

Forms of Municipal Government in New Jersey¹

The forms of municipal government now available to New Jersey communities reflect laws enacted at various times during the state's history. Twelve distinct forms can be identified. First, there are the five forms of government related to the **type of municipality**. While their origins can be traced back into the eighteenth and nineteenth centuries, the statutes governing them have been rewritten in recent years. They are:

1. City Form
2. Town Form
3. Borough Form
4. Township Form
5. Village Form

With some slight variation described below under the Township Form, these forms of governmental organization are available only to municipalities that have been incorporated pursuant to state law as the related type of municipality.

There are also the optional forms of government authorized during the twentieth century and available to any municipality that wishes to adopt them. These, with the year of their authorization, are:

6. Commission Form (1911)
7. Municipal Manager Form (1923)
8. Optional Municipal Charter Law: Mayor-Council Form (1950)
9. Optional Municipal Charter Law: Council-Manager Form (1950)
10. Optional Municipal Charter Law: Small Municipality Form (1950)
11. Optional Municipal Charter Law: Mayor-Council-Administrator Form (1981)

Finally, there is the possibility of a special charter, providing a unique pattern of organization for an individual municipality. Prohibited by Constitutional amendment from 1875 through 1947, the special charter approach was again made available by the revised State Constitution of 1947.

¹ Adapted and updated from Ernest C. Reock, Jr. and Raymond D. Bodnar, *The Changing Structure of New Jersey Municipal Government*, New Jersey County and Municipal Government Study Commission, April 1985.

12. Special Charters

The use of these forms of government, as of July 1, 2011, is shown in Table 1.

Table 1. Use of New Jersey Forms of Government, July 1, 2011.

		Elected Legislature And Elected Executive	Elected Legislature And Appointed Executive	Elected Legislator- Executives
Township Form (1798)				Township Committee (141)
City Form (1880s-1890s)		Mayor-Council (15)		
Town Form (1880s-1890s)		Mayor-Council (9)		
Borough Form (1880s-1890s)		Mayor-Council (218)		
Village Form (1880s-1890s)				Board of Trustees (1)
OPTIONAL FORMS				
Commission Form (1911)				Board of Commissioners (30)
Municipal Manager Form (1923)			Council-Manager (7)	
Optional Municipal Charter Law	1950	Mayor-Council Form (71)	Council-Manager Form (42)	
		Small Municipality Form (18)		
	1981	Mayor-Council- Administrator Form (3)		
Special Charters		(8)	(3)	
Total		(342)	(52)	(172)

General Patterns of Municipal Organization

Almost all forms of municipal government organization, both in New Jersey and elsewhere, can be placed in one of three broad patterns:

Elected Governing Body and Elected Chief Executive

The first general pattern is a form that mirrors the organization of the federal and state governments. There is a directly **elected** chief executive, usually called the mayor, who corresponds to the president or the governor at higher levels, and there is a separately elected legislative body, most often called the council. Each of these branches is given powers that serve as a check on any excesses of the other branch. The mayor, as chief executive, usually is expected to supervise the day-to-day administration of the local government and to see that local laws and ordinances are enforced. The mayor may have the power to veto ordinances and usually has some power to appoint subordinate officers and employees. The council enacts ordinances establishing public policy, appropriates funds required to run the government, and usually has some special powers of investigation. If the mayor's powers are strong, this form of government is described as a "strong" mayor-council form. If not, it is a "weak" mayor-council form.

Elected Governing Body and Appointed Chief Executive

The second broad pattern provides for an elected governing body that **appoints** a chief executive. This pattern presumably is modeled after forms of business organization. The council is the legislative, or policy-setting, branch of government and generally is expected to play no role in administering the daily affairs of the municipality. This task is delegated to an appointed chief executive, frequently called the manager or administrator. Since substantial powers, including appointments, are assigned to this person, care usually is taken to provide a relatively easy procedure for dismissal by the council if performance is not satisfactory.

Elected Governing Body-Administrators

The third pattern requires the election of a group of officials who serve **both** as the chief executive and as the legislative body. In effect, this is government by committee. It is one of the oldest patterns of municipal government organization, having its roots in the old town meeting plan, when the members of the annual meeting of all voters would select a few of their number to run the town until the next annual meeting. In practice, the governing body often functions as a committee only for legislative matters, while the responsibility for day-to-day supervision is divided among the individual members of the committee, with each member specializing in some aspect of municipal government. The commission form of government is a more formalized version of committee government.

The twelve forms of municipal government organization now available by law in New Jersey fit into the broad patterns of organization as shown in Table 2.

