

BRADLEY BEACH CHARTER STUDY COMMISSION

FINAL REPORT

Adopted July 14, 2025



Commission Members:

Refet Kaplan, Chair
Don Greenberg, Vice Chair
Thomas Coan
Tracie Davidson
Linda Maslanka Duffy

Prepared By:

Michael L. Collins, Esq.
Bradley Beach Charter Study Commission Attorneys
King, Moench & Collins, LLP

TABLE OF CONTENTS

I: EXECUTIVE SUMMARY 1

II: RECOMMENDATION OF THE COMMISSION – PUBLIC QUESTION..... 3

III: BACKGROUND AND ESTABLISHMENT OF COMMISSION 4

 A: Background 4

 B: Small Municipality Form of Government..... 4

 C: Charter Study Commission 6

IV: REVIEW OF CURRENT FORM OF GOVERNMENT..... 7

 A: Introduction 7

 B: Interviews 8

 1. Initial Phase One Interviews 8

 2. Business Administrators 10

 3. Current Mayor and Council 12

 4. Former Mayor and Council..... 15

 5. Current and Former Borough Staff..... 17

 C: Past Litigation Regarding Small Municipality Form of Government..... 18

 1. Guida vs. Bradley Beach et al., MON-L-001350-24 18

 2. Fox v. DeMarco, et al., MON-L-1595-23 18

 3. Hingston v. Borough of Bradley Beach, Docket No. MON-L-3790-24 20

 4. Coan v. Borough of Bradley Beach – MON-L-3974-21 21

 D: Phase One Conclusions 21

V: REVIEW OF ALTERNATIVE FORMS OF GOVERNMENT 22

 A: Introduction and Overview of Options 22

 B: Special Charter 23

 C: Current Small Municipality Form 23

 D: Alternate Forms of Government..... 24

 1. Mayor-Council 24

 2. Council-Manager Form 25

 3. Mayor-Council-Administrator..... 27

VI: COMMISSION FINDINGS 27

 A: Recommendation..... 27

 1. Charter Study Commission Recommendation / Form of Government 28

2.	Timing of Referendum.....	29
3.	Size of Council.....	30
4.	Division of Municipality (At-Large or Wards)	30
5.	Frequency of Elections (Concurrent or Staggered)	30
6.	Timing of Elections (Partisan vs. Nonpartisan).....	31
7.	Selection of Mayor	31
8.	Runoffs.....	32
B:	Potential Implementation.....	32

Attachments

- DISSENTING REPORT
- APPENDIX A – APPROVING RESOLUTION
- APPENDIX B – CERTIFICATION

The following Report is approved by Chairman Kaplan, Vice Chairman Greenberg, Commissioner Davidson, and Commissioner Maslanka Duffy and constitutes the Commission's "findings and recommendations" as required by N.J.S.A. 40:69A-10.¹

I: EXECUTIVE SUMMARY

The residents of Bradley Beach voted by a strong majority – an almost 60% margin – to establish a Charter Study Commission (the "Commission"). The Commission viewed this as a mandate to closely examine Bradley Beach's Small Municipality form of government – which has existed since 1991 – and determine whether a new form of government under the Faulkner Act should guide Bradley Beach for decades to come.

Over the past nine months, the Commission has educated itself – and the public – by conducting numerous interviews of current and former Bradley Beach governing body members, current and former business administrators, current employees, a representative from the Department of Community Affairs, and elected officials from other municipalities. The Commission also received public comment at meetings, through written submissions, and informally made to individual commissioners.

Through this review, the Commission has found that Bradley Beach has experienced negative results utilizing the "strong mayor" prescribed by the Small Municipality Plan form of government (the "Small Municipality Form"). Among other things, it allows for abuse by an overzealous executive, with governance suffering when there is a mayor who is overinvolved or under-involved in day-to-day Borough affairs. In recent years, the Borough has experienced numerous lawsuits disputing the powers between the mayor and council as well as claims brought by employees against the Borough, who are appointed by the mayor as the sole executive and appointing authority. The Small Municipality Form provides little recourse against a mayor that abuses power other than through an election every four years (or through a recall election).

After reviewing the options available to it, the Commission recommends that Bradley Beach adopt the Council-Manager Plan form of government (the "Council-Manager Form"). The structure allows the governing body to hire a manager, accountable to both the mayor and council, to manage daily operations. This form ensures equal voting among council members, with the mayor not possessing any more power than his or her elected colleagues. The full governing body hires the manager, who is required to be hired based on experience, reducing political biases. The form vests the manager with broad powers that are exercised at the pleasure of the full governing body, such that the executive power is checked by the governing body's plenary right to remove the manager by a simple majority vote. The Commission

¹ The Commission voted 4-1 to approve this Report. Commissioner Coan dissented from the vote and has provided a dissenting report that is attached hereto. Despite Commissioner Coan's dissenting opinion, he was afforded full participation in the drafting of this Report.

believes this structure will directly address and rectify the abuse of power issues that have been well documented in the current form.

As part of its recommendation, the Commission also recommends maintaining a five-member governing body with nonpartisan elections and a directly elected mayor, consistent with the current Small Municipality Form. It also recommends staggered elections every two years. While staggered elections should be consistent with Bradley Beach’s current Small Municipality Form, it has been identified that the Borough is likely maintaining an election structure that is inconsistent with State law, as further outlined in this Report.

The Commission will be submitting its recommendation to voters in this November’s general election. If adopted, voters will elect a new government under the Council-Manager Form one year later in November 2026.

The following is a table comparing the relevant provisions of the current Small Municipality Form of government to the proposed Council-Manager form:

	Current - Small Municipality	Proposed - Council-Manager
Mayor’s powers	Executive powers and also equal voting member of governing body	Legislative powers only as an equal voting member of governing body
Administrator/Manager Requirements	Optional position under State law; established by ordinance; no credential requirements under state law or current ordinance; reports to Mayor	Required position under State law; required to have relevant experience; reports to full governing body
Administrator/Manager Powers	Executive powers delegated by Mayor only	All executive powers pursuant to State law
Administrator/Manager Appointment	Appointed by mayor with the advice and consent of governing body; removable only by 2/3 vote of council	Appointed by governing body as a whole; removable by simple majority vote of governing body
General Appointments/Personnel	Made by Mayor	Made by Manager (with certain limited appointments belonging to Mayor) ²

² See *infra* Section (V)(D)(2).

This Report contains a further discussion of the above considerations in Section (V)(D)(2).

The Commission hopes this report shows how seriously it took its responsibilities and how much thought went into its recommendation. The Commission is thankful to the people of Bradley Beach for this unique chance to review and improve local government, and to everyone who helped during the process, especially those who gave interviews and the residents who shared their comments.

II: RECOMMENDATION OF THE COMMISSION – PUBLIC QUESTION

The Commission recommends and directs that the following public question be placed before the voters of Bradley Beach in the November 2025 general election:

Shall the COUNCIL-MANAGER PLAN of the Optional Municipal Charter Law, providing for FIVE (5) council members to be ELECTED AT-LARGE for STAGGERED terms at NONPARTISAN elections to be held in NOVEMBER, with the MAYOR ELECTED DIRECTLY BY THE VOTERS, be adopted by the Borough of Bradley Beach?

The following explanatory statement shall accompany the public question:

The voters of Bradley Beach are asked whether to approve a change to Bradley Beach's form of government from the Small Municipality form to the Council-Manager form under the Optional Municipal Charter Law, commonly known as the Faulkner Act.

If approved, Bradley Beach will be governed by a council of five (5) members, which includes a directly-elected Mayor. The Mayor serves as a voting member of the Council and only possesses limited appointment powers including to the library board of trustees. The Council as a body possesses the Borough's legislative powers and shall determine all matters of policy for Bradley Beach. The Council shall appoint a Municipal Manager, who will exercise all executive and administrative powers. The Municipal Manager shall serve at the will of the Council, subject to removal by a simple majority vote. This contrasts with the current Small Municipality form, in which the Mayor possesses the executive powers including all appointments and the position of Borough Administrator is optional.

The Mayor will be directly elected by the voters for a term of four (4) years. The remainder of the Council members will be

elected for staggered terms of four (4) years each. In order to initiate staggered terms, three (3) of the council members elected under the new form of government shall serve for only two (2) years, to be determined by lot at the organization meeting of the first Council. The remaining one (1) Council member and Mayor would serve an initial four (4) year term, with a municipal election held every two (2) years.

The council shall be elected at-large through nonpartisan elections held at the November general election.

If the change of government is approved by the voters, the first municipal election will be held on November 3, 2026, and the new Mayor and Council members will be installed on January 1, 2027.

III: BACKGROUND AND ESTABLISHMENT OF COMMISSION

A: Background

Bradley Beach is a municipality located in Monmouth County. It has a population of 4,282 as of the 2020 census. It is comprised of 0.61 square miles of land and 0.02 square miles of water. The water portion is comprised by portions of the Atlantic Ocean, and the Borough was named for James A. Bradley, the developer responsible for the creation of Bradley Beach and Asbury Park.³

The Borough of Bradley Beach was created by a referendum to separate Bradley Beach from Neptune Township. Bradley Beach was incorporated on March 13, 1893 based on the successful results of a referendum held on March 6, 1893 under the traditional borough form of government.

In 1991, the Borough underwent a change in the form of government to its present form. Based on the recommendations of a Charter Study Commission, and utilizing the Optional Municipal Charter Law, the voters of Bradley Beach approved a referendum to enact the Small Municipality Form. It took effect on July 1, 1992 with the seating of the newly elected governing body.

B: Small Municipality Form of Government

Under Bradley Beach's current Small Municipality Form, the mayor is elected by the voters at-large to a four-year term, with four council members elected to three-year terms, all

³ Hutchinson, Viola L. The Origin of New Jersey Place Names, New Jersey Public Library Commission, May 1945. Accessed September 21, 2015.

in nonpartisan elections. This is the current form that exists in the Borough and that is the subject of review by the Commission.

The Small Municipality Form,⁴ reserved for municipalities of less than 12,000 people, is commonly referred to as a “strong mayor” form of government. That is because the entire executive power is vested in the mayor.⁵ It is the mayor’s duty to ensure that all of the laws and ordinances in force and effect within the municipality are observed.⁶ On top of the executive function, the mayor also votes on matters alongside the council and presides over council meetings.⁷

The mayor is responsible for appointing an assessor, tax collector, attorney, clerk, and treasurer.⁸ The mayor is also responsible for appointing any officers and employees whose appointment or election is not otherwise provided for in either the Faulkner Act or anywhere else in New Jersey law.⁹ This includes officers and employees governed by the Civil Service provisions of New Jersey law if the municipality has not adopted them.

The mayor is also responsible for preparing the municipality’s annual budget with the assistance of the treasurer and the cooperation of the council members.¹⁰ The council treasurer shall also be the municipality's chief financial officer.¹¹ The treasurer is responsible for keeping and maintaining books and records of all the municipality’s financial transactions and shall have custody of all the municipality’s public money. The treasurer is also responsible for making monthly reports to the council of all receipts, expenditures, commitments, and unencumbered appropriation balances.

The council in a Small Municipality Form is vested with solely legislative functions.¹² The council may be comprised of 3, 5, or 7 councilmembers elected at-large for terms of three years.¹³ The council terms are staggered so that members of council are up for election each calendar year.¹⁴ A majority of the council must be present at a meeting in order for the transaction of business to occur.¹⁵

⁴ N.J.S.A. 40:69A-115 et seq.

