

The Faulkner Act

N .S.A 40:69A-81 to 40:69A-98

Listed below are the laws that regulate our *Council-Manager* form of government.

40:69A-81. Applicable laws

The form of government provided in this article shall be known as the "council-manager plan" and shall, together with articles 2 and 17, govern any municipality, the voters of which have adopted this plan pursuant to this act.

L.1950, c. 210, p. 485, s. 9-1, eff. June 8,1950. Amended by L.1981, c. 465, s. 21, eff. Jan. 9, 1982.

40:69A-82. Government by elected council and appointed manager and other officers and employees

Each municipality under this article shall be governed by an elected council and by an appointed municipal manager, and by such other officers and employees as may be duly appointed pursuant to this article, general law or ordinance.

L.1950, c. 210, p. 485, s. 9-2, eff. June 8, 1950.

40:69A-83. Council

The municipal council shall consist of five members, unless otherwise provided in the municipal charter, who shall serve for a term of 4 years.

L.1950, c. 210, p. 485, s. 9-3. eff. June 8,1950. Amended by L.1981, c. 465, s. 22, eff. Jan. 9, 1982.

40:69A-83.1. Council-manager plan; charter provision; regular municipal or general election; term of office

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

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

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

L.1981, c. 465, s. 23, eff. Jan. 9,1982.

40:69A-83.2. Election at large or by wards

Any municipality adopting a council-manager plan of government shall provide in its charter either:

a. That the council members shall be elected at large by the voters of the municipality at the regular municipal election, on general election, as the charter shall provide; or

b. That the municipality shall be divided into wards pursuant to the authority granted in section 1-13 or 1-19 (C.40:69A-13 or40:69A-19), that council members shall be elected at large and by wards at the regular municipal election or general election, as the charter shall provide; and that no more than one council member shall be elected from each ward established in the municipality, and all other council members shall be elected at large.

L.1981, c.465, s.24; amended 1989,c.221,s.5.

40:69A-83.3. Terms of first council members

Any municipality adopting a council-manager plan of government may provide in its charter that the council members elected at the first regular municipal election or general election, as the charter shall provide, following the adoption of the plan shall serve for the following terms: if the municipal council is to consist of five members, two shall serve for four years and three for two years; if the municipal council is to consist of seven members, three shall serve for four years and four for two years; or if the municipal council is to consist of nine members, four shall serve for four years and five for two years. The length of the respective term of each member of the first council shall be determined by lot at the organization of the council immediately following the election; except that if, pursuant to the charter, the mayor is elected directly by the voters, the mayor shall, for the purposes of this subsection, be counted among those first council members to serve a four year term.

b. Notwithstanding the provisions of subsection a. of this section, if a municipality adopting the provisions of this section shall also provide in its charter that the municipality shall be divided into wards pursuant to the authority granted in section 1-13 or 1-19 (C.40:69A-13 or 40:69A-19), the council members elected at the first regular municipal election or general election, as the charter shall provide, following the adoption of the plan shall serve as follows: the council

members elected at large for a term of four years; and the council members elected from wards for a term of two years.

L.1981, c.465, s.25; amended 1989, c.221, 5.6.

40:69A-86. Mayor; election by councilor by voters; charter provision

Any municipality adopting a council-manager plan of government shall provide in its charter either:

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

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

L.1950, c. 210, p. 486, s. 9-6, eff. June 8,1950. Amended by L.1981, c. 465, s. 26, eff. Jan. 9, 1982.

40:69A-87. Duties of mayor

The mayor shall preside at all meetings of the municipal council and shall have a voice and vote in its proceedings. He shall fill vacancies occurring in the trustees of the public library and in the board of education where the municipality is operating under chapter 6 of Title 18 of the Revised Statutes for such terms of office as are provided by law. All bonds, notes, contracts and written obligations of the municipality shall be executed on its behalf by the mayor or, in the event of his inability to act, by such councilman as the municipal council shall designate to act as mayor during his absence or disability. The powers and duties of the mayor shall be only such as are expressly conferred upon him by this article.

L.1950, c. 210, p. 486, s. 9-7, *eff.* June 8,1950.