Table 2. New Jersey Forms of Municipal Government by General Pattern of Organization.

	Elected Governing Body and Elected Chief Executive	Elected Governing Body and Appointed Chief Executive	Elected Governing Body- Adminis- trators
City Form	X		
Town Form	X		
Borough Form	X		
Township			X
Village Form			X
Commission Form			X
Municipal Manager Form (1923)		X	
OMCL: Mayor-Council Form	X		
OMCL: Council-Manager Form		X	
OMCL: Small Municipality Form	X		
OMCL: Mayor-Council-Administrator Form	X		
Special Charters		Mixed	

Older Forms of New Jersey Municipal Government

City Form

N.J.S.A. 40:103-5(71) et seq.

N.J.S.A. 40A:61-1 et seq.

The City Form of government is based on a series of laws enacted in the late nineteenth and early twentieth centuries that represent the legislature's initial attempts to provide optional forms of municipal government for local adoption. Their use was limited to municipalities incorporated as cities.

In recent years, most of these laws have been repealed, since they were not in use. Two laws remain: a 1963 statute, which is in use only in East Orange and may not be adopted by any other municipality, and a new statute enacted in 1987 to replace all other city laws. Together, these two laws were used as of July 1, 2011, by only 15 cities having 2.4 percent of the state's estimated 2010 population. Most cities in the state have adopted one of the more general optional form of government laws described further on. The City Form of government is not available for adoption by other municipalities.

Both of the laws for the City Form of government provide for a separately elected mayor and council. Under the 1987 law, the council consists of seven members, three of whom

are elected from each of two wards for staggered three-year terms of office, plus a single council member elected at large for a four-year term. The mayor also is elected at large for a four-year term of office. Elections are on a partisan basis, with primaries in the spring and the general election in November.

Five cities that had special charters granted by the legislature prior to 1875 were brought under the 1987 law for most purposes, but were permitted to retain their old charter provisions for election of the mayor and council, which may deviate in some respects from the general case. East Orange, under the 1963 law, also deviates from the general pattern.

The mayor serves as chief executive, responsible for seeing that all laws and ordinances are executed, and is the head of the police department, with the power to appoint senior officers in that department with the advice and consent of the council. The mayor has a veto over ordinances and, in the 1963 law, also over resolutions, both of which can be overridden only by a two-thirds vote of the council.

The council is the legislative body and selects one of its own members to preside as council president. The council makes most appointments of municipal personnel with the exception of the police department. Under the 1963 law, the mayor's appointive power appears to be much more extensive. However, the law authorizes the creation, after approval in a referendum, of semi-independent boards for the operation of the police, fire, and water departments. If established, these boards assume appointment and supervisory power within their departments. East Orange, the only city under this law, has made use of the option to delegate administrative supervision to such departmental boards. Under the 1987 City Form of government law the position of administrator may be created by ordinance and all or a portion of the executive responsibilities of the municipality may be delegated to the administrator. Only the 1963 law includes the general powers of initiative and referendum for the local voters¹

Town Form

N.J.S.A. 40A:62-1 et seq.

The Town Form of government had its origins in the nineteenth century, but the law was rewritten in 1988. Most communities previously using this form have abandoned it for one of the newer optional forms. As of July 1, 2011, only nine places with 1.5 percent of the state's population still used the Town Form of government, and it is not available for adoption by any additional places.

Under this form there is a mayor chosen directly by the voters for a two-or three-year term of office and eight council members elected from four wards for two-year overlapping terms². Several of the places using the Town Form of government used variations of this arrangement of wards and terms in 1988, and the revision of the law enacted in that year permitted them to retain the election patterns then in use. All elections are on a partisan basis with primaries in the spring and a general election in November.

¹ The power of recall, formerly authorized for only certain forms of municipal government, now applies to all elected officials in New Jersey.

² A few towns call their council a board of aldermen.

The mayor presides, may participate and vote in council meetings, and is designated as the head of the municipal government. He or she has a veto power over ordinances, which may be overridden only by a two-thirds vote of all members of the council, which includes the mayor.

The council is the legislative body of the municipality and makes almost all appointments. All executive powers not specifically designated for the mayor are exercised by the council.

The council may, by ordinance, create the position of town administrator and may delegate all or a portion of its executive responsibilities to the administrator.

The general powers of initiative and referendum are not authorized for the voters under the Town Form of government¹.

Borough Form

N.J.S.A. 40A:60-1 et seq.