⁵ N.J.S.A. 40:69A-121.

⁶ N.J.S.A. 40:69A-121.

⁷ N.J.S.A. 40:69A-120.

⁸ N.J.S.A. 40:69A-122.

⁹ N.J.S.A. 40:69A-124.

¹⁰ N.J.S.A. 40:69A-128.

¹¹ N.J.S.A. 40:69A-129.

¹² N.J.S.A. 40:69A-120.

¹³ N.J.S.A. 40:69A-117 et seq.

¹⁴ Id.

¹⁵ N.J.S.A. 40:69A-120.

C: Charter Study Commission

On April 24, 2024, Bradley Beach’s governing body introduced Ordinance 2024-6 to establish a referendum in the November 2024 general election on whether to establish a charter study commission. The Ordinance stated that:

[T]he Borough’s Mayor & Council believe that it is in the best interests of the Borough’s residents to review the current charter of the Borough through the establishment of a five (5) member Charter Commission, which would be charged with the responsibility and be authorized to hold hearings and public forums, to take evidence and to make recommendations in order to determine whether or not, in comparison with other forms of government in this State, the current form of government is the most appropriate for the Borough of Bradley Beach[.]¹⁶

The Ordinance was introduced on a 2-1 vote, with Councilmembers Mahoney and Weber voting in favor, Mayor Fox voting against, and Councilmembers DeNoble and Gubitosi absent.¹⁷ At this meeting, Councilman Weber stated his appreciation for the public’s comments on the topic and stated his belief that this “is the best course of action for the Borough.” Mayor Fox opined he was “not confident this course of action is what the Borough needs right now.”¹⁸

The Ordinance received final adoption on May 8, 2024, via a 4-1 vote, with Councilmembers DeNoble, Gubitosi, Mahoney and Weber voting yes, and Mayor Fox voting no.¹⁹ During the public hearing, three residents spoke in favor of the Ordinance.²⁰

In the November 2024 general election, Bradley Beach voters approved the establishment of a charter study commission by a vote of 1,202 to 812, with 59.7% of votes cast supporting the referendum.²¹ At the same election, voters elected five individuals to serve as charter study commissioners out of eight filed candidates²²:

Selim “Refet” Kaplan	858
Thomas J. Coan	781
Tracie Davidson	961
Terence Wright	655
Linda Maslanka Duffy	841

¹⁶ Bradley Beach Ordinance 2024-6.

¹⁷ Bradley Beach Council Minutes (April 24, 2024).

¹⁸ Id.

¹⁹ Bradley Beach Council Minutes (May 8, 2024).

²⁰ Id.

²¹ Monmouth County Clerk, Certified Election Results, available at www.monmouthcountyvotes.com.

²² Id.

Arianna Bocco	724
Deborah Bruynell	611
Donald Greenberg	734

On December 10, 2024, the Bradley Beach Charter Study Commission held its inaugural meeting at Borough Hall with Commissioners Coan, Davidson, Duffy, Greenberg, and Kaplan sworn into office.²³ Kaplan and Greenberg were elected as Chair and Vice Chair, respectively.

The Commission was established and operates pursuant to the Optional Municipal Charter Law, commonly known as the Faulkner Act, N.J.S.A. 40:69A-1 et seq. That law sets forth the following duties of the Charter Study Commission:

It shall be the function and duty of the charter commission to study the form of government of the municipality, to compare it with other available forms under the laws of this State, to determine whether or not in its judgment the government of the municipality could be strengthened, made more clearly responsive or accountable to the people or whether its operation could be more economical or efficient, under a changed form of government.²⁴

Under the law, the Commission is obligated to prepare a report containing its final findings and recommendations, which are contained within this document.²⁵

IV: REVIEW OF CURRENT FORM OF GOVERNMENT

A: Introduction

After completing its organizational tasks, the Bradley Beach Charter Study Commission embarked upon its “Phase One” inquiry into the current Small Municipality Form. As part of this phase, the Commission extended various invitations and conducted interviews of all responding parties.

First, the Commission sought to address the underpinnings of the establishment of the Charter Study Commission and its Phase One tasks. The Commission received a presentation on Phase One considerations by Daniel Torrisi, who serves a Municipal Technical Advisor of the State’s Department of Community Affairs, Division of Local Government Services. The Commissioners further sought input from persons with experience in other forms of government and the Charter Study Process. The Commission interviewed Nancy Facey-Blackwood, who is the former Chair of the Red Bank Charter Study Commission, and currently

²³ Bradley Beach Charter Study Commission Agenda (December 10, 2024).

²⁴ N.J.S.A. 40:69A-7.

²⁵ N.J.S.A. 40:69A-10.

serves as a Councilwoman in Red Bank following the successful Charter Study change to the Council-Manager form of government. Additionally, Bradley Beach Borough Attorney Greg Cannon was interviewed. Mr. Cannon is a Councilman in Aberdeen Township and serves as counsel to several towns representing various forms government.

Second, the Commission invited individuals who have served as Bradley Beach Borough Administrator in recent memory: Gregory Fehrenbach, Kim Humphrey, David Brown and Meredith DeMarco as well as the current Business Administrator, Matt Doherty. Mr. Fehrenbach, Mr. Brown and Mr. Doherty were interviewed. Ms. DeMarco and Ms. Humphrey did not elect to interview.

Third, the Commission invited all of the current members of the Mayor and Council to appear and testify. The Commission conducted interviews from all current governing body members, including Mayor Gubitosi and Councilmembers DeNoble, Nowicki, Weber and Greenblatt.

Fourth, the Commission contacted all individuals that had formerly served on the Bradley Beach governing body in recent years. It interviewed former Mayors Gary Engelstad and Larry Fox and former Councilman Tim Sexsmith.

Fifth, the Commission conducted interviews with various current and former Borough employees, which were conducted and are recounted on an anonymous basis.

B: Interviews

1. Initial Phase One Interviews

Daniel Torrisi²⁶

Daniel Torrisi is Municipal Technical Advisor for the State's Department of Community Affairs, Division of Local Government Services. In this capacity, he provided support to the Commission and made a presentation addressing Phase One considerations.

He provided an overview of Bradley Beach's demographics, including that its municipal government has an \$11 million budget. He explained the structure of the Small Municipality Form. The Small Municipality Plan is only utilized in 18 towns throughout New Jersey, including Bradley Beach. He noted the Small Municipality Form is a cross between Township and Borough forms of government (non-Faulkner Act). Bradley Beach created the position of Borough Administrator by Ordinance in 1994. The Administrator is to supervise the day-to-day functions of the municipality, while implementing the policies set forth by the governing body. The Administrator does not make policy, but this role effectively dissipates the control of the Mayor for those functions.

²⁶ See February 24, 2025 Charter Study Commission Meeting Minutes.

Torrise discussed the roles of mayor, council, and administrator. He explained that the mayor, while the chief executive, is expected to operate collectively with the council to provide direction to the administrator at a public meeting. In turn, the administrator takes his or her direction from the policies of the governing body, however, the administrator reports to the mayor directly.

Torrise expressed his opinion that it is better to have a professional administrator to implement the day-to-day operations that the governing body has set into place. Elected officials are lay people, generally, and the important tasks of negotiating contracts, keeping employees on task, hiring and firing are better left to a professional.

Nancy Facey-Blackwood²⁷

Nancy Facey-Blackwood currently serves as a Councilwoman in Red Bank. She began serving in this role under the new form of government that was adopted following a Charter Study Commission recommended a change in government structure. Ms. Blackwood was the Chair of the Red Bank Charter Study Commission that oversaw a change from the antiquated Borough form of government to the Faulkner Act form known as Council-Manager. Ms. Blackwood noted that Red Bank commissioned a Management Enhancement Report in 2018 to address systemic issues with the effectiveness of the governing body, daily operations, employee morale, chronic overstepping by governing body members and terminating professionals for seemingly no reason. The primary recommendation of that report was to change the form of government.

The Commissioners asked Ms. Blackwood to discuss the change in how things operate since the new form of government was implemented. Ms. Blackwood noted greater efficiency since hiring a manager to run the day-to-day operations. The manager is evaluated on an annual basis to maintain accountability.

The Commissioners explained that some members of the community are worried that a change in government would result in the town not attracting a large pool of qualified candidates. Ms. Blackwood countered this sentiment by saying that prior to the change in government, the environment in Red Bank wasn't positive, leading to less interest when trying to fill critical roles. However, after the change to Council-Manager Form, the amount of applicants actually increased. Ms. Blackwood went on to inform the Commission that according to the National Civic League, Council-Manager is recognized as one of the best forms of government.

²⁷ See March 24, 2025 Charter Study Commission Meeting Minutes.

Gregory Cannon, Esq.²⁸

Gregory Cannon, Esq. is the Borough Attorney for Bradley Beach. He currently represents six Monmouth County municipalities as a municipal attorney and has also served as an Aberdeen Councilman for 16 years.

He previously represented Belmar, which also operates under the Small Municipality Form. He found Belmar comparable to Bradley Beach as both are beach towns with seasonal residents, boardwalk issues, and mayor-council struggles. He noted that Bradley Beach pays its BA and CFO less than other Monmouth County municipalities, so it would either need to pay more or accept the applicants that it gets.

Cannon expressed that current Mayor Gubitosi and former Mayor Englestad pushed for public involvement and delegation, which helped bridge gaps and reduce tension in a hostile environment. He found that chaos develops from a lack of delegation and tension.

Lastly, he said that under the Small Municipality form, there do not seem to be real consequences for deviant behavior other than through elections.

2. Business Administrators

Matt Doherty²⁹

Matt Doherty is the current Borough Administrator (B.A.) for the Borough of Bradley Beach. He initially served in the role of Interim B.A. beginning in January 2025 and was appointed as the permanent B.A. in April 2025. Mr. Doherty previously served as the Mayor of Belmar, which also operates under the Small Municipality Form. He has a master's degree in public policy and a bachelor's degree in government.

In his current role, Mr. Doherty operates with a sufficient amount of autonomy. The Mayor and Council set the policy and he implements it, as best he can. Mr. Doherty stated that he serves at the pleasure of the Mayor and would resign if the Mayor preferred another person for the role, as he wouldn't want to work somewhere he wasn't wanted. Information that is shared with him is disseminated to the employees and/or public depending on the situation. Regarding a so-called information firewall that was put in place by the former Mayor Fox and his hand-picked Administrator, he believes a recall should have been initiated. He also claims that he would have gone against the Mayor's wishes and provided the information to the rest of the Council and the public.

²⁸ See April 28, 2025 Charter Study Commission Meeting Minutes.

²⁹ See May 12, 2025 Charter Study Commission Meeting Minutes.

Mr. Doherty described past issues surrounding the police chief, the budget and the rancor over the appointment of the B.A. as “failures on every level.” Despite this assessment, Mr. Doherty does not think changing the form of government will prevent the chaos of the previous administration from happening again. He expressed that the voters get the government they vote for and “hopefully they will not make that mistake again.”

Mr. Doherty believes that accountability is derived from more frequent local elections. Bradley Beach currently has all the Council seats up every three years. He supports staggered terms for elected officials so that there are annual local elections. In response to a question from the public, Mr. Doherty stated that the current form has more executive power in the position of the Mayor, but that the Council-Manager form would have more checks and balances.

