RED BANK CHARTER STUDY COMMISSION

FINAL REPORT

Adopted July 19, 2022

Commission Members:

Nancy Facey-Blackwood, Chair
Mark Taylor, Vice Chair
Michael DuPont
Benedict Forest
Kathryn Okeson

Prepared By:

Michael L. Collins, Esq.
Red Bank Charter Study Commission Attorney
King, Moench & Collins LLP

TABLE OF CONTENTS

I: EXECUTIVE SUMMARY 4
II: RECOMMENDATION OF THE COMMISSION – PUBLIC QUESTION 5
III: BACKGROUND AND ESTABLISHMENT OF COMMISSION 6
A: Overview and Borough Form of Government 6
B: Management Enhancement Review 8
C: Borough Administrator Ordinance 8
D: Charter Study Commission 11
IV: REVIEW OF CURRENT FORM OF GOVERNMENT 13
A: Introduction 13
B: Interviews 14
1. Initial Phase One Interviews 14
2. Business Administrators 15
3. Current Mayor and Council 17
4. Former Councilmembers. 21
5. Current Borough Staff 22
C: Phase One Conclusions 23
V: REVIEW OF ALTERNATIVE FORMS OF GOVERNMENT 24
A: Introduction 24
B: Overview of Options 25
C: Discussion on Form of Elections (Partisan or Nonpartisan) 27
D: Discussion on Current Faulkner Act Municipalities 29
E: Academic Research on Alternative Forms 31
VI: COMMISSION FINDINGS 32
A: Recommendation 33
1. Charter Study Commission Recommendation 33
2. Timing of Referendum 33
3. Type of Optional Form of Government 33
4. Size of Council 35
5. Division of Municipality (At-Large or Wards) 35
6. Frequency of Elections (Concurrent or Staggered) 36
7. Timing of Elections (Partisan vs. Non-Partisan) 36
8. Selection of Mayor 39

9. Runoffs 39
B: Potential Implementation 41
APPENDIX A – BIOGRAPHIES 42
APPENDIX B – APPROVING RESOLUTION 45
APPENDIX C – CERTIFICATION 48

I: EXECUTIVE SUMMARY

The people of Red Bank voted overwhelmingly – by a 70% margin – to establish a charter study commission. The Commission viewed this as a mandate to closely examine Red Bank's Borough form of government – which has existed over one century – and determine whether a newer form of government should guide Red Bank through its second century.

Over the past nine months, the Commission has educated itself – and the public – by conducting numerous interviews of current and former Red Bank governing body members, current and former business administrators, current employees, a political scientist, local government experts, and elected officials from other municipalities. The Commission also received public comment at meetings, through written submissions, and informally made to individual commissioners.

The Commission finds that the Borough form of government is not meeting the needs of Red Bank. While it can be debated whether certain inefficiencies are caused by the form of government or its officeholders, the Commission finds that the Borough form itself presents two clear structural deficiencies that can be improved upon.

First, the Borough form lacks sufficient delineations of authority for officeholders, which has allowed councilmembers to meddle, micromanage, and overstep their role as individual legislators. The Borough form indiscriminately vests executive responsibilities in the collective mayor and council and contains an optional business administrator, allowing the latter role to be altered by the whims of council. The Borough form's inefficiency is compounded by the governing body being nominally led by a "weak mayor" that only casts tie-breaking votes. The Borough form of government lacks defined and effective roles for the mayor, councilmembers, and administrator, which are required for Red Bank's government to operate efficiently in the 21st century.

Second, the Borough form's annual partisan elections have created a divisive environment that has undermined Red Bank's government from properly functioning. The high frequency of elections prevents the council from embarking upon long-term projects without being impeded by short-term political considerations. The partisan system has caused elected officials to oppose the other party's ideas for strictly political reasons in divided government, and when there is one-party control, there has been in-fighting on public display that has prevented consensus building.

After reviewing the options available to it, the Commission recommends that Red Bank adopt the Council-Manager form of government with non-partisan elections, as further detailed in this Report.

