital program and the capital budget shall be adopted only after advertisement and public hearing in the same manner as provided for the adoption of the operating budget in Section 903.B.

Section 905. Contracts.

- A. The Borough may make contracts for lawful purposes, subject to applicable General Law or this Charter. No contract shall be made or obligation incurred unless the Manager shall certify that there is a sufficient unencumbered balance in an appropriation and that sufficient monies therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any contract made or obligation incurred in violation of this provision shall be void and any officer authorizing any contract to be made in violation of this provision shall be subject to removal from office and liable to the Borough or its surety for any loss incurred as a result of such action.
- B. All contracts of the Borough involving sums in excess of an amount specified by Borough Council in the Administrative Code or other ordinance shall be in writing. The Manager shall execute all contracts on behalf of the Borough. Authorization for contracts for the purchase, sale, lease, use of real estate, or for the construction of public capital improvements shall be given by ordinance, and such contracts shall be signed by the President of Borough Council as well as the Manager. Any officer authorized to execute a written contract shall submit the form of contract to the Borough Solicitor for approval before executing the contract.
- C. Borough Council shall, by the Administrative Code, establish a procedure for competitive bidding to include as a minimum the kinds and amounts of contracts requiring competitive bidding; definitions; publication and notice requirements; length of term; deposit and bond requirements, conditions, terms, rules, regulations, waiver, rights of acceptance and rejection; and exceptions; as it shall from time to time deem advisable and in accordance with General Law and this Charter. Both single contract and separate contract procedures may be used at the discretion of Borough Council when not constrained by applicable General Law. Competitive bidding shall not be required for:
 - (1) Labor or services rendered by any Borough official or employee;
 - (2) Contracts for labor, materials, supplies, or services aggregating less than the amount specified by Borough Council in the Administrative Code or other ordinances, for the item in the year supplied;
 - (3) Contracts relating to the acquisition or use of real property;
 - (4) Contracts for professional or unique services or supplies;

- (5) Contracts for insurance and surety company bonds except that the use of competitive bidding for such items shall be encouraged where practicable;
 - (6) Contracts for emergencies;
 - (7) Contracts with governmental entities, authorities, agencies, or political subdivisions, except where required by General Law;
- D. Except as otherwise provided in this Charter, no contract for materials, supplies, labor, franchise, or other valuable consideration, to be furnished to or by the Borough, shall be authorized on behalf of the Borough except with the lowest responsible bidder, after competitive bidding.
- E. No person shall evade the competitive bidding provisions of this Charter or General Law by purchasing or contracting for materials, supplies, or services piecemeal, which transactions would, in the exercise of reasonable discretion and prudence, be considered as one transaction amounting to more than the amount specified according to this section or applicable General Law to require competitive bidding.

Section 906. Disbursements.

The Manager shall authorize disbursement of Borough monies only after determining that all goods and services contracted for have actually been received or performed and the proper purchasing procedures have been performed.

Section 907. Records and Reports.

The Manager shall:

- A. Provide for the recording of all financial transactions and related activities of the Borough in terms of dollars and other appropriate units of measurement, in accordance with the form and procedures prescribed by Council in the Administrative Code, in order that required reports and analyses may be produced for the proper management and control of such activities.
- B. Prepare periodic financial reports, at least monthly, and at the end of each fiscal year, prepare an annual financial report. The monthly financial reports shall be submitted to Borough Council at its regular monthly meeting, and be made available to the public.
- C. Provide for the preservation of official financial records, which shall be kept at the Borough office and shall be available for public inspection during regular office hours.

Section 908. Independent Audit.

Council shall provide for an independent annual audit of all Borough receipts, expenditures, accounts, and reports, including the accounts of the Treasurer, by a Pennsylvania Certified Public Accounting or a Certified Public Accounting firm, experienced in municipal finance and having

no personal interest, direct or indirect, in the fiscal affairs of the Borough or any of its elected or appointed personnel or employees. Council may provide for more frequent audits at its discretion. The results of the annual audit and a financial statement of the fiscal affairs of the Borough, with the results of the independent auditor's survey of internal control, and any recommendation thereon, shall be included in an annual report. A summary of the annual audit of the independent auditor, shall be available for public inspection at the Borough Office. A summary of the key accounts and findings shall be published by the Borough Manager not more than 60 days after completion of the audit. The annual audit shall be conducted in accordance with generally accepted auditing standards. The financial report shall be prepared in accordance with generally accepted accounting principles.