Mr. Doherty discussed the role of elections and potential recalls as adequate checks on local elected officials in their service. As to recall, the Commission notes that the only means of changing officeholders besides a future election is through New Jersey’s limited power of recall. The New Jersey Constitution and State law prescribe such a process for local elected officials.³⁰ However, there are significant hurdles making the recall process onerous, including that officeholders are not subject to recall until 50 days before the completion of their first year in office,³¹ that a recall petition requires the signatures of 25% of registered voters,³² a significant amount, and that a recall may take upwards of a year to complete from the start of the recall petition process to removal.³³

Gregory Fehrenbach³⁴

Greg Fehrenbach has worked in managerial roles in local government for nearly 50 years. Mr. Fehrenbach served as an interim B.A. for Bradley Beach and further assisted in the search for a full-time replacement. Additionally, he has served on numerous boards, commissions, associations and the League of Municipalities.

In his many years in local government, he has identified one constant – “a need to separate the CEO/Executive function from the CEO/political functions.” The form that best allows for the separation of these functions is the Council-Manager form of government. In this form, the manager “partners” with the governing body to assist with carrying out the policy-making function of the elected officials. The manager can be removed with a simple majority vote subject to the statutorily required notice. This, inherently, creates accountability.

³⁰ N.J. Const. art. I, § 2(b); N.J.S.A. 19:27A-1.

³¹ N.J.S.A. 19:27A-4(b).

³² N.J.S.A. 19:27A-5.

³³ See, e.g., N.J.S.A. 19:27A-10, -14.

³⁴ See March 10, 2025 Charter Study Commission Meeting Minutes.

The Commissioners queried Mr. Fehrenbach about the high turnover of the B.A. position, specifically, and what could be done to provide more stability in the role. He hypothesized that two recent B.A.s left for different reasons: Mr. Brown was likely seeking more responsibility and earning potential. Another factor may have been the government structure. Ocean Township is organized under the Council-Manager Form, which provides stability. Mr. Fehrenbach further hypothesized that the other recent B.A., Kim Humphrey, likely left after being disenchanted with the role. Generally speaking, Bradley Beach has a small population, a small budget and a large amount of negative press in recent years. All of these factors create an environment that leads to higher turnover.

The Commissioners also inquired as to the preferred qualifications for a B.A. that Mr. Fehrenbach would look for during the hiring process. He responded by stating the pool of candidates should have 2-5 years of municipal administrative experience, Rutgers training, and an understanding of municipal laws.

3. Current Mayor and Council

Al Gubitosi³⁵

Al Gubitosi serves as Mayor. He spent five years on Council and seven years on the Planning Board prior to his election as Mayor last year. He discussed the need as councilman to make changes to the Borough's ordinances to attempt to limit the powers being exercised by then-Mayor Fox. He discussed how former Mayor Fox initially accepted these changes but later objected resulting in litigation.

Gubitosi specifically addressed the issue of interim appointments, which the Borough ordinance authorized the mayor to complete for 90-day periods. He explained that Mayor Fox utilized this power to continue appointing the same person as Business Administrator, which the Council tried to stop. The Court did not agree with the Council's action and essentially said that the Borough's recourse would be to change away from a "strong mayor" form of government.

Gubitosi believes that the current form of government can work well with checks and balances, reasonable collaboration, and a good business administrator. He did not see the easier removal of a manager under the Council-Manager form to be attractive, as there should be stability in the role. He feels comfortable with the balance of power under his current administration.

³⁵ See April 28, 2025 Charter Study Commission Meeting Minutes.

Gubitosi expressed support for staggered elections and expressed concern that the current mayor's term coincides with presidential elections, which result in higher voter turnout with people not potentially being informed on local politics.

Jane DeNoble³⁶

Jane DeNoble serves as Council President. She has been a member of the Council since her election in 2022. She also previously served as a member of the Shade Tree Commission and Planning Board. Ms. DeNoble was asked by the Commissioners to compare her experience with the prior administration to the current one. She highlighted key differences like being invited to town hall to discuss agenda items, having access to the Mayor, and generally an improvement in the efficiency of getting things done. She attributes this primarily to having a new person serving as mayor, but also noted that the former mayor had a full-time job while the current Mayor is able to be "a lot more present."

The Commissioners asked her to elaborate on the hiring process for the Borough Administrator and she replied that 30 resumes were received, but the former mayor only presented 3 to Council for consideration/interviews. The Council strongly supported one candidate but the mayor chose someone else entirely. She felt this discounted the Council's decision-making process and input. This process ultimately resulted in litigation between the council and the mayor.

Ms. DeNoble supports staggered terms for the governing body. Ms. DeNoble stated that the current, proper functioning of the governing body is a reflection on the people serving, though she is open to changing the form of government. She admitted that the current form definitely did not work in the previous four years and she would never want that to happen again.

John Weber³⁷

John Weber has been serving on council since 2016. He recounted to the commission stories of the Council relationship with former Mayor Julie Schreck and how she did not have the support of the Council. He says that the voters were looking for a change, and so they voted Ms. Schreck into office to get things done, but the Council did not work with her and made things difficult.

He said that the Small Municipality Form works great when everyone gets along, but it is the absolute worst when they don't get along. He said he foresees a similar scenario happening in the future if we were to keep the Small Municipality Form.

³⁶ See February 24, 2025 Charter Study Commission Meeting Minutes.

³⁷ See March 10, 2025 Charter Study Commission Meeting Minutes.

In his own experience when first elected, he described feeling he was in the minority, and felt his liaison positions were challenging for him due to lack of guidance, support and assistance. He stated that while he doesn't recall a time under Mayor Engelstad that the Council's advice and consent were not adhered to, under Mayor Larry Fox, the council was stripped of that many times, each time he was baffled by it. He rebuked the statement of Mr. Fehrenbach, that the last administration had difficulties because the Council coveted the power of the Mayor. Mr. Weber said the council was just trying to solve problems and get things done. He said Mayor Fox did not listen to the wishes of the Council, and ,basically did what he wanted regardless of the Council's input.

When queried by the commissioners if he would like to keep the current form of government or switch to something different, Mr. Weber stated he has a hard time answering because as of now the current administration is getting along, and getting things done. However, he does think that the previous contention could certainly happen in the future. Mr. Weber said he needs to study the Council-Manager Form more deeply before he can make a true recommendation.

Shana Greenblatt³⁸

Shana Greenblatt, current Bradley Beach Council member, spoke about her election experience, running alongside the Charter Study referendum question. She said she felt change was needed in the borough, and she was willing to throw her hat in the ring alongside Mr. Gubitosi because she felt so strongly that he was a good mayoral candidate. She felt like the stakes were high, and she did not want to see another four years of the same governance.

She said she believes the character of leadership is what will drive a successful Borough. Chairman Kaplan asked if her perceptions have changed in regards to the form of government since she has been serving on the council for the last few months, and she stated that this is the only form of government that she knows. She does really think that communication and transparency are important.

Commissioner Coan asked if she seeks out information or if it flows to her naturally, she responds that it is a little bit of both, and has a good relationship with the Council members and the Mayor. She does feel welcome when she goes to Town Hall to seek information, and her emails are being answered.

She believes council terms should be staggered. She said she turns to veteran council members and values their longevity. She said she thinks there needs to be a partnership between the Business Administrator and the Mayor. She also said she would be nervous that a hired manager, under a Council-Manager Form, would not be as invested in the community as an elected resident, which under the current form of government is the mayor.

³⁸ See April 28, 2025 Charter Study Commission Meeting Minutes.

Paul Nowicki³⁹

Paul Nowicki was appointed to the current council in January 2025. When queried by the commissioners regarding how the borough governing issues reached the point they had, he cited a division between the Council and the Mayor, along with a lack of leadership and synergy in the previous administration.

Mr. Nowicki said that the current Council and Mayor have Bradley Beach's best interest at heart and have been very welcoming. He said he feels the current form is somewhat functioning as a Council-Manager Form, and they have allowed for a free flow of information and ideas.

When asked by the commissioners about his experience with the Council-Manager Form in his capacity as an Engineering Consultant, where he generally worked with state and county governments, Mr. Nowicki stated he has never experienced the Council/Manager form of government directly, but viewed it as a form where the manager seems to have a lot of power.

When asked by Commissioner Greenberg what his recommendation would be, he stated that the current form would work best because the mayor serves like a CEO, and the use of ordinances could help regulate the authority more closely. Mr. Nowicki was reminded by Commissioner Davidson that ordinances were not always followed in the past.

4. Former Mayor and Council

Gary Englestad⁴⁰

Gary Englestad served two terms as mayor from 2013 through 2020. He began his service to Bradley Beach as a councilman, winning election initially in 2004 and serving in that capacity until he won the election for Mayor in 2012. He did not seek re-election in 2020. Englestad strongly favors the current form of government because "it lends well to accountability." However, he understands the need for this process to see if another form may be beneficial to the Borough. He explained that he was able to work with each administration in different roles to get things done. There were challenges to holding the role of mayor while also working a full-time job.

Larry Fox⁴¹

Larry Fox was elected mayor in 2020 and served for one term. He referenced comments from former Administrator Fehrenbach indicating that forms of government with an elected

³⁹ See March 10, 2025 Charter Study Commission Meeting Minutes.

⁴⁰ See April 14, 2025 Charter Study Commission Meeting Minutes.

⁴¹ See March 24, 2025 Charter Study Commission Meeting Minutes.

chief executive often result in conflict with the Council, with both sides vying for control of the organization. He believed this to be relevant to the Commission's work.

He explained that his election was his first time in elected office and that he desired to stay away from "small town" politics. He then highlighted what he summarized as improvements made to the community during his tenure.

The Commission engaged in an extended back-and-forth regarding Mayor Fox's oversight of the police department during his tenure. Relevant to the Commission's role, the mayor explained that he was privy to reviews that were conducted by the Monmouth County Prosecutor's Office. He made the Administrator privy to their reports but not the Council, which he said was based upon directions from the prosecutors.

Regarding the position of Administrator, Fox explained his belief that the Administrator serves the council but reports to the mayor. He indicated that he did not share resumes with the council regarding potential hiring until "further along" in the process. He stated that the Administrator should regularly attend council meetings but did not believe a former administrator should have been required to attend because of consistent attacks.

He did not regret any of the four Administrators that served during his tenure.

The Commission inquired about labor negotiations, which Fox indicated were handled by the Administrator and Labor Counsel, with him receiving updates thereafter. He did not include council members as part of the negotiations process.

Fox provided a closing statement chronicling the events during his tenure and made allegations against a member of the Commission. He also discussed challenges he had with the Council adopting ordinances attempting to limit his power and how it made things more difficult to make necessary appointments. He expressed that ordinances should not be utilized to shift responsibilities in municipal government.

Tim Sexsmith⁴²

Tim Sexsmith is a former Councilman. Commissioner Davidson reminded Mr. Sexsmith that it was he who first raised the issue of a change in government at a February 2022 Council meeting. She asked if he still felt that way, and Mr. Sexsmith responded with a yes and no. He said it was a "perfect storm" with the Mayor and Council at that time, due to personalities, etc.

⁴² See April 14, 2025 Charter Study Commission Meeting Minutes.

He also said current elected officials in Bradley Beach are very capable and knowledgeable, which is why he thought it was the form of government that wasn't serving the people of the Borough efficiently.

Chairman Kaplan asked if since leaving office Mr. Sexsmith's opinions have changed in respects to the form of government, and Mr. Sexsmith stated he can see either form working for the borough. He said he sees an advantage in staggered Council terms and was supportive of non-partisan elections.