The Council-Manager form allows a directly elected mayor to serve as the head of government and as a voting member of the council – not just a tie-breaker. The mayor and council exercise all legislative powers and set the policy for Red Bank. In turn, the mayor and

council hire a manager to run the day-to-day municipal operations. The manager carries out the executive functions, and the mayor and council are required to act through the manager. The Commission believes this structure will directly address and rectify the micromanagement issues that have been seen in the current Borough form.

The Commission also believes that non-partisan elections will improve Red Bank's electoral process. The Commission finds that the current partisan elections have led to biannual division and acrimony. Nonpartisan elections will allow any candidate to run for office by filing a petition, counteracting the outsized influence of party endorsements and favorable ballot position, which has directly affected the council's governance in recent years. Those elected would serve four-year terms, with elections staggered every two years.

The Commission will be submitting its recommendation to voters in this November's general election. If adopted, voters will elect a new government in May 2023. This timing ensures that the newly-adopted government takes effect as soon as possible, rather than waiting for a November 2023 election that would allow the Borough government to operate in lame duck status for over a year. It will also allow the new governing body to be chosen in an election exclusively focused on Red Bank issues. The recommendation also provides for run-off elections in the unlikely event that candidates fail to attain a majority of votes for mayor and/or council. After the new government is installed on July 1, 2023, it may choose to move future municipal elections to November, which this Commission recommends that it do.

The Commission hopes that the breadth of this Report demonstrates the seriousness by which it took its obligations and the amount of thought that has gone into the recommendation it makes. The Commission remains grateful to the people of Red Bank for this unique opportunity to look into and improve our local government, and to those who assisted the Commission through this process, especially each of the parties that provided interviews to the Commission and the residents of Red Bank that offered public comments.

II: RECOMMENDATION OF THE COMMISSION – PUBLIC QUESTION

The Commission recommends and directs that the following public question be placed before the voters of Red Bank in the November 2022 general election:

> Shall the COUNCIL-MANAGER PLAN of the Optional Municipal Charter Law, providing for SEVEN (7) council members to be ELECTED AT LARGE for STAGGERED terms at NON-PARTISAN elections to be held in MAY, with the MAYOR ELECTED DIRECTLY BY THE VOTERS, with run-off elections to be held thereafter if a sufficient number of candidates fail to attain a majority of votes, be adopted by the Borough of Red Bank?

The following explanatory statement shall accompany the public question:

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

If approved, Red Bank will be governed by a council of seven (7) members, which includes a directly-elected Mayor, who serves as a voting member of the Council. The Council will exercise legislative powers and set municipal policy for Red Bank. 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.

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, four (4) 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 two (2) Council members 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 non-partisan elections held on the second Tuesday in May. If a sufficient number of candidates for mayor and/or council fail to attain a majority of votes, a potential runoff election for that office would be held in June. After the new Council is installed, it may choose to move subsequent non-partisan elections to the day of the general election in November, with potential runoff elections in December.

If the change of government is approved by the voters, the first municipal election will be held on May 9, 2023, and the new Mayor and Council members will be installed on July 1, 2023.

III: BACKGROUND AND ESTABLISHMENT OF COMMISSION

A: Overview and Borough Form of Government

Red Bank is a municipality located in Monmouth County. It has a population of 12,936 as of the 2020 census. It is comprised of 1.75 square miles of land and .41 square miles of water.

The water portion is comprised by portions of the Navesink River, and the Borough was named for the red soil along it.[1]

Red Bank was created by an act of the New Jersey Legislature on March 10, 1908 from portions of Shrewsbury Township under the Borough form of government.[2] The Borough form of government is currently administered under N.J.S.A. 40A:60-1 et seq.