Section 909. Bonding of Officers and Employees.

Borough Council shall provide for the bonding of all officers and employees who are responsible for the handling and/or authorization of receipts and disbursements, except as otherwise provided for in this Charter. All such bonding shall be approved by the Borough Solicitor for form and sufficiency. The premium for such bonding shall be paid for by the Borough.

Section 910. Limitations on Debt.

The borrowing of money by the Borough shall continue to be limited in amounts, and governed by procedures, contained in the Local Government Unit Debt Act, 53 Pa.C.S. §§ 8001 *et seq.*, as amended, or by other applicable General Law.

**ARTICLE X
Code of Ethics**

Section 1001. Declaration of Policy.

The following Code of Ethics shall apply to all Borough elected and appointed officials and employees of the Borough, whether compensated or uncompensated, including members of authorities, agencies, boards and commissions of the Borough or those in which the Borough participates with other units of government or the Commonwealth of Pennsylvania or any of its political subdivisions or instrumentalities.

Section 1002. Prohibitions.

A. The following activities shall be prohibited in the operation of the government of the Borough:

- (1) No person shall, in his or her employment by the Borough in any capacity, or appointment to any board, authority, commission or agency, or removal therefrom, be favored or discriminated against because of age, race, gender, sexual orientation, disability, political or religious opinions or affiliations;

(2) No person who seeks appointment to any Borough board, authority, commission or agency or employment by the Borough in any capacity shall, directly or indirectly, give or pay any money, service or other compensations to any person in connection with such appointment or employment.

(3) No elected or appointed official of the Borough or employee thereof, shall:

- a) Engage in or accept private employment or render services for private interests when such employment of service is in conflict with or prevents the proper discharge of his or her official duties;
- b) Engage in any activity or take any action by virtue of an official position from which activity or action the official or employee, or any other person or entity in whose welfare the official or employee is interested, shall realize a gain or advantage, or receive anything which could be regarded as a gain or advantage, except such gain or advantage generally realized by the citizens of the Borough as the purposeful result of such activity or action.
- c) Solicit or accept, directly or indirectly, any gift, favor, service or other consideration that might reasonably tend to influence that official or employee in the discharge of the duties of his or her office;
- d) Seek to influence, directly or indirectly, the awarding of any contract where such official, or employee, or other person or entity in whose welfare the official or employee is interested, would benefit directly or indirectly, financially or otherwise, from said contract, except such benefits generally realized by the citizens of the Borough as the purposeful result of such contract;
- e) Solicit, accept or receive by virtue of his or her office, directly or indirectly, from any person or entity, any service or franchise right upon terms more favorable than are granted to the citizens of the Borough's generally;
- f) Give or promise, directly or indirectly, to any person any office, position, employment, benefit or any thing of value for the purpose of influencing or obtaining the political support, and or vote of any person, except where such benefit is generally realized by the citizens of the Borough; or,
- g) Use any public property for personal benefit or profit, except as may be authorized by Council in the Administrative Code or other ordinance.

B. In matters involving the recommendation, deliberation, or approving of contracts, no elected or appointed official of the Borough, or employee thereof, shall participate in any of those aforementioned activities if he or she, or any member of his immediate family, has a financial interest in any person or other entity proposing to contract with the Borough.

- C. No Member of Council or the Mayor may vote on or approve any matter before Council in which he or she is the sole beneficiary. This prohibition shall include votes taken to make appointments to Borough boards, authorities, commissions or agencies. This prohibition shall not apply to matters involving the election of Council officers, or to the appointment of any committees on which only Council members are eligible to serve.

Section 1003. Political Activity.

- A. Employees of the Borough shall not campaign for any candidate seeking a Borough office, shall not participate in fund raising activities for candidates for Borough office or for elected Borough officials, and shall not participate in any other political activity of the Borough.
- B. An employee of the Borough shall resign from such employment within ten (10) days of the date he or she becomes a candidate for any elected office of the Borough under this Charter.

Section 1004. Violations.

Violations of the provisions of Article X of this Charter shall constitute malfeasance in office which, except as otherwise provided for by General Law, shall be a summary offense punishable by the maximum fine and/or imprisonment established by General Law. Conviction shall result in forfeiture of office or termination of employment and any person so convicted shall thereafter be ineligible to hold any elective or appointed office of the Borough under this Charter, or employment in the government of the Borough.