5. Current and Former Borough Staff

The Commission spoke to both current and former borough staff to understand their views on a change in form of government. The staffers were granted anonymity. Several themes emerged from those discussions:

- There was unanimous agreement that the turnover in the Borough Administrator position in recent years, beginning in the Engelstad administration and accelerating through the Fox administration, was a major hindrance to the effective and efficient governing of Bradley Beach.
- There was near unanimous agreement that problems with the administration of Bradley Beach government steadily worsened in the years of the Fox administration, as multiple issues remained unaddressed, or were poorly handled. "It was the mayor's way or no way," said one staffer, a sentiment that was shared by several other staffers.
- There was near unanimous agreement that the appointment of DeMarco, and the subsequent legal challenges over her appointment, made working conditions and governmental operations particularly challenging. "Working became very isolating, like living in a frozen tundra," in the words of one senior staffer. "She treated me like I was a dumbbell."
- Several former and current staffers said there were also problems with turnover in the CFO position. One staffer, who began work in 2022, noted she has worked with three different CFOs in her time.
- Current staffers unanimously said that working conditions have improved under the Gubitosi administration. For that reason, some said, they opposed a change in form of government. Other staffers said they would be fine working under a changed government form.
- A former Borough Administrator, who has since gone on to a position as Borough Manager in another jurisdiction, said Bradley Beach could greatly benefit from a change in form of government. "The best qualified candidates are going to go for the best jobs. You want to be the top dog, making the decisions," he said. The former staffer said it

would be much easier to find better candidates for a Borough Manager as established under the Council-Manager Form.

- Many employees found there to be a lack of communication from the Mayor, Administrator, and CFO, resulting in staff members including department heads having to make decisions on their own without appropriate guidance.

C: Past Litigation Regarding Small Municipality Form of Government

The Commission also evaluated recent litigation involving disputes that occurred under Bradley Beach's Small Municipality Form. The litigation includes Guida vs. Bradley Beach et al., MON-L-001350-24; Larry Fox v. Jane DeNoble, et al., MON-L-1595-23; Hingston v. Borough of Bradley Beach, Docket No. MON-L-3790-24; and Coan v. Borough of Bradley Beach – MON-L-3974-21.

The Commission was advised by its attorneys regarding the parties' respective positions, the Court's findings, and the potential impact to the Commission's analysis of the Small Municipality Form. A non-privileged recitation of these cases is provided in this report as it informs the Commission's review.

1. Guida vs. Bradley Beach et al., MON-L-001350-24

Former Bradley Beach Chief of Police Leonard Guida sued seeking to void a disciplinary notice that was issued by the Council against him. The notice stemmed from an executive session held by the governing body to discuss an investigation report issued by the Monmouth County Prosecutor's Office regarding Guida's disciplinary matter.

Prior to same, the Mayor had issued a Preliminary Notice of Disciplinary Action, placing Guida on administrative leave pending the outcome of an investigation. On January 18, 2023, the Monmouth County Prosecutor's Office issued a report sustaining the majority of the charges. Mayor Fox issued his Final Notice of Disciplinary Action on March 4, 2024, outlining the penalties and indicating that Guida had taken early retirement.

Guida alleged that the Council lacked the authority to issue a separate Preliminary Notice of Disciplinary Action as that power belonged to the Mayor in the Small Municipality Form, and that alternatively, the notice could not be sustained because it was taken after the Mayor's actions and Guida's retirement. The Superior Court granted Guida relief and vacated the Council's Preliminary Notice of Disciplinary Action. While the Court did not enter a written decision to be analyzed, the final order demonstrates a power struggle between the Mayor and Council that was resolved with the Mayor's actions prevailing.

2. Fox v. DeMarco, et al., MON-L-1595-23

This case involved a lawsuit between former Mayor Fox and the members of the Borough Council disputing their respective powers under the Small Municipality Form.

The initial dispute involved mayoral appointments that were subject to the council's advice and consent. N.J.S.A. 40:69A-122 provides that certain offices as well as "such other

officers as may be provided by ordinance shall be appointed by the mayor with the advice and consent of the council.” On June 14, 2022, the Council introduced Ordinance No. 2022-07. In relevant part, the Ordinance added “the Business Administrator, Chief Financial Officer, Auditor, [and] Engineer” to the list of appointments by the mayor that were subject to the council’s advice and consent function pursuant to N.J.S.A. 40:69A-122.

Following passage of the Ordinance, a dispute arose in January 2023 between the Mayor and Borough Council over appointments regarding several positions added under the Ordinance. The Mayor introduced nominations for the labor attorney, auditor, and engineer to serve during the calendar year 2023. The council did not approve the Mayor’s nominations. The Mayor contended that because the Borough Council rejected the Mayor’s January recommendations, the-then Borough labor attorney, auditor, and engineer were considered “holdover incumbents” and, therefore, could remain in their positions until the Borough Council provided their advice and consent on their reappointments or successors per Borough Code.

These events precipitated the Council’s adoption of Ordinance No. 2023-04 to amend Article II, Section 5 of the Borough Code concerning Mayor’s powers and duties. The changes added the Borough Engineer, Borough Attorney, Borough Planner, OPRA Attorney, Labor Attorney, Bond Attorney, Affordable Housing Attorney, Tax Appeals Attorney, Coastal Engineer, and Sewer Engineer to the list of officers subject to advice and consent per N.J.S.A. 40:69A-122. The Council also removed the holdover provision encompassed in Ordinance § 5-14(j) that allowed the Mayor to appoint acting officers.

For the May 24, 2023 Council Meeting, the Council intended to consider an agenda with resolutions to appoint an engineer, auditor, and labor attorney. The Mayor sought emergent relief from the court and on May 25, 2023, Judge Richard English issued a preliminary injunction in favor of the Mayor pending a July 11, 2023 hearing.

The Mayor argued that the actions of the Borough Council violated his authority under State law and the Borough’s Charter when the Council approved Ordinance No. 2022-07 and Ordinance No. 2023-04. The Mayor sought to invalidate the Council’s amendments to Section 5-10(A)(5) which added additional positions to the list of “officer” appointments the Mayor was required to seek the advice and consent of the Council.

On August 16, 2023, the Court determined that because the Borough Council holds the legislative power, it had the authority under the Act to adopt ordinances that require its advice and consent for the appointment of the Borough officers. The Court accordingly held that the amendments of Borough Code § 5-10(A)(5) – pursuant to Ordinance Nos. 2022-07 and 2023-04 to be valid.

Next, the Court found that because the Faulkner Act was firm on the Mayor’s authority regarding holdovers when the Mayor and Council cannot agree on an appointment, the corresponding revisions proposed to the Borough Code were not permitted, and the Court invalidated them. In effect, the court’s decision reaffirmed the Mayor’s authority regarding

holdovers under the above circumstances while also acknowledging the Council's "advise and consent" powers concerning these appointments under the Small Municipality Form of government.

The parties would return to court months later. Rather than alter the holdover provision, the Council adopted Ordinance 2023-16 containing a wholesale repeal of the relevant Section 5-14(J). On December 15, 2023, the Mayor filed a Motion to Enforce Litigant's Rights, seeking injunctive relief to temporarily enjoin and restrain the implementation of the Council's newly enacted ordinance. The Council filed a Cross-Motion seeking to uphold Ordinance 2023-16 and to invalidate the Mayor's removal of the Borough Attorney that they claimed was done without its advice and consent.

The Mayor alleged that the Borough Council again attempted to legislatively undo his appointment authority by, this time, repealing wholesale Section 5-14(J). The Council argued that it was within their legislative authority to repeal Section 5-14(J) because the Act did not explicitly mandate the delegation of acting appointment powers to the Mayor. The Council also argued the Borough Attorney could not unilaterally be removed by the Mayor.

The Court found that the Councilmembers had interfered with the bifurcation process of the Borough's Small Municipality Form and, accordingly, declared Ordinance 2023-16 to be null and void. As for the Mayor's termination of the Borough Attorney, the Court emphasized that his previous order found that officers in a holdover status could not be removed absent the advice and consent of the Council. The Court found the Mayor's action also to be null and void and restored the Borough Attorney to serve the remainder of his appointed term.

3. Hingston v. Borough of Bradley Beach, Docket No. MON-L-3790-24

Plaintiff had served in the U.S. Coast Guard Reserve since July of 2006 before being employed by the Bradley Beach Police Department in March of 2016. He sued the Borough for employment discrimination claiming that beginning in June 2023, the Borough allegedly stopped paying the difference between his military salary and his police officer salary as was required by Borough Ordinance § 78-18, New Jersey's Law Against Discrimination, and the federal Uniformed Services Employment and Reemployment Rights Act.

According to the suit, allegations were made that then-chief Leonard Guida wasn't "happy about the short notice on behalf of the Coast Guard and wants them to know it" and repeatedly derided Plaintiff's military service as "vacation." The suit continued saying that the Borough PD attempted on more than one occasion to contact the Coast Guard to have Plaintiff's "military orders rescinded." This lawsuit garnered considerable media coverage that also brought additional public attention to the litigation surrounding the Council's attempted disciplinary proceedings against Chief Guida that went before Judge English as well as other alleged racial profiling and infractions of departmental rules and regulations.⁴³

⁴³ See e.g., Charles Daye, Bradley Beach cop sues over pay, says chief called his Coast Guard duty 'vacation', Asbury Park Press (December 18, 2024, 5:04 AM),

The Borough denied the allegations in its Answer. The parties thereafter entered into settlement negotiations. On July 1, 2025, the Borough authorized a settlement with the officer through Resolution 2025-236 in the amount of \$120,000.

4. Coan v. Borough of Bradley Beach – MON-L-3974-21

Plaintiff Thomas J. Coan filed an Order to Show Cause against Defendants Borough of Bradley Beach, the Borough Council, and former Mayor Fox seeking an order voiding all actions taken by Defendants at an October 12, 2021 public meeting for violations of the Open Public Meetings Act (“OPMA”). Plaintiff claimed Defendants failed to provide adequate notice of their intent to go into executive session with New Jersey American Water to discuss the possible sale or conveyance of the Borough’s sewer utility, improperly excluding the public from discussions with a third-party involving public business. Defendants held another public meeting on November 9, 2021, again publishing an agenda claiming Defendants would go into executive session to discuss another attorney-client privileged matter involving the sale of public property. No further details were provided.

After Plaintiff filed suit, the Court noted that Defendants attempted to cure the notice deficiencies by convening a third meeting on February 8, 2022 to hear presentations from American Water and Highwood Development, again in executive session. Plaintiff argued the meetings did not fall under any OPMA exception. Plaintiff further argued OPMA prohibits the Defendants and third parties from convening in executive session because third parties have no fiduciary duties or duty of confidentiality owed to the Borough.

The Court found that, in all three instances, Defendants violated OPMA because Defendants did not meet on an attorney-client privileged matter and thus neither executive session fell within an OPMA exception. Because of these violations, the Court issued an injunction against Defendants requiring Defendants to comply with OPMA. The Court also permanently enjoined Defendants from meeting in closed or executive session with third parties unless such meeting falls under a recognized exception to OPMA.

D: Phase One Conclusions

Based upon the foregoing record, the Commission finds that the Small Municipality Form of government is not meeting the needs of Bradley Beach. While it can be debated whether certain management issues are caused by the form of government or its officeholders, the Commission finds that the present form presents clear structural deficiencies that can be improved upon.