The Borough Form of municipal government is the most common among New Jersey municipalities, being used by 218 places with 17.4 percent of the state's population as of July 1, 2011. The law governing this form of government was rewritten in 1987.

The Borough Form of government provides for a mayor and a six-member council, elected separately in partisan elections at the November general election. The mayor serves for four years, while council members serve three-year staggered terms of office, with two council seats being contested each year. Council members are elected at large from the entire community². The mayor presides at council meetings, but votes only to break ties. He or she has a veto that may be overridden by a two-thirds vote of all members of the council, not including the mayor. A council president is selected annually from among their own members by the council and presides in the absence of the mayor. The mayor nominates all appointive officers subject to council confirmation. However, if the council does not confirm within 30 days, the appointing power is transferred to the council. The law names the mayor as the head of the municipal government and directs him or her to see that state laws and local ordinances are faithfully executed in the borough.

The council has all executive responsibilities not specifically assigned to the mayor. However, the council may, by ordinance, create the position of administrator and may delegate all or a portion of the executive responsibilities of the municipality to the administrator.

The general powers of initiative and referendum are not authorized for the voters under

¹ The power of recall, formerly authorized for only certain forms of municipal government, now applies to all elected officials in New Jersey.

² In the past it was possible for a borough over 10,000 in population to be divided into from two to five wards. Roselle and Roselle Park were the only boroughs using this plan in 1987, each with five wards electing a single council member, plus one member elected at large. They were permitted to retain this pattern of election, but the option is no longer available to other boroughs.

the Borough Form of government¹.

The Borough Form of government is available only to municipalities incorporated as boroughs. There is no provision for some other type of municipality to adopt the Borough Form.

In past years, in order to gain some advantage under federal revenue sharing, a few boroughs used a name-change statute to insert the word “township” in their name without changing their form of government. Thus, there may be such places as the “Township of Glen Ridge Borough,” which continues to function under the Borough Form of government.

Township Form

N.J.S.A. 40A:63-1 et seq.

The Township Form of government is one of the oldest in New Jersey. Although declining in popularity, it is still the second most numerous, with 141 townships serving 17.9 percent of the state’s population as of July 1, 2011. The Township Form of government law was rewritten in 1989.

The governing body is a township committee of three or five members who are elected in partisan elections from the township at large for three-year staggered terms². There is an election of at least one member every year. The size of the committee may be increased from three to five or decreased from five to three through a petition and referendum procedure.

Committee members annually choose one of their own members to serve as mayor for that year. The mayor presides at committee meetings and votes as a member of the committee, but has no other special powers under the Township Form of government law. In general, all formal legislative and executive powers, including the power of appointment, are exercised by the committee as a whole. However, some township committees continue a traditional practice of dividing themselves into subcommittees to supervise the administrative activities of the township government.

A township committee may, by ordinance, create the position of administrator and may delegate all or a portion of the executive responsibilities of the municipality to the administrator. Frequently, when this is done, the township committee no longer uses subcommittees, but functions as a committee of the whole.

The general powers of initiative and referendum are not authorized for the voters under the Township Form of government³.

¹ The power of recall, formerly authorized for only certain forms of municipal government, now applies to all elected officials in New Jersey.

² A township of more than 7,000 inhabitants formerly could be divided into two or three wards, with the township committee then to consist of two members elected from each ward for three-year staggered terms, and one committee member elected at large, to serve as mayor during a four-year term of office. Only the Township of Winslow used wards at the time this township law was rewritten in 1989. While Winslow was permitted to retain this pattern, the option is no longer available to other townships.

³ The power of recall, formerly authorized for only certain forms of municipal government, now applies to all elected officials in New Jersey.

The Township Form of government is available only to townships. In past years, in order to gain some advantage under federal revenue sharing, a number of municipalities using other forms of government have used a name-change statute to insert the word “township” in their name. Thus, there may be such places as the “Township of Glen Ridge Borough,” which continues to use the Borough Form of government, although calling itself a township.

Village Form

N.J.S.A. 40A:63-8

The Village Form of government is rare in New Jersey. Only Loch Arbour, with a 2010 population of 194, is now using this form of governmental organization. The governing body is a five-member board of trustees elected at large for three-year, staggered terms of office. One member is chosen by the board to serve as the president.

Chapter 157 of the Laws of 1989 wiped out almost all portions of the statutes dealing with villages and provided that, in the future, villages should function under the Township Form of government statute, although the village may continue to use the older terminology to describe its governing officials.

Early Twentieth Century Optional Forms of Government

Commission Form

N.J.S.A. 40:70-1 et seq.