Under Red Bank's current borough form of government, the mayor is elected by the voters at large to a four-year term.[3] The council is fixed with six members, elected at large for terms of three years.[4] The council terms are staggered so that two members of council are up for election each calendar year.[5]

The Borough form of government is commonly referred to as a "weak mayor" form of government. The Mayor is designated as the "head of municipal government" but has limited powers.[6] While the mayor presides at council meetings, he or she only votes to break a tie.[7] The mayor does have the power to veto ordinances, but he or she may be overridden by a two-thirds vote of the council.[8] From a practical standpoint, this power has limited import, as an ordinance that passes the council by a 4-2 vote already satisfies the supermajority requirement.

Under the Borough form of government, the executive responsibilities vest in the mayor and council.[9] However, the council is authorized by ordinance to "delegate all or a portion of the executive responsibilities of the municipality to an administrator."[10] Red Bank has maintained a Borough Administrator by ordinance since at least 1979, which exists to "assist the Borough Council and its members in the continued efficient operation of the Borough.[11]

The Borough Administrator (along with "subordinate officers") is appointed by the Mayor with the advice and consent of the council.[12] However, if the council fails to confirm the Mayor's nomination within thirty (30) days, the Council may make the appointment with the

---

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

[2] Snyder, John P. The Story of New Jersey's Civil Boundaries: 1606-1968, Bureau of Geology and Topography; Trenton, New Jersey; 1969. p. 184. Accessed July 10, 2012.
[3] N.J.S.A. 40A:60-2(a).
[4] N.J.S.A. 40A:60-2(b).
[5] Id.
[6] N.J.S.A. 40A:60-5(a).
[7] N.J.S.A. 40A:60-5(c).
[8] N.J.S.A. 40A:60-5(d).
[9] N.J.S.A. 40A:60-7(a).
[10] N.J.S.A. 40A:60-7.
[11] Red Bank Ordinance 1-79; Red Bank Ordinance § 90-25.
[12] N.J.S.A. 40A:60-5(g); N.J.S.A. 40A:9-137; Red Bank Ordinance § 90-27(A).

mayor lacking any tie-breaking power.[13] In either instance, the administrator serves "at the pleasure of the governing body" until removal by a 2/3 vote of the council.[14]

B: Management Enhancement Review[15]

Over the past half decade, there have been various public discussions critical of Red Bank's current government, including by the governing body itself. In 2017, Red Bank's Mayor and Council publicly shared concerns about inefficiencies and procured consultants from the Government Strategy Group ("GSG") to conduct a "Management Enhancement Review." GSG conducted numerous interviews of then-Borough officials and issued a formal written report dated May 2018.

The Report's "first recommendation" was that "Red Bank address its form of government" because it "is not working as well as it could be." The Report identified that Red Bank's government had "drifted away from the intent of the original [borough] charter and over the years has morphed into a 'commission' form of government which gives individual elected officials larger roles in the actual day-to-day business of the various departments."

The Report recommended that Red Bank "[c]onsider a charter study to determine the best form of government for Red Bank." Citing the "number of challenges" that Red Bank faces, the Report suggested that Red Bank would "benefit greatly by a form of government that provides for strong executive leadership with a Chief Executive Officer," whether in the form of a strong mayor or strong manager, as provided under the Faulkner Act's mayor-council and council-manager forms of government.

In the interim, the report suggested "strengthen[ing] the position of Business Administrator, allowing him or her to function more like a CEO." Under this recommendation, the Report believed that the administrator should have broad authority over personnel matters. It was submitted that this would allow elected officials to better "focus on big-picture . . . policy matters" and "[g]ive the people in charge of staff full control of their staff to make them responsible for results."

C: Borough Administrator Ordinance

On June 13, 2018, the Borough Council adopted an ordinance overhauling the borough administrator position. The Council explained that it was adopted in response to the 2018 Management Enhancement Review:

[13] N.J.S.A. 40A:60-6.
[14] N.J.S.A. 40A:9-137, -138.
[15] See *passim* Ken DeRoberts and Joseph Hartnett, Government Strategy Group, Management Enhancement Review for the Borough of Red Bank (May 2018), at 4-5 (the "GSG Report").