<https://www.app.com/story/news/local/courts/2024/12/18/bradely-beach-cop-lawsuit-shortchanged-pay-coast-guard/76950199007/>.

The Small Municipality Form isolates executive power in the position of the Mayor. Bradley Beach has now experienced abuse of this power in the office of Mayor that usurped and sidelined the legislative powers of the Council. The “strong mayor” form has been shown to be prone to exploitation by an overzealous executive who can seemingly disregard the input, advice, and concerns of the elected Council, appointed professionals, and employees with little recourse. The Mayor wields significant authority over hiring decisions, professional appointments, board appointments, and day-to-day operations. These appointments may be decided by the Mayor, in defiance of a disapproving Council, resulting in persons loyal to, or otherwise beholden to the Mayor, and the Mayor alone.

To this end, the Small Municipality Form does not require the employment of a business administrator to assist in the running of the town operations. Under the present structure, a lack of leadership in the office of Mayor can create a power vacuum, leaving employees and residents alike without direction. Similarly, an overbearing leader can erode morale leading to high turnover and a failure to perform basic, required governmental functions (e.g. budget preparation, payroll, etc.). The Small Municipality Form anticipates a competent, engaged, and collaborative person to serve as Mayor. In a town with a population as small as Bradley Beach, it may be ambitious to assume that the electoral process will effectively find such an individual every four years.

Bradley Beach has experienced a spate of lawsuits. They involve challenges regarding the powers between the Mayor and Council in the Small Municipality Form, personnel claims brought by employees making allegations against the mayor and/or council, and citizens challenging the actions of the mayor and council. These legal disputes in some respects illustrate pitfalls in the Small Municipality Form that have presented themselves, with the mayor expansively wielding executive authority in a manner disputed by the council, with the resulting actions challenged by employees and residents alike.

Under the Small Municipality Form, the Council, voters, and residents have limited recourse to address any abuse of power by the Mayor. The Mayor serves a four-year term, typically running on an off-cycle from the Council. As such, the only way to stop a Mayor that is abusing the office is through the ballot box in an election that could be years away (or through recall under a process that is limited and difficult to accomplish under State law as discussed earlier).

V: REVIEW OF ALTERNATIVE FORMS OF GOVERNMENT

A: Introduction and Overview of Options

In the “Phase Two” portion of the charter study review, the Commission was tasked with reviewing the different forms of government that were available to it. To start this phase, the Commission received a presentation from legal counsel, Mr. Mark Taylor, Esq. He provided an overview of the different forms of government that are available to a charter study commission, along with certain relevant considerations.

The Commission is tasked with making a recommendation regarding Bradley Beach's current Small Municipality Form. State law affords the Commission with four different recommendation options:⁴⁴

- Recommend a special charter
- Recommend an alternate form of government under the Faulkner Act
- Recommend changes to the Small Municipality Form authorized under the Faulkner Act
- Recommend that the current form remain unchanged

B: Special Charter

The Commission received testimony from Torrasi that a special charter has not been approved by the Legislature in decades and has no reasonable likelihood of being adopted, such that a special charter was not a realistic option.

C: Current Small Municipality Form

Bradley Beach currently maintains the Small Municipality Form. As discussed earlier in the report, it operates with a five-member governing body with a directly elected mayor that is elected through nonpartisan elections.

The Commission has the power to recommend a referendum to make changes to the current Small Municipality Form. The Faulkner Act allows for four distinct potential modifications. First, the charter may be amended to change the number of council members. The council may be comprised of two, four, or six council members in addition to the mayor.⁴⁵ Second, the municipality could adopt partisan elections. The Small Municipality Form allows small municipalities to hold either partisan or nonpartisan elections.⁴⁶ Third, the municipality could change from a direct election of the mayor to an indirect election in which the council elects one of its own members to be the mayor.⁴⁷ Fourth, Bradley Beach could change from concurrent to staggered elections.⁴⁸

The only potential change that bears discussion is the latter change from concurrent to staggered elections. The Small Municipality Form allows for the Council to be elected through staggered elections with at least one council seat up for election each year.⁴⁹ A review of news articles from the 1991 adoption of the Small Municipality Form reveals that the then-Charter

⁴⁴ N.J.S.A. 40:69A-12.

⁴⁵ N.J.S.A. 40:69A-117.

⁴⁶ N.J.S.A. 40:69A-117.1.

⁴⁷ N.J.S.A. 40:69A-117.3.

⁴⁸ N.J.S.A. 40:69A-117.2.

⁴⁹ N.J.S.A. 40:69A-117.2.

Study Commission recommended concurrent elections “in order to save the expense of annual local elections and to avoid yearly political battles.”⁵⁰

The issue of annual elections is a policy consideration. But the expense of annual local elections, which used to be a consequence of nonpartisan elections that had to be held in May, is no longer necessarily the case. The Legislature has authorized nonpartisan elections to be held in the November general election, which if utilized – as is currently the case – eliminates any cost to Bradley Beach having more frequent elections.

D: Alternate Forms of Government

With respect to the alternative forms of government other than the Small Municipality Form, there are three forms of government that are available to Bradley Beach that the Commission may recommend in a referendum:

- Mayor-Council⁵¹
- Council-Manager⁵²
- Mayor-Council-Manager⁵³

1. Mayor-Council

The Mayor-Council form of government is commonly known as the “strong mayor” form. It is currently used in approximately 71 New Jersey municipalities. The mayor in a Mayor-Council government is elected to a four-year term.⁵⁴ He or she is vested with the municipality’s executive powers, responsible for day-to-day operations, in charge of administration, and is designed to be independent of the council.⁵⁵ The mayor has the right to speak at council meetings, but is not obligated to, and does not have a vote.⁵⁶ The mayor appoints the administrator to serve a 4-year term that is concurrent with him or her, though this individual is subject to advice and consent from the council and a 2/3 vote for removal by the council.⁵⁷

The council is limited to legislative functions and has no executive or administrative authority.⁵⁸ To this end, statute requires the council members to deal with employees solely

⁵⁰ Brian Kladko, *Bradley Beach Voters to Decide on Government Change*, Asbury Park Press, Oct. 27, 1991, at AA11.

⁵¹ N.J.S.A. 40:69A-31 et seq.

⁵² N.J.S.A. 40:69A-81 et seq.

⁵³ N.J.S.A. 40:69A-149.1 et seq.

⁵⁴ N.J.S.A. 40:69A-33.

⁵⁵ N.J.S.A. 40:69A-39; N.J.S.A. 40:69A-40.

⁵⁶ N.J.S.A. 40:69A-41(b).

⁵⁷ N.J.S.A. 40:69A-43.

⁵⁸ N.J.S.A. 40:69A-36.

through the mayor or designee, who is typically the business administrator.⁵⁹ In turn, the mayor does not have a formal role at governing body meetings, and cannot place items on the agenda, so he or she often does not attend.

The council's adoption of ordinances is subject to the mayor's approval or signature, but it can override the mayor's veto by a 2/3 vote.⁶⁰ The council can increase items in the mayor's budget with a 2/3 vote and reduce items in the mayor's budget with a simple majority vote.⁶¹

2. Council-Manager Form

In the Council-Manager Form, used in approximately 42 New Jersey municipalities, the mayor is a voting member of the governing body and presides at governing body meetings.⁶² The mayor may be directly elected or selected from among the council.⁶³ The mayor and council are all elected to four-year terms.⁶⁴

The Faulkner Act does not prescribe the Mayor any powers beyond those shared by his or her council colleagues except: a) appointments of trustees to a public library (if one exists), b) appointments of board of education members if appointed (which is not the case in Bradley Beach).⁶⁵ In this regard, the Faulkner Act states that all "powers of the municipality" and "determination of all matters of policy" are vested in the full council "except as otherwise provided by this act or by general law."⁶⁶

It bears noting that the referenced general law may contain provisions that vest the Mayor with certain powers other than those identified in the Faulkner Act. For example, the State's emergency laws grant the mayor the power to appoint municipal emergency management coordinators, while the Municipal Land Use Law specifically divests the mayor in a council-manager form from having Class I and IV appointments to the Planning Board and instead vests those with the full council.⁶⁷

The mayor and council act collectively as the legislative body appointing the municipal manager, municipal clerk, tax assessor, attorney, and boards and commissions.⁶⁸ The manager

⁵⁹ N.J.S.A. 40:69A-37.1 ("[T]he municipal council shall deal with employees of the department of administration and other administrative departments solely through the mayor or his designee. All contact with the employees, and all actions and communications concerning the administration of the government and the provision of municipal services shall be through the mayor or his designee, except as otherwise provided by law.").

⁶⁰ N.J.S.A. 40:69A-41.

⁶¹ N.J.S.A. 40:69A-46.

⁶² N.J.S.A. 40:69A-87.

⁶³ N.J.S.A. 40:69A-86.

⁶⁴ N.J.S.A. 40:69A-83 and N.J.S.A. 40:69A-86.

⁶⁵ N.J.S.A. 40:69A-87.

⁶⁶ N.J.S.A. 40:69A-88.

⁶⁷ N.J.S.A. App.A:9-40.1; N.J.S.A. 40:55D-23.

⁶⁸ N.J.S.A. 40:69A-89.

is appointed to be the chief executive and carry out the entire council's will.⁶⁹ To effectuate this, the manager possesses broad executive powers that are enumerated in the Faulkner Act as follows:

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 measures 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 the municipal council.
- (j) The municipal manager shall be responsible to the council for carrying out all policies established by it and for the proper

⁶⁹ N.J.S.A. 40:69A-95.

administration of all affairs of the municipality within the jurisdiction of the council.⁷⁰

Individual council members are statutorily prohibited from trying to individually influence the manager or give orders to the manager's subordinates.⁷¹

Although the manager has broad authority, he or she may only act in accordance with governing body policy.⁷² The manager may be removed by a simple majority vote of the governing body, unlike other forms of government, which require a 2/3 supermajority vote.⁷³

In both the Mayor-Council and Council-Manager forms, there are specific options to be determined as part of a potential referendum:

- Size of governing body
- Division of municipality (at-large or wards)
- Frequency of elections (concurrent or staggered)
- Form of elections (partisan or nonpartisan)
- Runoffs or no runoffs (in partisan government)

3. Mayor-Council-Administrator

The Mayor-Council-Administrator form is uncommon and is used in only three (3) New Jersey municipalities. An initial distinguishing factor is that it does not allow for nonpartisan government.⁷⁴ This form can be considered akin to the Borough form of government with a mandated administrator. There is a mayor directly elected to a four-year term, with six councilmembers elected to three-year terms staggered each year.⁷⁵ The mayor only votes to break ties and may appoint the statutory administrator, subject to removal by a 2/3 vote of council.⁷⁶

VI: COMMISSION FINDINGS

A: Recommendation

After conducting the Phase One analysis about the Borough's current operations and the Phase Two analysis about the alternative forms of government, the Commission is left with

⁷⁰ Id.

⁷¹ N.J.S.A. 40:69A-91 ("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.").

⁷² N.J.S.A. 40:69A-95.

⁷³ N.J.S.A. 40:69A-93.

⁷⁴ N.J.S.A. 40:69A-149.3.

⁷⁵ Id.

⁷⁶ N.J.S.A. 40:69A-149.5 and N.J.S.A. 40:69A-149.9.

the Phase Three consideration of crafting a recommendation for an alternative form of government that may be considered by voters. This Section outlines the specific decisions that the Commission is required to make, along with the Commission's determinations and reasoning in support of same.