The first of the twentieth century optional forms of municipal government to be made available to all municipalities was enacted by the legislature in 1911 as the Commission Form of Government Law, or Walsh Act. The law permits the voters of any municipality in New Jersey to abandon their existing form of government and adopt the Commission Form. During the 1910s and 1920s over 60 municipalities, including most of the large cities, many older suburbs, and a number of seashore resorts, made the change. In the past 50 years, however, the trend has been reversed, and few large places now use this form of municipal government. As of July 1, 2011, 30 places, with 4.1 percent of the state’s 2010 population, used the Commission Form of government.

Under the Commission Form the voters elect a three-member commission in places of less than 12,000 population and a five-member commission in larger places. A three-member commission may be increased to five through a petition and referendum process. Elections are all at large and are held on a nonpartisan basis in May unless the municipal governing body has adopted an ordinance to hold the nonpartisan election at the time of the general election in November. When such a change has been made it must remain in effect for at least 10 years¹. Candidates are prohibited from adding a political party label to their names on the ballot. Commissioners serve four-year concurrent terms of office.

¹ P.L. 2009, c. 196.

The commissioners collectively constitute a board that is the legislative body of the municipality. The executive function of the municipality is divided among the three or five commissioners, each of whom is the director of one of the municipal departments specified by law. Subordinate offices and agencies are assigned among the departments by the full board at its organization meeting. Thereafter, the power to appoint all subordinate personnel in each department rests with the commissioner in charge of that department. One commissioner is chosen by the board to serve for four years as the mayor and to preside over meetings of the board. The mayor is directed by law to “supervise” all departments, but there is no veto power, and judicial decisions have tended to regard each commissioner as supreme in his or her own department, so that the mayor’s supervisory authority depends more upon personal qualities than statutory authority.

The Commission Form of government authorizes use of the initiative and the referendum by the voters of the community¹.

Although the Commission Form makes no provision for a chief appointed administrative officer, such a position can be established by local ordinance. This is rarely done, since the administrative authority of each commissioner in his or her own department is so complete.

The Commission Form of government can be considered a more formalized version of the Township Form, although the powers of each commissioner within his or her own department are much more sweeping than the authority of a township committee member.

Municipal Manager Form (1923)

N.J.S.A. 40:79-1 et seq.

In 1923 the legislature enacted the second of the major optional laws now available, the Municipal Manager Form of Government Law. Any municipality, regardless of type, may replace its existing form of municipal government with the organization outlined by this law. In practice, the law has seen only limited use, with seven places, covering 2.3 percent of New Jersey’s 2010 population, operating under its provisions as of July 1, 2011.

Under the 1923 Municipal Manager Form the voters elect three, five, seven, or nine members of a council in nonpartisan at-large elections. Runoff elections may be included in case no candidate receives a majority of the votes cast, although they are not required under the Uniform Nonpartisan Election Law². The term of office normally is four years, with concurrent terms. However, a municipality that had staggered terms of office under its previous form of government may use three-year staggered terms, and a municipality may change to four-year staggered terms after adoption of this form of government.

¹ The power of recall, formerly authorized for only certain forms of municipal government, now applies to all elected officials in New Jersey.

² *N.J.S.A. 40:45-6.21.*

The council appoints a municipal manager, a tax assessor, an auditor, a treasurer, a municipal clerk, and an attorney. The council functions thereafter as a legislative body; administrative duties are prohibited for council members.

The manager is the municipal chief executive, makes all additional appointments, and prepares the tentative budget for council consideration. The manager serves at the pleasure of the council.

The mayor is selected by the council from among its own members, with duties mainly limited to presiding and voting as a member in council meeting and making appointments to the board of library trustees and the board of education where that board is not elected. The mayor's term of office varies, depending on the length of time between council elections.

The 1923 Municipal Manager Form of government does not authorize the powers of initiative or referendum for local voters¹

The Optional Municipal Charter Law

The Optional Municipal Charter Law of 1950 (OMCL), or Faulkner Act, is the third major legislative act authorizing local option in forms of government organization. It provides for four distinct forms of municipal government: a Mayor-Council Form, a Council-Manager Form, and a Mayor-Council-Administrator Form, all of which may be adopted by any municipality, and a Small Municipality Form, which is available only to municipalities under 12,000 in population. Each of the forms of municipal government under the OMCL, except the Mayor-Council-Administrator Form, includes a number of options on which decisions must be made when the municipality adopts the form. These can be changed at a later date through a referendum, without changing the basic form of government.