**ARTICLE XI
Citizen Participation**

Section 1101. General Provisions.

Council and the Mayor shall protect and promote the right of the citizens of the Borough to participate in a positive and constructive manner in the government of the Borough. Subject to, and in accordance with, the provisions of this Charter, any citizen of the Borough may participate in the government of the Borough by:

- A. Seeking elected office as Mayor or Member of Council and by voting for the elected officials of his or her choice;
- B. Serving on boards, commissions, authorities, committees or other agencies of the Borough;
- C. Attending and being heard at public meetings of Council and other boards, commissions, authorities, committees or agencies of the Borough.
- D. Addressing suggestions to the Council, the Mayor, and others to provide guidance for their actions; and
- E. Exercising the right of initiative and referendum as provided in this Charter or General Law.

Section 1102. Participation Encouraged.

Council shall appoint citizens to boards, commissions, authorities or other agencies of the Borough, making the greatest possible use of the talents and interests of such citizens, thereby promoting the public interest and welfare of the Borough.

Section 1103. Initiative and Referendum.

A. Registered voters of the Borough shall have the following powers:

- (1) Initiative – to propose ordinances to Council which are consistent with this Charter and General Law, and to adopt or reject the same at a primary, municipal or general election if Council fails to adopt and the Mayor fails to approve an ordinance so proposed without any change in substance; and
- (2) Referendum – to require repeal by Council of any adopted ordinance and, if Council fails to repeal said ordinance, to repeal it at a primary, municipal or general election.

B. Petition papers circulated for the purpose of an initiative or referendum shall:

- (1) Contain the names and addresses of five (5) registered voters of the Borough designated as a Committee of the Petitioners;
- (2) Contain or have attached thereto throughout the circulation the full text of the ordinance proposed or sought to be repealed;
- (3) Bear the date, signatures, and addresses in ink of registered voters of the Borough equal in number to at least 10% of the number of votes cast in the Borough for all candidates for the Office of Governor in the last gubernatorial general election;
- (4) When filed, have attached to it an affidavit executed by the circulator thereof, stating that he or she personally circulated the paper, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the person whose name appears thereon, and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be repealed;
- (5) Be filed within 30 days after the date of the first signature;
- (6) Be filed with the Borough Manager as one instrument as provided herein.

C. Procedure after Filing.

- (1) Within twenty (20) days after the petition is filed, the Borough Manager shall examine the petition for compliance with the provisions of this Charter and General Law and

certify the results of his or her examination to the Committee of Petitioners and the President of Council by registered mail.

(2) If the Borough Manager certifies the petition as valid.

- a) The ordinance proposed shall be introduced at the next regular or special meeting of Council and be subject to the other provisions of Article III of this Charter pertaining to the enactment of ordinances, not inconsistent with the provisions of this Charter.
- b) In the case of an ordinance which has not yet gone into effect and is sought to be repealed, such ordinance shall be immediately suspended from taking effect until:
 1. The referendum petition is withdrawn by the Committee of Petitioners; or
 2. It is repealed by the vote of Council and its repeal is either approved by the Mayor or if vetoed, such veto is overridden by Council in accordance with Section 304.B; or
 3. It is approved or disapproved by the registered voters of the Borough, upon the certification of election results according to the provisions of the Pennsylvania Election Code.

(3) If the Borough Manager determines that the petition is invalid:

- a) He or she shall certify the results of his or her examination to the Committee of Petitioners and the President of Council by registered mail describing the particulars in which it is defective.
- b) The Committee of Petitioners shall have ten (10) days after the date of receipt of such notification to correct the said deficiencies and to file the corrected petition with the Borough Manager.
- c) Within five (5) days after the corrected petition is filed, the Borough Manager shall examine the corrected petition, as aforesaid, and the procedures in the case of an original petition shall be followed.
- d) A petition may only be corrected once, but a new petition may be filed for the same purpose at any future time.

D. Action on Petition.

If, within sixty (60) days after the submission of a petition certified as valid by the Borough Manager to the President of Council, Council fails to adopt or repeal the ordinance as requested by the initiative or referendum petition, the Borough Manager, within ten (10) days thereafter, or the Committee of Petitioners within fifteen (15) days thereafter (if the Borough

Manager fails to act), shall file the petition with the Board of Elections of Chester County, Pennsylvania, to be voted upon by the qualified voters of the Borough at the next primary, municipal or general election to be held not less than sixty (60) days thereafter. The Board of Elections shall frame the question to be placed upon the ballot. An initiative or referendum election shall be held by special election according to the provisions of the Pennsylvania Election Code.