1. Charter Study Commission Recommendation / Form of Government

The Commission may choose to recommend a referendum on an alternative form of government, recommend a special charter, recommend changes to the current Small Municipality Form, or determine that the current Borough form of government should remain unchanged.⁷⁷

Through the Commission's work, it has determined that the current Small Municipality Form has not operated to the satisfaction of most current and former elected officials, the employees, and most importantly, the people of Bradley Beach. While the current administration by all accounts is doing a credible and, some would say, excellent job without all of the issues of the past administration, the Commission must look to the future and what subsequent administrations may do in the Small Municipality Form with all of its inherent weaknesses.

The Commission has the unique power of directing a referendum for an alternative form of government. It believes that this power should be utilized to present Bradley Beach voters an option to try and change the form of government. If the Commission does not make a recommendation, the voters are then deprived of having any opportunity to vote for change if they so choose.

Thus, the Commission's majority voted to recommend a referendum question on an alternative form of government under the Faulkner Act.

With the Commission intent on recommending a change from the Small Municipality Form, the Commission must choose between the three remaining forms of government that are available: Mayor-Council, Council-Manager, and Mayor-Council-Administrator.⁷⁸

As a preliminary matter, the Commission eliminated consideration of the Mayor-Council-Administrator form. It does not allow for nonpartisan elections, which Bradley Beach currently utilizes and the Commission believes must be maintained. This leaves the Mayor-Council and Council-Manager forms. Because Mayor-Council is a "strong mayor" form of government that caused issues in recent years that largely resulted in the establishment of the Commission, the Commission finds the "weak mayor" Council-Manager form to be the suitable option.

⁷⁷ N.J.S.A. 40:69A-12.

⁷⁸ N.J.S.A. 40:69A-31 et seq; N.J.S.A. 40:69A-81 et seq.; N.J.S.A. 40:69A-149.1 et seq.

The Commission believes that the Council-Manager form has the appropriate design and safeguards that are appropriate to protect against the abuses of executive power that Bradley Beach experienced in past years. Under Council-Manager, the governing body will hire a manager (similar to the current Business Administrator) to run the day-to-day affairs of Bradley Beach. The manager answers directly to the entire mayor and council – not just the mayor. At the same time, the manager can be removed by a simple majority vote, as compared to the current form, in which a supermajority vote is required for removal.

The Commission believes that this structure protects against the election of a mayor whose actions are not in the best interest of the Borough. Under the Council-Manager form, every councilmember has an equal vote and the majority of the governing body – not just one person – serves as the check and balance upon the manager.

The Commission is also attracted to the Council-Manager form's requirement that a municipal manager be hired and chosen based upon experience under State law.⁷⁹ The Commission believes that this requirement could reduce the potential for an administrator being chosen on account of political considerations and/or lacking relevant experience to be effective in the role.

Lastly, the Commission believes that the Council-Manager form would provide improved safeguards regarding personnel and hiring. Under the Small Municipality Form, the mayor is the sole appointing authority, with only certain roles subject to advice and consent of the governing body, on which the mayor also has a vote. In contrast, the Council-Manager form would have the manager, accountable to the full governing body, making most personnel decisions. The full governing body would possess appointing power over the manager, clerk, attorney, and board members, without the mayor or any one individual having such authority.⁸⁰

In sum, the Commission finds that the Council-Manager form is best suited to prevent against the issues that Bradley Beach has suffered in the past and provide quality governance in the future. This is further illustrated in a table enclosed with the executive summary at the beginning of this document.

2. Timing of Referendum

The Commission is authorized to hold the referendum either in the November general election or in a special election to be held 60-120 days from the date of its recommendation.⁸¹ With the Commission concluding its work in July, the Commission believes that the natural course is for the referendum question to be placed on this November's ballot. This will afford maximum voter participation in determining the future of Bradley Beach. The Commission also finds that a special election would present unnecessary cost to the taxpayers of Bradley Beach.

⁷⁹ N.J.S.A. 40:69A-92.

⁸⁰ N.J.S.A. 40:69A-89.

⁸¹ N.J.S.A. 40:69A-15.

As such, the approved referendum would be considered on the November 4, 2025 general election ballot.

3. Size of Council

Under the Council-Manager Form , the Commission has the option of establishing the council as 5, 7, or 9 members.⁸² The Commission believes that a five (5) member governing body is suitable. It would maintain the current size of the governing body utilized by Bradley Beach under the Small Municipality Form, which the Commission believes works well and does not warrant change.

4. Division of Municipality (At-Large or Wards)

Under the Council-Manager form, the Commission may choose to elect all governing body members at-large or have a portion of governing body members elected from wards.⁸³ The Commission believes that all governing body members should be elected at-large. The current Small Municipality Form of government only allows for at-large elections and Bradley Beach's small size and population do not support wards.

5. Frequency of Elections (Concurrent or Staggered)

Under the Council-Manager Form, the Commission may choose to elect all governing body members in a concurrent election every four years or to have terms staggered with elections every other year.⁸⁴ The Commission believes that staggered elections are warranted.

Without staggered elections, voters would only have a say in the municipal government every four years, which the Commission finds to be too infrequent. In this regard, it notes that councilmember terms would become four years in length, as compared to the current three-year length under the Small Municipality Form.

The use of concurrent elections also risks the potential election of an entirely new governing body with potentially five individuals that are new to local government. Staggered elections help ensure a level of continuity in government following each election.

Finally, the Commission notes that staggered elections no longer present an added expense to the Borough because they can be held in the November general election. This was a consideration of the 1991 charter study commission when it recommended concurrent elections for the current Small Municipality Form.

⁸² N.J.S.A. 40:69A-83, -83.3.

⁸³ N.J.S.A. 40:69A-13; N.J.S.A. 40:69A-83.3.

⁸⁴ N.J.S.A. 40:69A-83.3(a).

6. Timing of Elections (Partisan vs. Nonpartisan)

The Commission must choose whether to have partisan elections or nonpartisan elections.⁸⁵ Bradley Beach has utilized nonpartisan elections since the Small Municipality Form was adopted in 1992. The Commission finds that the system works well and keeps partisan politics out of the municipality. Thus, the Commission seeks to maintain nonpartisan elections in the recommended Council-Manager form, which the Faulkner Act allows.

In 2009, the Legislature adopted a law that allows nonpartisan elections held in May to be moved to the November general election by ordinance of the governing body.⁸⁶ The Bradley Beach governing body adopted Ordinance 2010-15 moving the Borough’s nonpartisan elections to the November general election.

While the Faulkner Act does not explicitly address referendums for November nonpartisan elections, there is precedent for such implementation, as evidenced by neighboring Asbury Park’s successful charter study commission referendum providing for November nonpartisan elections.

Based upon the Commission’s recommendation of nonpartisan elections in the November general election, if the referendum were adopted in the November 4, 2025, general election, the following timeframe would apply to the installation of a new Council-Manager form of government:

August 20, 2026	Nominating Petition Filing Deadline ⁸⁷
November 3, 2026	Municipal Nonpartisan Election ⁸⁸
January 1, 2027	New Government Reorganizes ⁸⁹

7. Selection of Mayor

The Commission may choose from having the people directly elect the Mayor, or alternatively, having the mayor chosen from among the elected council members.⁹⁰ Bradley Beach voters currently have the power to elect the mayor under the Small Municipality Form of government, and the Commission does not see any reason for that power to be taken away.

⁸⁵ N.J.S.A. 40:69A-83.1.

⁸⁶ P.L. 2009, c. 196; N.J.S.A. 40:45-7.1(a) (“Any municipality governed by the provisions of the Uniform Nonpartisan Elections Law . . . may, by ordinance, choose to hold regular municipal elections on the day of the general election, the Tuesday after the first Monday in November” (citations omitted)).

⁸⁷ N.J.S.A. 40:45-8.

⁸⁸ N.J.S.A. 40:45-7; N.J.S.A. 40:45-16.

⁸⁹ N.J.S.A. 40:69A-205(c).

⁹⁰ N.J.S.A. 40:69A-86.

8. Runoffs

The Commission may choose whether Bradley Beach’s new government should hold runoff elections if a sufficient number of candidate(s) fail to receive a majority of votes; without runoffs, the highest vote-getter(s) prevail on a plurality basis.⁹¹ If runoffs are utilized, the threshold for winning and avoiding runoff elections is calculated by taking the total number of voters who cast a vote for at least one candidate for the subject office, adding one, and dividing by two.⁹²

The Commission does not believe that runoffs should be contained within the referendum question. Bradley Beach currently operates in a nonpartisan form of government without runoff elections. The Borough does not have any track record of elections with numerous candidates resulting in a candidate winning with a small plurality, which runoffs are intended to prevent against. The Commission does not identify any reason to change from the current system without runoffs to one using them.

B: Potential Implementation

If the referendum passes, the implementation of the new form of government is governed by the Faulkner Act and Uniform Nonpartisan Elections Law.⁹³

To start, the new government would take office on January 1, 2027.⁹⁴ It would be elected in a nonpartisan election held as part of the November 3, 2026 general election. The filing deadline to run would be August 20, 2026.

When the new government begins, all of Bradley Beach’s current ordinances and resolutions would remain in effect, as long as they are not inconsistent with the Faulkner Act.⁹⁵ From a practical standpoint, this means that all of Bradley Beach’s local laws will remain in place, except for provisions governing the structure of the mayor, council, and administrator/manager, which would be handled under State law until the new Council-Manager governing body is able to adopt new ordinances.

Under the new form of government, the current terms of all elected officials in the Small Municipality Form of government would cease, as well as any appointed officers, except for certain specific boards including library trustees.⁹⁶ The new Council-Manager governing body would have the option to adopt a resolution allowing interim appointments of individuals

⁹¹ N.J.S.A. 40:69A-14; N.J.S.A. 40:45-18 et seq.

⁹² N.J.S.A. 40:45-18.

⁹³ N.J.S.A. 40:69A-1 et seq.; N.J.S.A. 40:45-5 et seq.

⁹⁴ N.J.S.A. 40:69A-205.

⁹⁵ N.J.S.A. 40:69A-206.

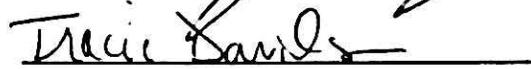
⁹⁶ N.J.S.A. 40:69A-207(a).

for 90 days while a new administrative code is prepared and adopted.⁹⁷ Within 90 days, the new governing body is required to adopt a new administrative code establishing the structure of government under the adopted council-manager form.⁹⁸

During the transition period between the November 3, 2026 election and January 1, 2027 reorganization, the lame duck governing body is expressly prohibited from creating or making appointments to any subordinate board, department, body, office, position or employment.⁹⁹


Refet Kaplan, Chair


Donald Greenberg, Vice Chair


Tracie Davidson


Linda Maslanka Duffy

⁹⁷ N.J.S.A. 40:69A-207(b).

⁹⁸ N.J.S.A. 40:69A-207(c).

⁹⁹ N.J.S.A. 40:69A-208(a).