> [A]fter careful study and consideration, including retaining advice and assistance from expert consultants in municipal government, the Mayor and Council of the Borough of Red Bank have found and determined that it is in the best interests of good government and effective management of the Borough to delegate executive responsibilities to a professional manager in the position of Business Administrator for the Borough, as provided for in the Borough's charter pursuant to NJSA 40A:60-7.a.[16]

The Council also "additionally found and determined that the amendments set forth herein will enable the Borough to more effectively serve its residents and stakeholders and deal with modern issues confronting the Borough."[17]

Mayor Menna announced that the Borough had released the Management Enhancement Review, which was a "bipartisan effort" that was "looking for a comprehensive, unbiased review[] so [the Borough] could collectively do a better job."[18] He said that the Council had "started taking remedial actions while the report was being prepared," and that "one example was the ordinance on th[e] agenda regarding the Business Administrator."[19] Councilman Zipprich remarked that the Mayor had "summarized it beautifully and added that he felt the analysis was well timed as it was being done prior to the hiring of a new Business Administrator."[20] He also said he "felt the report would be a roadmap to the future and would help make the Borough more friendly to residents and businesses."[21] The Ordinance was adopted on a 5-0-1 vote, with Councilmembers Horgan, Taylor, Whelan, Yngstom, and Zipprich voting in favor, and Councilman Ballard abstaining.[22]

The Ordinance provided for a professional administrator that was "appointed on the basis of his executive, administrative and technical qualifications with special reference to education and experience in local government."[23] The Ordinance required the administrator to possess a college degree and prohibited the administrator from being a former councilmember for one year following separation.[24] The Administrator did not need to be a Red Bank resident.[25]

The Ordinance expressly delegated the executive responsibilities of the Borough to the Business Administrator.[26] To this end, the Ordinance provided that the

---

[16] Red Bank Ordinance 2018-17.
[17] Id.
[18] Red Bank Council Minutes (June 13, 2018).
[19] Id.
[20] Id.
[21] Id.
[22] Id.
[23] Red Bank Ordinance § 90-27(E) (repealed).
[24] Id.
[25] Id.
[26] Red Bank Ordinance § 90-28(A) (repealed).

> Administrator shall be responsible for the proper and efficient management of business affairs of the Borough and shall have all such management powers and perform all such management duties other than those specifically required by statute to be exercised only by the Borough Council or only by another officer or body or department of the Borough.[27]

The Ordinance also set forth the Administrator's executive powers and responsibilities, including relating to hiring, internal reporting, purchasing and contracting, maintenance of Borough facilities, budget development, preparation of Borough Council agendas, development of internal practices, investigating of employee issues, serving in part as the approving authority over the police department, and such other tasks as may be assigned by the Mayor and Council.[28]

Nearly four years later, and after this charter study commission was established and actively performing its work, the Borough Council repealed certain provisions of the 2018 business administrator ordinance. On February 9, 2022, the Borough Council adopted Ordinance 2022-02 by a 3-2 vote.[29] Councilmembers Ballard, Sturdivant, and Zipprich voted yes, and Councilmembers Horgan and Triggiano voted no.[30] The ordinance attempted to reverse some of the changes that were made in Ordinance 2018-17. First, it removed a provision providing that the Borough Administrator shall fill and hire all positions unless otherwise provided.[31] This power was returned to the Mayor and Council. Second, it imposed a residency requirement upon the Administrator that is applicable within six months of appointment, unless extended by resolution of the governing body.[32] Third, it revised and shortened the list of executive functions that are delegated and assigned to the Administrator.[33]

Prior to adoption, the Borough Council held a public hearing and engaged in discussion about the proposal. Councilwoman Horgan stated that she believed the Council is a legislative body and that councilmembers should not be involved in the day-to-day operations of the Borough, calling it a "really bad move."[34] She also questioned the re-imposition of a residency requirement, noting that Red Bank is a relatively small municipality and is a small pool.[35] Councilman Ballard contended that the ordinance change only reverts the Business Administrator position to the way it was prior to 2018.[36] Councilman Zipprich noted that

---

[27] Red Bank Ordinance § 90-28(B) (repealed).
[28] Red Bank Ordinance § 90-28(A)-(P) (repealed).
[29] Red Bank Council Minutes (Feb. 9, 2022).
[30] Id.
[31] Red Bank Ordinance 2022-02.
[32] Id.
[33] Id.
[34] Red Bank Council Minutes (February 9, 2022).
[35] Id.
[36] Id.