OMCL Mayor-Council Form

N.J.S.A. 40:69A-1 et seq.

The Optional Municipal Charter Law Mayor-Council Form of government provides for a separately-elected mayor and council, all of whom serve for four-year terms of office. The council may consist of five, seven, or nine members, and they may be elected from the community at large or through a combination of at-large and ward representation. The number of wards varies with the size of the council as shown below:

¹ The power of recall, formerly authorized for only certain forms of municipal government, now applies to all elected officials in New Jersey.

<i>Size of Council</i>	<i>Number of Wards</i>	<i>At-Large Council Members</i>
5	2 or 3	3 or 2
7	4	3
9	5 or 6	4 or 3

Elections may be held on a partisan basis, with primaries in the spring and the general election in November, or on a nonpartisan basis in May or at the general election in November. Council terms may be served concurrently for the full four years, or they may be staggered, so that part of the council is elected every two years. However, if wards are used, the council terms must be staggered, with the mayor and the at-large council members standing for election in the same year, while ward council members run in the off-year election two years later. Runoff elections may be included in the nonpartisan pattern, to be used if no candidate receives a majority, but they are not required.

The mayor, as chief executive, is responsible for enforcing the charter and ordinances of the municipality and all general laws and for supervising the departments of the municipal government. The municipal government organization is limited to from three to ten departments, plus the offices of municipal clerk and tax assessor. One of the departments must be a department of administration headed by a business administrator, who administers a centralized purchasing system and the personnel system and assists the mayor in preparation of the tentative budget. The mayor appoints the department heads, the tax assessor, and most members of boards, commissions, and authorities with the advice and consent of the council. Department heads serve during the mayor's term of office and may be removed by the mayor, but the council may veto such removal by a two-thirds vote. Subordinate officers and employees are appointed by department heads. The mayor has the authority to set the salary of most municipal employees, but the council establishes the compensation to be paid to department heads.

The mayor may attend council meetings and has the right to speak, but not to vote; some mayors do not attend. The mayor has a veto power over ordinances, which may be overridden only by a two-thirds vote of the council. The tentative budget is prepared by the mayor, who submits it to the council for approval. The council may reduce items in the mayor's budget by a simple majority, but may increase items only by a two-thirds majority.

The council is limited to legislative functions, with its only appointment based on the charter being that of the municipal clerk. The council may deal with employees of the municipality's administrative departments only through the mayor or the mayor's designee. However, it may require the mayor or the designee to appear before the council to report on any matter under discussion. The council also has various investigative and fiscal control powers, but may remove municipal officers only for cause. The council selects one of its own members to preside, with the title of president of council.

Any municipality adopting an OMCL form of government is required to enact an

ordinance creating an administrative code, which specifies the municipal officers, departments, and agencies, and defines their responsibilities and procedures¹. The powers of initiative and referendum are a part of all forms of government under the Optional Municipal Charter Law².

It is possible for a municipality operating under the OMCL Mayor-Council Form of government, through a referendum, to change any of the optional aspects — the size of the council, partisan or nonpartisan elections, the use of wards, staggered or concurrent council terms, and the use of runoff elections — without undergoing a complete change in the form of government. However, if a community under this form of government wishes to revert to its previous form or to change to another optional form of government, it must wait at least three years if under 7,000 in population or five years if larger. It may not revert to any form of government that it could not now adopt.

Although only 71 municipalities operate under this form of government as of July 1, 2011, they include most of the large communities of the state; 37.6 percent of New Jersey's 2010 population is served, the largest percentage for any form of municipal government.

OMCL Council-Manager Form

N.J.S.A. 40:69A-1 et seq.

The second form of government made available to any municipality under the Optional Municipal Charter Law of 1950 is the Council-Manager Form. Members of the council are elected by the voters for four-year terms of office, and there may be five, seven, or nine members. The municipality has the option of holding elections at large or of dividing the community into wards and electing some council members at large and some from wards. The number of wards depends on the size of the council as follows:

<i>Size of Council</i>	<i>Number of Wards</i>	<i>At-Large Council Members</i>
5	2 or 3	3 or 2
7	4	3
9	5 or 6	4 or 3

Elections may be on a partisan basis, with primaries in the spring and the general election in November, or on a nonpartisan basis in May or November. If nonpartisan elections are used, they may or may not be accompanied by run-off elections, to be used if no candidate receives a majority of the initial vote. Council terms may be scheduled to run concurrently for four years, or they may be staggered, so that there is an election every two years. If wards are

¹ See below, under Administrative Codes.