40:69A-88. Powers of municipality vested in council; exceptions

All powers of the municipality and the determination of all matters of policy shall be vested in the municipal council, except as otherwise provided by this act or by general law.

L.1950, c. 210, p. 487, s. 9-8, eff. June 8, 1950.

40:69A-89. Appointment of municipal manager and clerk and others

The municipal council shall appoint a municipal manager and a municipal clerk. Both of such offices may be held by the same person. The council may provide for the manner of appointment of a municipal attorney, any planning board, zoning board of adjustment or personnel board in the municipality, and may create commissions and other bodies with advisory powers.

L.1950, c. 210, p. 487, s. 9-9.

40:69A-90. Departments, boards and offices; deputy manager

The municipal council shall continue or create, and determine and define the powers and duties of such executive and administrative departments, boards and offices, in addition to those provided for herein, as it may deem necessary for the proper and efficient conduct of the affairs of the municipality, including the office of deputy manager which shall not be included in the classified service under Title 11 of the Revised Statutes. Any department, board or office so continued or created may at any time be abolished by the municipal council.

L.1950, c. 210, p. 487, s. 9-10, eff. June 8,1950.

40:69A-91. Municipal council to act as a body; administrative service to be performed through manager; committees or commissions

It is the intention of this article that the municipal council shall act in all the matters as a body, and it is contrary to the spirit of this article for any of its members to seek individually to influence the official acts of the municipal manager, or any other officer, or for the councilor any of its members to direct or request the appointment of any person to, or his removal from, office; or to interfere in any way with the performance by such officers of their duties. The council and its members shall deal with the administrative service solely through the manager and shall not give orders to any subordinates of the manager, either publicly or privately. Nothing herein

contained shall prevent the municipal council from appointing committees or commissions of its own members or of citizens to conduct investigations into the conduct of any officer or department, or any matter relating to the welfare of the municipality, and delegating to such committees or commissions such powers of inquiry as the municipal council may deem necessary. Any council member violating the provisions of this section shall, upon conviction thereof in a court of competent jurisdiction, be disqualified as a council member.

L.1950, c.210, s.9-11; amended 1989, c.221, s.7.

40:69A-92. Qualifications of municipal manager

The municipal manager shall be chosen by the council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office as hereinafter set forth. At the time of his appointment, he need not be a resident of the municipality or State, but during his tenure of office he may reside outside the municipality only with the approval of council.

L.1950, c. 210, p. 488, s. 9-12, *eff.* June 8, 1950.

40:69A-93. Term of municipal manager; removal; suspension

The municipal manager shall hold office for an indefinite term and may be removed by a majority vote of the council. At least 30 days before such removal shall become effective, the council shall by a majority vote of its members adopt a preliminary resolution stating the reasons for his removal. The manager may reply in writing and may request a public hearing, which shall be held not earlier than 20 days nor later than 30 days after the filing of such request. After such public hearing, if one be requested, and after full consideration, the council by majority vote of its members may adopt a final resolution of removal. By the preliminary resolution the council may suspend the manager from duty, but shall in any case cause to be paid him forthwith any unpaid balance of his salary and his salary for the next 3 calendar months following adoption of the preliminary resolution unless he is removed for good cause. For the purposes of this section, "good cause" shall mean conviction of a crime or offense involving moral turpitude, the violation of the provisions of section 17-14, 17- 15,17-16,17-17 or 17-18 of P.L.1950, c. 210 (C. 40:69A-163 through 40:69A-167), or the violation of any code of ethics in effect within the municipality.

L.1950, c. 210, p. 488, s. 9-13, *eff.* June 8,1950. Amended by L.1981, c. 465, s. 27, *eff.* Jan. 9, 1982.

40:69A-94. Absence or disability of manager

The manager may designate a qualified administrative officer of the municipality to perform his duties during his temporary absence or disability. In the event of his failure to make such designation, the council may by resolution appoint an officer of the municipality to perform the duties of the manager during such absence or disability until he shall return or his disability shall cease.

L.1950, c. 210, p, 488, s. 9-14.