Freehold Borough also imposes a residency requirement for its borough administrator.[37] Mayor Menna stated that if the Council was considering residency requirements, it should consider expanding them to all Borough positions – not just the Business Administrator.[38] Councilwoman Triggiano stated that a residency requirement would decimate the Red Bank Fire Department and would turn away quality candidates.[39] She also believes the Council should have confidence in the Administrator to make hiring decisions and that the Council should refrain from adopting this ordinance as the Charter Study Commission continues its work.[40]

D: Charter Study Commission

On May 26, 2021, Red Bank's Mayor and Council introduced Ordinance 2021-11 to establish a referendum in the November 2021 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 borough form of government is the most appropriate for the Borough of Red Bank[.][41]

The Ordinance was introduced on a 5-0 vote, with Councilmembers Ballard, Horgan Triggiano, Yassin, and Zipprich voting in favor.[42] At this meeting, Councilman Zipprich inquired about the process for candidates running for the charter study commission.[43] Councilman Yassin stated that he was excited the Mayor and Council was unanimously moving ahead with the charter study commission.[44] Councilwoman Triggiano said it was a "great step forward."[45] Mayor Menna said "it was an expansive experiment in the evolution of democracy and expanding the community by not being closed to ideas that may be helpful in the future," and that he appreciated the support of the Council.[46]

---

[37] Id.
[38] Id.
[39] Id.
[40] Id.
[41] Red Bank Ordinance 2021-11.
[42] Red Bank Council Minutes (May 26, 2021).
[43] Id.
[44] Id.
[45] Id.
[46] Id.

The Ordinance received final adoption on June 23, 2021 a 4-0 vote, with Councilmembers Horgan, Triggiano, Yassin, and Yngstrom voting yes, and Councilmembers Ballard and Zipprich absent.[47] During the public hearing, three residents spoke in favor of the Ordinance.[48]

In the November 2021 general election, Red Bank voters approved the establishment of a charter study commission by a vote of 2,108 to 918, with 69.7% of votes cast supporting the referendum.[49] At the same election, voters elected five individuals to serve as charter study commissioners, out of eleven filed candidates[50]:

Nancy Facey-Blackwood	**1,196**
Thomas R. Wieczerzak	670
Scott Broschart	871
John L. Jackson	616
Jesse Garrison	791
Benedict Forest	**923**
John Gosden	632
Michael R. DuPont	**894**
Mark Taylor	**992**
Aimee Humphreys	864
Kathryn Okeson	**1,007**

On November 30, 2022, the Red Bank Charter Study Commission held its inaugural meeting at Borough Hall with Commissioners DuPont, Facey-Blackwood, Forest, Okeson, and Taylor sworn into office.[51] Facey-Blackwood was unanimously elected as Chair and Taylor was unanimously elected as Vice Chair.[52] Biographies of the Commissioners are appended to this Report.

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

[47] Red Bank Council Minutes (June 23, 2021).
[48] Id.
[49] Monmouth County Clerk, Certified Election Results, available at www.monmouthcountyvotes.com.
[50] Id.
[51] Red Bank Charter Study Commission Minutes (Nov. 30, 2022).
[52] Id.