² The power of recall, formerly authorized for only certain forms of municipal government, now applies to all elected officials in New Jersey.

used, the terms must be staggered, with the at-large members running in one election and the ward council members two years later.

The council appoints a manager, a municipal clerk, and a tax assessor, and may provide for the method of selection of the municipal attorney, the zoning board of adjustment, a personnel board, and advisory boards and commissions. The council is limited to legislative duties and must act as a body. Individual members of the council are prohibited from dealing with the municipal administrative personnel except through the manager.

The mayor may be selected by the council from among its own members, in which case he or she will serve for a two- or four-year term until the organization meeting following the next council election. Alternatively, the mayor may be elected directly by the voters, serving four years in that office. In either case, the mayor is little more than a presiding officer for the council, with a voice in all discussions and a vote.

The manager is the chief executive and either appoints all subordinate personnel not otherwise provided for or delegates the appointive power to department heads. The budget is prepared by the manager, who submits it to the council for revision and approval. The manager must attend all council meetings, and may take part in discussions, but has no vote. The manager serves at the pleasure of the council and may be removed by a majority vote at any time, so long as prescribed procedure is followed.

Any municipality adopting an OMCL form of government is required to enact an ordinance creating an administrative code that specifies the municipal officers, departments, and agencies, and defines their responsibilities and procedures¹. The OMCL Council-Manager Form includes the powers of initiative and referendum².

It is possible for a municipality operating under this form of government, through a referendum, to change any of the optional aspects— the size of the council, partisan or nonpartisan elections, the use of wards, staggered or concurrent terms, the use of runoff elections, and the method of selection of the mayor — without undergoing a complete change in charter.

Any municipality adopting the OMCL Council-Manager Form of government may abandon that form and revert to its earlier form or may change to another optional form of government after three years if under 7,000 in population or after five years if larger. It may not revert to any form of government that it could not now adopt.

As of July 1, 2010, 42 places were using the OMCL Council-Manager Form of government, including 11.0 percent of the state's estimated 2002 population.

¹ See below, under Administrative Codes.

² The power of recall, formerly authorized for only certain forms of municipal government, now applies to all elected officials in New Jersey.

OMCL Small Municipality Form

N.J.S.A. 40:69A-1 et seq.

The third form of government available under the Optional Municipal Charter Law is the Small Municipality Form, which may be adopted by any municipality that has a population of less than 12,000. Places that adopt this form while under the 12,000 limit are not precluded from continuing it if they grow beyond that size.

The Small Municipality Form includes an elected council consisting of the mayor and two, four, or six other council members. The mayor may be elected directly by the voters or may be selected by the council from among its own members. Council terms are three years on either a concurrent or a staggered basis. If the mayor is elected directly, his or her term of office is four years; if chosen from the council, the mayor serves for either one or three years, depending on whether the council terms are staggered or concurrent.

Elections may be either partisan, with primaries in the spring and the general election in November, or nonpartisan, with a municipal election in May or November. Nonpartisan elections may include provisions for runoff elections for use if no candidate receives a majority of the vote, but this is not required. All elections are at large; wards are not authorized.

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

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

Any municipality adopting an OMCL form of government is required to enact an ordinance creating an administrative code that specifies the municipal officers, departments, and agencies, and defines their responsibilities and procedures¹. The powers of initiative and referendum are available to the voters under the Small Municipality Form of government².

¹ See below, under Administrative Codes.

² The power of recall, formerly authorized for only certain forms of municipal government, now applies to all elected officials in New Jersey.

It is possible for a municipality operating under this form of government, through a referendum, to change any of the optional aspects — the size of the council, partisan or nonpartisan elections, staggered or concurrent terms, the use of runoff elections, or the method of selection of the mayor — without changing the basic form of government. Any municipality adopting the Small Municipality Form of government may abandon that form and revert to its earlier form or may change to some other optional form of government after three years if under 7,000 in population or after five years if larger. It may not revert to any form of government that it could not now adopt.

Eighteen municipalities, with 1.5 percent of New Jersey's 2002 estimated population, were served by the Small Municipality Form of government as of July 1, 2011.

OMCL: Mayor-Council-Administrator Form

N.J.S.A. 40:69A-1 et seq.

The Mayor-Council-Administrator Form of municipal government was added to the Optional Municipal Charter Law in 1981. As of July 1, 2011 only three municipalities, the townships of Berkeley Heights, North Brunswick and West Milford, had adopted it. This is the newest plan of government made available. It is based largely on the Borough Form, but with the mandatory addition of a municipal administrator and a general strengthening of the mayor's powers.