E. Results of Election.

- (1) Initiative – If a majority of the registered voters of the Borough voting on a proposed ordinance vote in favor thereof, such ordinance shall become a valid and binding ordinance of the Borough upon certification of election results according to the provisions of the Pennsylvania Election Code.
- (2) Referendum – If a majority of the registered voters of the Borough voting to repeal an ordinance vote in favor thereof, such ordinance shall be considered repealed upon certification of the election results according to the provisions of the Pennsylvania Election Code.
- (3) Multiple Questions – If two (2) 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 others.

F. Limitations on Initiative and Referendum.

Initiative and referendum powers shall not extend to the budget or capital programs in their entirety, zoning, nor to any emergency ordinance. Any proposed ordinance must include funding provisions.

ARTICLE XII
Severability

If any provisions of this Charter are held invalid, the remaining provisions of the Charter will not be affected thereby. If the application of the Charter or any of its provisions to any persons or circumstances is held invalid, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby.

ARTICLE XIII
Amendment

This Charter may be amended in the manner provided by the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. §§ 2901 *et seq.*, as amended.

ARTICLE IV
Transition and Continuation

Section 1401. Effective Date.

This Charter shall, upon approval by referendum in the manner provided by the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. §§ 2901 *et seq.*, as amended, become effective as of January 1, 2009, and the Borough government shall operate under the terms and provisions hereof from and after said date.

Section 1402. Terms Continued.

Officials whose terms do not expire upon the effective date of this Charter shall continue in office as provided herein. Members of Council, the Mayor and other Borough officials in office on the day before this Charter becomes effective shall continue in office for the remainder of the terms to which they were elected on the effective date of this Charter, and they will assume the powers and duties of Members of Council, the Mayor and other Borough officials as set forth in this Charter.

Section 1403. Tax Collector.

The elected office of Tax Collector is abolished and the Treasurer of the Borough shall serve as the tax collector.

Section 1404. Shade Tree Commission.

- A. The Council shall, in the Administrative Code, provide for the continuation of the Shade Tree Commission, including rules and regulations governing appointment, vacancies, oaths and compensation. The Shade Tree Commission shall be an advisory body to the Borough Council.
- B. The Council shall, in the Administrative Code, provide rules and regulations governing the custody and control of shade trees in the Borough.
- C. The Council shall, in the Administrative Code, provide for the administration of the shade tree rules and regulations by the Shade Tree Commission, the Council, the Borough Manager, or any combination thereof.

Section 1405. Rights and Privileges Preserved.

- A. Nothing in this Charter, except as otherwise specifically provided, shall affect or impair the rights and privileges of persons who are officers and employees of the Borough at the time of adoption of this Charter. An employee holding a position in the Borough government at the time this Charter takes effect and who was serving in the same or similar position at the time of the adoption of this Charter, shall not be subject to competitive tests as a condition of

continuation in the same or similar position, but in all other respect shall be subject to the provisions of the applicable General Law of the Commonwealth.

- B. The Borough of Malvern Police Pension Plan (the “Plan”) shall conform to Commonwealth of Pennsylvania Act 600, with the exception that benefits in excess of those allowed by Commonwealth of Pennsylvania Act 600 may be granted only if the cost of such benefits can be funded by Plan member contributions, by Plan surplus and/or by municipal pension aid provided by the Commonwealth of Pennsylvania, and there is no municipal contribution to the Plan required to be made by the Borough of Malvern, either at implementation or after audit.

Section 1406. Existing Departments and Offices.

All departments, boards, commissions and offices of the Borough in existence at the date of enactment of this Charter shall continue until the Council provides otherwise unless contrary to this Charter, except for the offices of Tax Collector and the Vacancy Board, which shall be abolished.

Section 1407. Continuation of Ordinances and Resolutions.

All ordinances, resolutions and regulations of the Borough in effect at the time this Charter becomes effective and not in conflict with any provision of this Charter shall continue in force until amended or repealed by the Council.

Section 1408. Rights and Liabilities to Continue.

The Borough shall continue to own, possess, exercise and control, as the case may be, all rights, property and franchises of every kind or nature which it does at the time this Charter becomes effective under the same conditions and liabilities to which it is subjected at the time this Charter becomes effective under the same conditions that apply at such time.