> responsive or accountable to the people or whether its operation could be more economical or efficient, under a changed form of government.[53]

Under the law, the Commission is obligated to prepare a report containing its final findings and recommendations, which are contained within this document.[54]

IV: REVIEW OF CURRENT FORM OF GOVERNMENT

A: Introduction

After completing its organizational tasks, the Red Bank Charter Study Commission embarked upon its "Phase One" inquiry into the current Borough form of government.[55] 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. It interviewed Joseph Hartnett of GSG, who authored the Management Enhancement Report that recommended a charter study commission. The Commission also received a presentation on Phase One considerations by Edward Sasdelli, who serves a Municipal Technical Advisor of the State's Department of Community Affairs, Division of Local Government Services.

Second, the Commission invited all three (3) individuals that had served as Borough Administrator within recent memory: Darren McConnell, Ziad Shehady, and Stanley Sickels. Each of these individuals responded affirmatively and were interviewed.

Third, the Commission invited all of the current members of the Mayor and Council to appear and testify. The Commission conducted interviews from all parties that affirmatively responded, including Mayor Menna and Councilmembers Ballard, Horgan, Triggiano, and Zipprich.

Fourth, the Commission contacted all individuals that had formerly served on the Red Bank governing body over the past five (5) years. Former Councilmembers Schwabenbauer and Yngstrom responded affirmatively and were interviewed.

Fifth, the Commission conducted interviews with various current Borough employees, including Department Heads. These interviews were conducted with the consent of the Interim Borough Administrator. To protect the employees' anonymity, the interviews were conducted

---

[53] N.J.S.A. 40:69A-7.
[54] N.J.S.A. 40:69A-10.
[55] "Change in New Jersey Municipal Organization," Center for Governmental Services, Edward J. Bloustein School of Planning and Public Policy, Rutgers University, June 2006.

in private by a subcommittee of two commissioners, and relevant findings were reported out without reference to individuals.

B: Interviews

1. Initial Phase One Interviews

Joseph Hartnett[56]

Joseph Hartnett is Executive Managing Director of GSG, the consultant entity that was hired by the Mayor and Council in 2017 to conduct the Management Review. As discussed earlier, GSG's first recommendation was that Red Bank examine its form of government and consider the establishment of a charter study commission.

As part of an expansive interview, Hartnett reminded the Commission that there was no such thing as a "perfect government," and that no matter which structure is chosen, it depends on having the right people elected to it. He stated that the Commission's goal is to recommend a form of government that maximizes chances for success.

Providing background, Mr. Hartnett explained that Red Bank operates under a Borough form of government, which can be altered by ordinance to operate in various ways, from a "strong CEO" borough administrator to having no borough administrator and each councilmember overseeing a department on a "commission" basis.

Mr. Hartnett explained that early 20th century local governments were established under a commission form of government, where individual governing body members are assigned to oversee various departments. He stated that the commission form of government quickly became out of favor, as it leads to "management by silo" with no central authority, leading to inefficiency and dysfunction.

Specific to Red Bank's government, Hartnett specifically stated his belief that former administrator Ziad Shehady left the Borough because of micromanaging and interference by certain elected officials. He believed that a recommendation of an alternative form of government would be advisable. He also reiterated that having a professional manager that wants to get things done maximizes the chances of actually getting things done. He noted that it is easiest to recruit for an administrator position in the council-manager form of government, followed by the mayor-council form.

Edward Sasdelli[57]

[56] See *passim* Red Bank Charter Study Commission Minutes (Jan. 5, 2022).
[57] See *passim* Red Bank Charter Study Commission Minutes (Jan. 18, 2022).

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

He provided an overview of Red Bank's demographics, including that its municipal government has a $24 million budget. He explained the structure of the Borough form of government, including the delegable powers to an administrator. He noted arguable weaknesses with the Borough form of government, including that it does not allow for nonpartisan elections, does not provide for anything other than annual elections, lacks any provision for initiative or referendum, and contains no statutory provision governing the business administrator to prevent the council from involving itself in day-to-day operations.

Sasdelli discussed the interplay between the mayor and council and the administrator. He explained that the mayor and council are not "figureheads," but rather collectively act to provide direction to the administrator at a public meeting. In turn, the administrator should not be substituting his or her personal opinion for that of the governing body.