Under this form, the municipal council consists of the mayor and six members of council who are elected in at-large, partisan elections. The mayor serves for a four-year term, and the other members of council serve for three-year terms on a staggered basis, with an election of two members every year.

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

The mayor appoints an assessor, a tax collector, an attorney, a municipal clerk, a treasurer, and such other officers as are provided by ordinance, with the advice and consent of the council. All such appointments are for a one-year term unless required differently by some other statute. Other municipal personnel for whom no method of selection is provided are appointed by the mayor.

The council may provide by ordinance for up to six departments, each to be headed by a director appointed by the mayor with the advice and consent of the council. Department heads serve during the term of the mayor and may be removed by the mayor; they may also be removed for cause by the council. There is a municipal administrator, who is appointed by the mayor with advice and consent of council and serves during the mayor's term. He or she may be removed by a two-thirds vote of council. The municipal administrator is directed to administer the business affairs of the municipality and to supervise all of the departments.

The council is the legislative body and is responsible for preparing the municipal budget with the assistance of the municipal administrator and the treasurer. Council members have no administrative duties and no appointive power under this form of government.

Any municipality adopting an OMCL form of government is required to enact an ordinance creating an administrative code that specifies the municipal officers, departments, and agencies, and defines their responsibilities and procedures¹. The powers of initiative and referendum are available to the voters under this form of government²

Any municipality operating under the Mayor-Council-Administrator Form of government may abandon it and revert to its previous form or may adopt some other optional form after three years if under 7,000 population or after five years if larger. It may not revert to any form of government that it could not now adopt.

Special Charters

Since the state revised its constitution in 1947, it has become possible for individual communities to obtain a unique form of government through enactment of a law providing them with their own special charter. Although slow to gain attention, this new special charter procedure has become more popular in recent years, with eleven places, as of July 1, 2010, operating under special charters enacted or amended since 1947. Collectively, they include 3.4% of New Jersey's 2010 population.

The usual approach in writing the newer special charters has been to base them on some existing optional form of government, with special variations to meet the desires of a particular community.

In addition, a handful of municipalities still are organized, at least in part, on the basis of old special charters granted specifically to them by the legislature prior to the 1875 constitutional amendment requiring a general law approach to local government legislation. While these municipalities have now been brought under the revised City Form and Town Form for most purposes (see above), they have been permitted to retain some vestiges of their old special charters with regard to provisions dealing with the method of electing the mayors and councils.

The Office of Administrator Established by Ordinance

N.J.S.A. 40A:9-136 et seq.

None of the older forms of municipal government associated with a particular type of municipality (City, Town, Borough, Township, Village) require a chief appointed administrative officer (CAAO), since they were enacted many years before this concept gained general acceptance. However, the revisions made in these laws during the late 1980s now specifically

¹ See below, under Administrative Codes.

² The power of recall, formerly authorized for only certain forms of municipal government, now applies to all elected officials in New Jersey.

permit such a position.

Similarly, the Commission Form, enacted in 1911, and the OMCL Small Municipality Form (1950) limited to places under 12,000 in population, make no charter provision for a CAAO. As communities have increased in population and governmental functions, however, the need for some such officer to coordinate the municipality's activities has come to be recognized in a number of places.

At first, the need was met by designating some existing officer — the clerk, the collector, or the engineer in most cases — to serve as coordinator of municipal functions on an informal basis. Gradually, municipalities began assigning this task more formally by ordinance or resolution, although no specific statutory authorization was available.

By 1968 the trend had become so widespread that legislative authority was sought, and it was granted through the enactment of Chapter 367, Laws of 1968. This statute was rewritten slightly in 1971 and more significantly in 1989, and now provides a solid basis for the addition of a CAAO to any form of local government where the office does not exist by charter provision.

The governing body, by ordinance, may create the position of municipal administrator and delegate to the office all or any portion of the executive responsibilities of the municipality. The administrator is appointed by the mayor or chief executive officer of the municipality with the advice and consent of the governing body, except in the Township and Commission forms of government, where the appointment is made by majority vote of the governing body. The municipal administrator serves at the pleasure of the governing body and may be removed from office by a two-thirds vote of that body.

General Laws Affecting Municipalities

Although the laws providing each form of government define the basic structure for that form, including the designation of principal officers, their method of selection, their powers, and many aspects of administration, it must be recognized that many other laws affect municipal organization in a more general way. These general laws are particularly important in the areas of municipal finance, land use controls, public education, and public health. It is not the intent of this section to provide detailed information on the general laws in each of these areas, but merely to illustrate the point that any person concerned with the organization of a particular municipality must look beyond the statutes dealing with a specific form of government.