Bradley Beach Charter Study Commission
Dissenting Report by Thomas J. Coan

July 14, 2025

Bradley Beach is at a crucial juncture, and the discussion around changing our form of government warrants careful consideration. The Department of Community Affairs has presented only four “form of government” options to our Charter Study Commission, however three of these forms appear to be very limiting in scope, offering negligible, if any proven benefits. Two were eliminated almost immediately by the commission, one for its partisan requirement and the other due to a larger city focus. It is imperative that we critically assess the true value and potential impact of each form of government on our community. This leaves us a choice between the current Faulkner Act/Small Municipality form and the Borough/Manager form. I firmly believe that we do not need to change the form of government unless we can truly improve the system that operates for the residents. The Borough/Manager form, recommended by the majority of this commission, creates too much potential for “outside politics” to adversely impact the community.

LOCAL EXAMPLES OF PROBLEMATIC MANAGER FORMS.

We need only look to our Monmouth County neighbors to see the potential pitfalls, such as increased political pressures creating six figure lawsuits, and gaps in continuity of government. Both Ocean and Howell Townships have experienced significant issues with the city manager form of government, demonstrating that such a change is far from a guaranteed solution for efficiency or improved governance. The links and attached Superior Court lawsuit, will take you through the removal of a Manager by a majority vote and one leaving abruptly due to “turmoil within the Township Council.”

OCEAN TOWNSHIP - Manager removed by council vote.

<https://transparencynj.com/2023/04/18/ocean-township-quietly-paid-110000-to-settle-former-managers-whistleblower-lawsuit/>

<https://thecoaster.net/2023/04/26/ocean-township-officials-lawsuit-settled-for-110000/>

<https://thelinknews.net/2020/12/02/muscillo-is-out-as-township-of-ocean-manager/>

HOWELL TOWNSHIP - Manager left for a lower paying job in a smaller municipality.

<https://www.jerseyshoreonline.com/howell/town-manager-removed-for-exceeding-paid-time-off/>

<https://thelakewoodscoop.com/news/breaking-howell-township-manager-announces-resignation/>

<https://capemaycountyherald.com/article/stone-harbor-appoints-new-borough-administrator/>

Bradley Beach Charter Study Commission
Dissenting Report by Thomas J. Coan

LACK OF QUALIFIED MANAGER CANDIDATES

Furthermore, the pool for hiring qualified and dedicated individuals for positions like a Borough Manager is often quite limited. Our current system allows for a Mayor who is deeply committed to and vested in the community. Typically this Mayor, elected by the people, possess a level of dedication that a transient Borough Manager, no matter how skilled, may struggle to replicate. The Mayor is one of us, a direct representative accountable to the residents of Bradley Beach on a day to day basis.

Please realize that over the previous two Mayoral cycles from 2017 to 2024 we have had two Mayors, but eight Business Administrators. The Mayors in the seat have kept it warm, but their administrative oversight through the BA left a lot to be desired and created the most disruption. When looking at the eight Business Administrators who worked over those years many would be qualified to be our proposed Borough Manager. All the while things still were not fixed and we continued to be plagued with late budgets, an abusive Police Chief, nepotism hiring, inaccurate annual financial statements, illegal executive meetings, and lackadaisical employee contract negotiations. All that with allegedly qualified "Business Administrators" and oversight by Mayors. Wonder how these same "Managers" will operate with a free hand to run our Borough?

PROPOSED BENEFITS DO NOT LEAD US CLEAR OF OTHER CONSEQUENCES

In resolution 2024-6 it states our charge as a commission as follows:

"WHEREAS, the Borough's Mayor & Council believe that it is in the best interests of the Borough's residents to review the current charter of the Borough through the establishment of a five (5) member Charter Commission, which would be charged with the responsibility and be authorized to hold hearings and public forums, to take evidence and to make recommendations in order to determine whether or not, in comparison with other forms of government in this State, the current form of government is the most appropriate for the Borough;"

I have taken this charge very seriously as do my colleagues and based upon the limited options presented by the NJ Department of Community Affairs I do not feel that the Borough/Manager form of government being proposed is the most appropriate for our town. I realize that this is contrary to the feelings of the other Commissioners, who appear to rely heavily on the fact that the Borough Manager may be removed anytime with a majority vote of 3-2. I do not believe they have considered the unintended consequences such as the costs and administrative dishevelment of using this proposed new tool. The Borough will still have to pay the removed Manager for 90 days, hire or appoint a Temporary Borough Manager at additional expense. As I have pointed out earlier Ocean Township used this tool and paid the fired manager a \$110,000 settlement, please read his attached whistleblower Superior Court complaint it will give you some insights.

Bradley Beach Charter Study Commission
Dissenting Report by Thomas J. Coan

The aftermath of a Borough Manager firing will be beginning a search for a new highly qualified professional to fill the role, an executive head hunter for NJ Municipalities would be the first stop, at another additional fee. We would most likely hire a firm like Government Management Advisors LLC, who provides "Interim local government management services, executive search services, organizational analyses, and shared services/consolidation studies for municipalities and counties in New Jersey" and lists Greg Fehrenbach as one of its Principals. Please recall,

in Mr. Fehrenbach's presentation to our Commission as he explained that he recommended Council President Meredith DeMarco as our Business Administrator over many more highly qualified candidates. This left our town at a huge administrative disadvantage for her term, and exemplifies how easily it can be to appoint poor candidates to the position that would manage our entire Borough.

DON'T ALLOW OUTSIDE POLITICS DETERMINE OUR LEADERSHIP

Mr. Fehrenbach's testimony only confirmed the problem that the Borough Manager candidate pool is limited and highlights the risk that poorly qualified individuals may be hired. I believe the Borough Manager position is a highly political appointment. These political influences exist, not only in Borough operations but also across those of County and State. As a believer in the foundations of home rule here in New Jersey, I am concerned Mr. Fehrenbach's comments in the Charter Study Commission report. I do not feel that a hired bureaucrat will separate his/her self from political function at any point. This has been documented by the behavior of Mr. Fehrenbach through his decision making process while an Acting Business Administrator and "Borough Volunteer" in the Larry Fox administration. As covered in the majority report where Mr. Fehrenbach is referenced:

"In his many years in local government, he has identified one constant - "a need to separate the CEO/Executive function from the CEO/political functions." The form that best allows for the separation of these functions is the Council-Manager form of government. In this form, the manager "partners" with the governing body to assist with carrying out the policy-making function of the elected officials position, specifically, and what could be done to provide more stability in the role."

"He hypothesized that two recent B.A.s left for different reasons: Mr. Brown was likely seeking more responsibility and earning potential. Another factor may have been the government structure. Ocean Township is organized under the Council-Manager Form, which provides stability."

Even though a majority of the Bradley Beach Charter Study Commission found support for the Borough/Manager form of government, I could not disagree more. The previous lawsuits and challenges noted in Ocean Township and Howell Township demonstrate that the Manager does not always "partner well" with the governing body. Mr Fehrenbach's inclusion of Ocean Township is ironic given that the whistleblower lawsuit against the Mayor and Council does not indicate "stability" to me.

Bradley Beach Charter Study Commission
Dissenting Report by Thomas J. Coan

LAWSUITS

It is also crucial to remember the history of lawsuits that have plagued our town in the past. Introducing a new, potentially less accountable layer of administration could easily open the door to further legal challenges, something we absolutely do not need. We have worked hard to move beyond those difficult times and clearly other Monmouth County Township/Manager Municipalities have not gained a litigation shield by using this form of government.

PROPOSED CHANGES TO THE CURRENT FORM OF GOVERNMENT

Another option for us as a Charter Study Commission is to make recommendation for changes to our current form of government, here are a few that would give more clarity and cohesiveness to the governing body:

- Require a Business Administrator and include detailed educational and work experience criteria in the ordinance.
- All Municipal correspondence to be shared with the entire Borough Council in a weekly report.
- Advice & Consent required for all full-time hires.
- Expanded liaison roles for Council members to enhance communication and interactions, while reporting to the Business Administrator
- Agenda prepared by the full governing body with equal input

in closing I have been very proud to serve Bradley Beach on this Charter Study Commission and work with Chairman Kaplan and Commissioners Greenberg, Davidson and Maslanka-Duffy. It has been an enlightening experience as I learned more about the inner workings of New Jersey politics and how it impacts our residents. Day to day life is difficult enough and it is quite a task to track how our governments in Bradley Beach, Freehold, Trenton and Washington DC evolve and make law. With regard to the choice between our current form of government (Faulkner Act/Small Municipality) or the one proposed by my colleagues (Borough/Manager), no form of government is perfect and the success of any government depends on the people elected. That said, I truly believe that the current form will better serve our community because it empowers the leader elected by the people and to a larger degree helps to protect our community from outside "politics." Leadership that comes from outside Bradley Beach can't replicate the passion and commitment of our own elected Mayor.


Thomas J. Coan

Michael W. Hoffman, Esq.
Attorney Identification Number 03993-1995
Barrett, Pavluk, Vince & Hoffman, L.L.C.
Counselors At Law
1200 Eagle Avenue
Ocean Township, New Jersey 07712
732-493-2800
Attorneys for Plaintiff Michael F. Muscillo

Michael F. Muscillo,

Plaintiff,

VS.

Township of Ocean, Christopher P.
Siciliano, and John P. Napolitani, Sr.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH COUNTY

DOCKET NUMBER MON-L-_____

CIVIL ACTION

COMPLAINT

Plaintiff Michael F. Muscillo, complaining of the defendants, alleges as follows:

1. Plaintiff Michael F. Muscillo is an individual who is domiciled in the township of Ocean, county of Monmouth, state of New Jersey.
2. Defendant Township of Ocean is a corporate body politic incorporated and residing in the state of New Jersey with its principal place of business located at 399 Monmouth Road in the township of Ocean, County of Monmouth.
3. Defendant Chrisopher P. Siciliano is an individual who is domiciled in the township of Ocean, county of Monmouth, state of New Jersey.
4. At all times pled herein, Defendant Siciliano held the elected office of councilman with the ceremonial title of Mayor.

5. At all times pled herein, Defendant Siciliano acted within the scope of his authority as empowered by and authorized per Defendant Township of Ocean.
6. At all times pled herein, Defendant Siciliano, if acting outside the scope of his authority, aided and/or abetted the ongoing and continuous acts and/or omissions constituting unlawful conduct complained of herein.
7. Defendant John P. Napolitani, Sr. is an individual who is domiciled in the township of Ocean, county of Monmouth, state of New Jersey.
8. At all times pled herein, Defendant Napolitani held the elected office of councilman with the ceremonial title of Deputy Mayor.
9. At all times pled herein, Defendant Napolitani acted within the scope of his authority as empowered by and authorized per Defendant Township of Ocean.
10. At all times pled herein, Defendant Napolitani, if acting outside the scope of his authority, aided and/or abetted the ongoing and continuous acts and/or omissions constituting unlawful conduct complained of herein.
11. On or about June 29, 2017, Defendant Township of Ocean hired Plaintiff Muscillo in the title and position of Municipal Manager.
12. At all times pled herein, Plaintiff Muscillo performed his employment duties and responsibilities to the reasonable satisfaction of an objectively reasonable employer.
13. Defendant Township of Ocean per Defendant Siciliano and Defendant Napolitani, amongst others, retaliated against Plaintiff Muscillo because the plaintiff spoke out against the activities, policies, and/or practices of the defendant township as an employer.
14. The defendants so retaliated against Plaintiff Muscillo because the plaintiff:

- (a) disclosed or threatened to disclose an activity, policy, or practice of the defendant township as an employer he objectively reasonably believed to be unlawful, fraudulent and/or criminal; and/or
 - (b) provided information to a public body investigating possible unlawful conduct; and/or
 - (c) objected to an activity, policy, or practice which the plaintiff objectively reasonably believed to be unlawful, fraudulent, criminal, and/or against a clear mandate of public policy.
15. More specifically, and without limitation, Plaintiff Muscillo spoke out against the following acts and/or omissions of the defendants:
- (a) the directive of the defendants to hire a relative of Defendant Siciliano as a law enforcement officer employed by the township;
 - (b) the directive of the defendants to create the unlawful township position of “deputy manager” in order to appoint a certain code enforcement officer to that position;
 - (c) the attempt of the defendants to conduct a public meeting violative of the New Jersey Open Public Meetings Act (i.e. the “Sunshine Law”);
 - (d) the attempt of the defendants to hold an event sponsored by the township on public property involving unlawful activities including the consumption of alcohol;
 - (e) the operation of a “shadow government” by Defendant Siciliano and Defendant Napolitani;
 - (f) the conduct of Defendant Napolitani engaging in conflicts of interest per conducting business through his construction company with a condominium association situated in the municipality, which association was then engaged in litigation with the township; and
 - (g) the failure or refusal of the defendants to take legal action against a certain code enforcement officer who committed criminal acts against the computer information system of the township.
16. The retaliation of the defendants culminated in Defendant Township of Ocean terminating the employment of Plaintiff Muscillo by way of resolution dated December 2, 2020.