Sasdelli 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. In past decades, individual councilmembers may have been able to administer the borough's affairs, but that is no longer realistic.

2. Business Administrators

Darren McConnell[58]

Darren McConnell is currently serving as Interim Business Administrator. He concurrently serves as Chief of Police, a position that he has held for the past eight years. He has been employed by Red Bank for the past 33 years, rising through the ranks as an officer in the Police Department.

McConnell said that the current government does not operate as efficiently as it should. As Interim Administrator, he must make decisions, but he is often left to consider whether he would have the majority support of council for the decision being made – which between meetings can require two weeks to determine.

McConnell said that governing body committee meetings can productive when channeled to the right goals. On the upside, the meetings can provide the opportunity for in-depth conversations between the department heads and governing body members. At the same time, there are downsides when the committees go beyond their scope and role, to the detriment of the department heads and the Borough's operations.

[58] See *passim* Red Bank Charter Study Commission Minutes (Feb. 2, 2022).

McConnell felt that a strong administrator had the ability to make the Borough more efficient. The hiring process for regular employees can become very cumbersome with the bureaucratic step of obtaining governing body approval, especially in today's market where prospective employees can be lost.

Ziad Shehady[59]

Ziad Shehady served as Red Bank's business administrator from 2018 to 2021. He also previously served as an administrator and as a governing body member in Springfield, New Jersey.

In his prepared remarks, Shehady said he came to Red Bank "with a mandate and a unanimous direction to effectuate the objectives of [GSG's] management enhancement review" in the form of a strong business administrator. He found that dysfunction started with governing body members "who thought or felt that their influence and control was not what it could be or thought that it would be." He stated that he left Red Bank on his own volition for a private sector opportunity.

As part of his interview, Shehady explained that he tried to move the Council towards workshop meetings involving the full governing body to avoid "death by committee" meetings. Shehady noted that a lot of work is required to prepare items for a governing body agenda, and that while the administrator must embark upon such tasks, that does not mean that the administrator controls the governing body agenda – as had been alleged by detractors.

He suggested there is a problem when governing body members see their role as a full-time job. The administrator may already be addressing a citizen concern, but with social media, governing body members are actively inserting themselves into the matter, complicating things.

Shehady said that politics played a role in Red Bank dysfunction he experienced, specifically governing body members that did not respect the majority of council. He described instances where the majority of the governing body would provide the administrator direction, and that the minority would be unhappy and "go outside of that system and undermine the majority rather than work to make sure that the borough was successful and what the majority agreed upon." He continued: "I was finding for political reasons people use their political influence, their titles in the political organizations, or whatever to try and spread misinformation or spread information that was not yet ready for public consumption or incomplete information with their agenda in mind."

Shehady alleged that governing body members held "secret lunches" with employees, that executive session matters were leaked to employees, and that employees received direction without any knowledge from himself or other governing body members.

[59] See *passim* Red Bank Charter Study Commission Minutes (Feb. 15, 2022).

Shehady noted that the ordinance changes regarding the business administrator ordinance are largely "semantics," as the attitudes of the elected officials better dictate the relationship between the governing body and administrator. He noted that, while local government is only now trending towards a stronger administrator, local boards of education uniformly operate in such an environment, with school superintendents possessing specific executive powers that boards of education lack.

Stanley Sickels[60]

Stanley Sickels served as Red Bank's borough administrator from 1996 to 2017.

He stated that during the last ten years of his tenure, the council was "not working together." He also found that the council's committee meetings would get "bogged down" with the entire committee wanting to meet with department heads rather than himself. He found that the committee meetings became "more political" in recent years, with them being longer and more frequent.