State supervision of local affairs probably is most fully developed in the area of municipal finance. The Local Budget Law (*N.J.S.A. 40A:44 et seq.*) applies to all municipalities and establishes procedures for preparing, introducing, adopting, and implementing the municipal budget. The Local Bond Law (*N.J.S.A. 40A:2-1 et seq.*) provides the guidelines under which municipalities may borrow money. Other legislation (*N.J.S.A. 40A:4-46.1 et seq.*) limits the annual increase in municipal budgets. In addition, state concern with the competence of key local officials has led to the enactment of general laws dealing with specific municipal offices. The appointment of municipal clerks (*N.J.S.A. 40A:9-133.1 et seq.*), tax assessors (*N.J.S.A. 40A:9-146 et seq.*), tax collectors (*N.J.S.A. 40A:9-141 et seq.*), finance officers (*N.J.S.A. 40A:9-140.1 et*

seq.), and public works directors (*N.J.S.A. 40A9-154.6a et seq.*) is now governed by general laws applying to all municipalities, regardless of form of government.

In the area of land use controls, the Municipal Land Use Law (*N.J.S.A. 40:55D-1 et seq.*) establishes the rules for creation of municipal planning boards and zoning boards of adjustment and defines their powers. The conduct of the local public schools is generally unaffected by decisions about the form of municipal government, with statutory authority and guidelines included in Title 18A of the laws. Similarly, in questions of local public health administration, the provisions of the form of municipal government law must be read in conjunction with the general law provisions contained in Title 26 of the statutes.

Other examples could be developed. The important point is that a form of municipal government organization is defined not only by the law dealing with that form but also by the general laws for particular functions of government, such as police, fire, library, welfare, sewer, and water supply services. Where apparent conflicts have arisen there has been considerable litigation, which helps to identify the statutory provisions that apply.

Administrative Codes

The charter of a municipality, in most cases, consists of a section of the laws of the state that describes the form of government in use in that community. For example, a municipality operating under the Borough Form of government would have the appropriate sections of *N.J.S.A. 40A:60-1 to 40A:60-8.1* as its charter. These charter laws, however, provide only the major elements of the organizational framework for the municipal government. As described in the previous section, the charter provisions are supplemented by various provisions of general law that apply to all municipalities. Such general laws frequently are scattered through the statute books according to the subjects with which they deal. In addition, there remain many areas not controlled by either the charter or general laws in which each municipality can adopt its own organization and procedures and provide through local option for additional details of its local government operation.

In order to pull together the structural details and procedures obtained from these three sources — charter provisions for a particular form of government, general laws, and locally determined features — it is highly desirable for each municipality to enact an ordinance known as an administrative code. The administrative code restates the major provisions of the municipality's charter, restates the applicable sections of general law, and supplies whatever additional details are necessary to present a complete guide indicating who the municipal officers are; how they are selected; how they are organized into departments, boards, commissions, and other agencies; who they supervise; by whom they are supervised; what powers they have; and what procedures should be followed to carry on the activities of the municipal government.

Almost all municipalities that have changed their form of municipal government in recent years have enacted administrative codes. However, most places that still function under one of the older forms of government have never done so. The principal advantage of having such a code is to provide both the governing officials and the general public with a concise document describing their own local government and how it is expected to operate, rather than

relying on word-of-mouth, custom, and legal authorizations that are scattered through a wide variety of sources. In this sense, it probably is particularly important for communities having one of the older forms of municipal government to adopt an administrative code, since their basic statutory charters frequently are vague or completely silent on the guidelines necessary to run today's municipalities effectively.

In 1992 the legislature amended the Optional Municipal Charter Law to require that all communities adopting an OMCL charter enact an administrative code by ordinance within 90 days of the organization of the first council under the new charter¹. The administrative code is to restate appropriate sections of the charter and applicable sections of general law, and to provide additional details necessary to constitute a complete guide to:

- (a) municipal offices;
- (b) how municipal officers are selected;
- (c) how municipal departments, divisions, boards, commissions, and agencies are organized;
- (d) lines of supervisory responsibility and accountability; and
- (e) procedures to carry out the functions and activities of municipal government.

With the enactment of the administrative code by municipal ordinance the description of the form of government is completed, and the citizens and officials of the municipality will have readily available a complete guide to their local government.

¹ *N.J.S.A.* 40:69A-207.