CAUSES OF ACTION

Count I
(Conscientious Employee Protection Act)

17. The plaintiff repeats and realleges each and every paragraph set forth above and below as if more fully set forth herein.
18. The acts and/or omissions of the defendants violate the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq.
19. The acts and/or omissions of the defendants have placed the plaintiff under duress.
20. The acts and/or omissions of the defendants have caused loss to and/or prevented gain by the plaintiff.

WHEREFORE, Plaintiff Michael F. Muscillo demands judgment against the defendants, jointly and severally, for the following relief:

- (a) compensatory damages;
- (b) reinstatement;
- (c) punitive damages;
- (d) attorneys fees, interests and costs of suit;
- (e) injunctive relief; and
- (f) any other relief deemed equitable and just by the Court.

Count II
(Common Law Retaliation: "Pierce Violations")

21. The plaintiff repeats and realleges each and every paragraph set forth above and below as if more fully set forth herein.
22. The acts and/or omissions of the defendants violate public policy as a cause of action sounds under Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58 (1980).

23. The acts and/or omissions of the defendants have placed the plaintiff under duress.
24. The acts and/or omissions of the defendants have caused loss to and/or prevented gain by the plaintiff.

WHEREFORE, Plaintiff Michael F. Muscillo demands judgment against the defendants, jointly and severally, for the following relief:

- (a) compensatory damages;
- (b) reinstatement;
- (c) punitive damages;
- (d) attorneys fees, interests and costs of suit;
- (e) injunctive relief; and
- (f) any other relief deemed equitable and just by the Court.

Count III
(Constitutional Rights)

25. The plaintiff repeats and realleges each and every paragraph set forth above and below as if more fully set forth herein.
26. The acts and/or omissions of the defendants violate the right to protect property held by the plaintiff under the Constitution of New Jersey.
27. The acts and/or omissions of the defendants violate the right to due process of law held by the plaintiff under the Constitution of New Jersey.
28. The acts and/or omissions of the defendants violate the right to freely speak, write, and publish one's sentiments absent abuse held by the plaintiff under the Constitution of New Jersey.
29. The acts and/or omissions of the defendants violate other substantive rights, privileges or immunities secured by the Constitution or laws of the state of New Jersey held by or for the benefit of the plaintiff.

30. The acts and/or omissions of the defendants have placed the plaintiff under duress.
31. The acts and/or omissions of the defendants have caused loss to and/or prevented gain by the plaintiff.

WHEREFORE, Plaintiff Michael F. Muscillo demands judgment against the defendants, jointly and severally, for the following relief:

- (a) compensatory damages;
- (b) reinstatement;
- (c) punitive damages;
- (d) attorneys fees, interests and costs of suit;
- (e) injunctive relief; and
- (f) any other relief deemed equitable and just by the Court.

Count IV
(New Jersey Civil Rights Act)

32. The plaintiff repeats and realleges each and every paragraph set forth above and below as if more fully set forth herein.
33. The acts and/or omissions of the defendants have deprived the plaintiff of his substantive rights, privileges and/or immunities secured by the Constitution or laws of the state of New Jersey.
34. The plaintiff's exercise or enjoyment of those substantive rights, privileges or immunities have been interfered with or attempted to be interfered with by threats, intimidation or coercion per the individual defendant(s) acting under color of law.
35. The acts and/or omissions of the defendants have placed the plaintiff under duress.

36. The acts and/or omissions of the defendants have caused loss to and/or prevented gain by the plaintiff.
37. A cause of action thus sounds under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.

WHEREFORE, Plaintiff Michael F. Muscillo demands judgment against the defendants, jointly and severally, for the following relief:

- (a) compensatory damages;
- (b) reinstatement;
- (c) punitive damages;
- (d) attorneys fees, interests and costs of suit;
- (e) injunctive relief; and
- (f) any other relief deemed equitable and just by the Court.

Barrett, Pavluk, Vince & Hoffman, L.L.C.
Attorneys for Plaintiffs

/s/ Michael W. Hoffman

By: Michael W. Hoffman, Esq.

Dated: November 19, 2021

TRIAL DEMAND

The plaintiff hereby demands a trial by jury.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Michael W. Hoffman, Esq., is designated as trial counsel.

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to Rule 4:10-2(b), demand is made that defendants disclose to plaintiff's attorney whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse for payments made to satisfy the judgment and provide

plaintiff's attorney with true copies of those insurance agreements or policies, including, but not limited to, any and all declaration sheets. This demand shall include and cover not only primary coverage, but also any and all excess, catastrophe, and umbrella policies.

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

1. I certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding.
2. I certify that there are no other actions contemplated.
3. I certify that I am unaware of a non-party that should be joined in this action.

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(3)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court if any, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Barrett, Pavluk, Vince & Hoffman, L.L.C.
Attorneys for Plaintiffs

/s/ Michael W. Hoffman

By: Michael W. Hoffman, Esq.

Dated: November 19, 2021

APPENDIX A – APPROVING RESOLUTION

BRADLEY BEACH CHARTER STUDY COMMISSION

RESOLUTION APPROVING FINAL REPORT AND FINDINGS OF BRADLEY BEACH CHARTER STUDY COMMISSION AND RECOMMENDING ALTERNATIVE FORM OF GOVERNMENT

WHEREAS, the Bradley Beach Charter Study Commission (“Commission”) is a body politic established pursuant to the provisions of the Optional Municipal Charter Law, commonly known as the Faulkner Act, N.J.S.A. 40:69A-1 et seq. (the “Act”); and

WHEREAS, pursuant to N.J.S.A. 40:69A-10, the Commission “shall report its findings and recommendations to the citizens of the municipality . . . within 9 calendar months from the date of its election” in the form of an “original signed copy of any final report containing said findings and recommendations made by any member of the commission”; and

WHEREAS, N.J.S.A. 40:69A-12(d) authorizes the Commission to “report and recommend. . . [t]hat a referendum shall be held to submit to the qualified voters of the municipality the question of adopting one of the plans of government authorized in” the Act; and

WHEREAS, the Commission has determined to recommend that Bradley Beach adopt the Council-Manager form of government as further outlined in the report attached hereto and incorporated by reference (the “Report”); and

WHEREAS, as set forth in the Report, the Commission recommends and directs that the following public question be placed before the voters of Bradley Beach in the November 2025 general election:

Shall the COUNCIL-MANAGER PLAN of the Optional Municipal Charter Law, providing for FIVE (5) council members to be ELECTED AT-LARGE for STAGGERED terms at NONPARTISAN elections to be held in NOVEMBER, with the MAYOR ELECTED DIRECTLY BY THE VOTERS, be adopted by the Borough of Bradley Beach?

; and

WHEREAS, as set forth in the Report, the Commission recommends and directs that the following explanatory statement shall accompany the public question:

The voters of Bradley Beach are asked whether to approve a change to Bradley Beach’s form of government from the Small Municipality form to the Council-Manager form, under the

Optional Municipal Charter Law, commonly known as the Faulkner Act.

If approved, Bradley Beach will be governed by a council of five (5) members, which includes a directly-elected Mayor. The Mayor serves as a voting member of the Council and only possesses limited appointment powers including to the library board of trustees. The Council as a body possesses the Borough's legislative powers and shall determine all matters of policy for Bradley Beach. The Council shall appoint a Municipal Manager, who will exercise all executive and administrative powers. The Municipal Manager shall serve at the will of the Council, subject to removal by a simple majority vote. This contrasts with the current Small Municipality form, in which the Mayor possesses the executive powers including all appointments and the position of Borough Administrator is optional.

The Mayor will be directly elected by the voters for a term of four (4) years. The remainder of the Council members will be elected for staggered terms of four (4) years each. In order to initiate staggered terms, three (3) of the council members elected under the new form of government shall serve for only two (2) years, to be determined by lot at the organization meeting of the first Council. The remaining one (1) Council member and Mayor would serve an initial four (4) year term, with a municipal election held every two (2) years.

The council shall be elected at-large through nonpartisan elections held at the November general election.

If the change of government is approved by the voters, the first municipal election will be held on November 3, 2026, and the new Mayor and Council members will be installed on January 1, 2027.

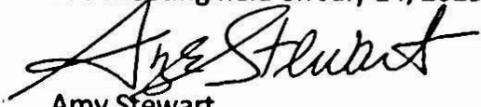
NOW, THEREFORE, BE IT RESOLVED by the Bradley Beach Charter Study Commission, as follows:

1. The foregoing recitals are incorporated as if set forth at length.
2. The Report is hereby approved and adopted as the Commission's findings and recommendations, duly adopted by a majority of the membership of the Commission.

3. The Commission's Secretary and Attorney are hereby authorized and directed to submit an original signed copy of this Resolution and the Report to the Municipal Clerk of the Borough of Bradley Beach, and to take any and all steps reasonably necessary to effectuate the Commission majority's recommendation of a public question to be presented to the voters of Bradley Beach in this November 2025 general election, as set forth in the Report.

CERTIFICATION

I, Amy Stewart, Secretary of the Bradley Beach Charter Study Commission, do hereby certify this to be a true copy of a Resolution adopted by the Bradley Beach Charter Study Commission at a meeting held on July 14, 2025.

A handwritten signature in black ink, appearing to read "Amy Stewart", written in a cursive style.

Amy Stewart

Secretary

Bradley Beach Charter Study Commission

APPENDIX B – CERTIFICATION

We hereby affirm by our signatures below that this Report, including the majority and dissenting opinions, contains the findings and recommendations made by all members of the Bradley Beach Charter Study Commission, as approved at a public meeting on July 14, 2025, in accordance with N.J.S.A. 40:69A-10.



Refet Kaplan, Chair



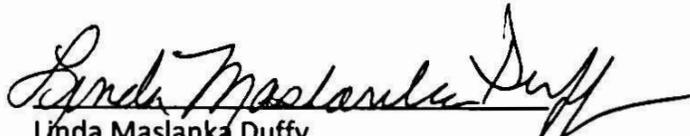
Donald Greenberg, Vice Chair



Thomas J. Coan



Tracie Davidson



Linda Maslanka Duffy