40:69A-95. Powers and duties of manager The municipal manager shall:

- (a) Be the chief executive and administrative official of the municipality;
- (b) Execute all laws and ordinances of the municipality;
- (c) Appoint and remove a deputy manager if one be authorized by the council, all department heads and all other officers, subordinates, and assistants, except a municipal tax assessor, for whose selection or removal no other method is provided in this article, except that he may authorize the head of a department to appoint and remove subordinates in such department, supervise and control his appointees, and report all appointments or removals at the next meeting thereafter of the municipal council;
- (d) Negotiate contracts for the municipality subject to the approval of the municipal council, make recommendations concerning the nature and location of municipal improvements, and execute municipal improvements as determined by the municipal council;
- (e) See that all terms and conditions imposed in favor of the municipality or its inhabitants in any statute, public utility franchise or other contract are faithfully kept and performed, and upon knowledge of any violation call the same to the attention of the municipal council;
- (f) Attend all meetings of the municipal council with the right to take part in the discussions, but without the right to vote;
- (g) Recommend to the municipal council for adoption such measure~. as he may deem . necessary or expedient, keep the council advised of the financial condition of the municipality, make reports to the council as requested by it, and at least once a year make an annual report of his work for the benefit of the council and the public;

(h) Investigate at any time the affairs of any officer or department of the municipality;

(i) Perform such other duties as may be required of the municipal manager by ordinance or resolution of municipal council. The municipal manager shall be responsible to the council for carrying out all policies established by it and for the proper administration of all affairs of the municipality within the jurisdiction of the council.

L1950, c. 210, p. 489, s. 9-15, eff. June 8,1950. Amended by L1981, c. 393, s. 6, eff. Jan. 6, 1982.

40:69A-96. Budget; preparation by manager

The municipal budget shall be prepared by the municipal manager. During the month of November in each year, the municipal manager shall require all department heads to submit requests for appropriations for the ensuing budget year, and to appear before him at public hearings, which shall be held during that month, on the various requests.

L1950, c. 210, p. 490, s. 9-16, *eff.* June 8,1950.

40:69A-97. Submission of budget to council

Except in those municipalities which operate on the State fiscal year pursuant to section 2 or 3 of P. L 1991, c.75 (C.40A:4-3.1 or C.40A:4-3.2), on or before the fifteenth day of the fiscal year the municipal manager shall submit to council his recommended budget together with such explanatory comment or statement as he may deem desirable. The budget shall be in such form as is required by law for municipal budgets, and shall in addition have appended thereto detailed analysis of the various items of expenditure and revenue.

The council shall, where practicable, provide by ordinance for the operation of a system of work programs and quarterly allotments for operation of the budget, and for development and reporting of appropriate unit costs of budgeted expenditures.

L.1950,c.210,s.9-17; amended 1991,c.75,s.7.

40:69A-97.1. Council-manager plan deadline

Notwithstanding the provisions of section 9-17 of P.L. 1950, c. 210 (C. 40:69A-97), in any local budget year for which budget dates are extended pursuant to section 1 of this act, the municipal manager of a municipality governed under the "council-manager plan" pursuant to P.L. 1950, c. 210 (C. 40:69A-1 et seq.) which takes advantage of such extension shall submit to the council his recommended budget not less than 16 days prior to the extended date for the introduction and approval of municipal budgets.

L. 1989, c. 31, s. 9.

40:69A-98. Laws conferring powers upon mayor or other executive head construed as meaning municipal manager

Any provision of general law conferring the appointing power or other power upon the mayor or other executive head of the municipality shall be construed as meaning the municipal manager in a municipality governed under this article, and the appointments or the power exercised by the municipal manager in accordance with such provision shall be classified and given the same force and effect as if executed by the official named therein, except that members of the board of education and of the trustees of the public library, whenever required to be appointed by any such provision by any board or official of the municipality, shall be appointed under this article by the mayor, and except that the mayor shall serve as the fifth member of the board of school estimate pursuant to N.J.S. 18A:22-1.

L.1950, c. 210, p. 490, s. 9-18, eff. June 8,1950. Amended by L.1981, c. 68, s. 1, *eff.* March18, 1981