Sickels believed that most councilmembers viewed their role as representing a specific department at the council level, rather than providing oversight to the department. That said, he found that certain councilmembers began involving themselves in day-to-day issues – "get[ting] their hands into the departments" – and that things became "very political." This included councilmembers bypassing him in violation of the chain of command and going straight to department heads with issues. In his opinion, it would have been more efficient if Red Bank had strong department heads and a strong administrator that could deal with the day-to-day issues.

Sickels also believed there was a lack of control or respect among the councilmembers and a lack of "consideration" afforded to the administrator. He said that earlier councils had worked together even when from different political parties, but in more recent years, it became very partisan.

Sickels also believed that the administrator having the clear ability to hire staff, other than department heads, would have made the borough function more efficiently. He found the ordinance delineating his powers to be vague regarding his hiring and firing abilities and that further clarification would have been beneficial.

3. Current Mayor and Council

Pasquale Menna[61]

[60] See *passim* Red Bank Charter Study Commission Minutes (Feb. 2, 2022).
[61] See *passim* Red Bank Charter Study Commission Minutes (Mar. 2, 2022).

Pasquale Menna is Mayor of Red Bank. He has served in this capacity for 16 years. Prior to that, he served as a councilmember for 18 years. He described the mayor and council as a "deliberative body," and said that it can function well if the members respect each other and treat each other with respect. He said the role of the mayor is different from councilmember, as he is not a voting member, and issues can be "stagnated" if not supported by a particular faction of council.

Menna said that, in past decades, the Borough would be run professionally with an administrator tasked with administering the day-to-day affairs and policy initiatives propagated by council. He said that, in the last ten years, "a new breed" of government leaders are "essentially at Borough Hall day in and day out and second-guessing and interfering in many different ways with the orderly, professional operations of the government."

Menna identified specific instances where the administrator has told him that he was told by other governing body members to keep a specific issue away from him, and that he found out after it was too late to act on the matter. He said that the failure to share information with governing body members was dangerous.

Menna suggested that, despite criticism about potentially exposing issues, he moved forward with GSG's management enhancement review. In response, the council unanimously supported adopting a "reinvigorated" business administrator ordinance. However, the council is going back on this reform. He also noted that the GSG Report encouraged the establishment of a charter commission, which is important to address whether the Borough needs a new form of government.

Menna suggested that nonpartisan government would open the spectrum of people that could run for office. He also believed that it would be helpful to have a professional administrator that can run the municipality with direction from the mayor, rather than councilmembers that can interfere and void the mayor's decisions.

He concluded by recalling having civil adversaries in the past, including "drag out" fights with a former councilmember that ran against him, yet went out to dinner and got along afterward. That contrasted with the current environment.

Michael Ballard[62]

Ballard was elected to the Council in 2017 and has served since 2018, with approximately five years on the governing body.

Ballard claimed that he has only served as an elected official in a Borough form of government for 2 ½ years, because for the other 2 ½ years, the Borough maintained the 2018 amendments to the Borough Administrator ordinance that he felt "change[d] the form of

[62] See *passim* Red Bank Charter Study Commission Minutes (Mar. 10, 2022).

government in and of itself." He said that when a Borough Administrator is afforded certain powers, you no longer have a Borough. Ballard believed the "Borough" would be functioning if the Administrator was not named the CEO and the Committees – pursuant to which Councilmembers provided oversight of individual departments – still operated and existed.

Ballard claimed that his "authority diminished" when he was in the minority faction of the all-Democratic council. Ballard said many of his ideas and proposals were not incorporated into action by the Business Administrator, including the budget, which he claims the former Administrator described as "his."

Ballard believed the Borough form of government was "best" because it gave voters a voice on an annual basis. He also believed that a partisan government was best because "ideology is important when you're making laws that impact everyone." He also believed that the Red Bank Democrats encouraged people to run as part of an "open process" and that the local nominating system was no different than that for higher offices.

When asked about his role, Ballard indicated that he liked to engage with department heads and even employees to "get a feel for what's going on in the Borough." He also believed he had a role in being a liaison between the Borough's departments and the people through the Council's committee system. He believed that the councilmembers must "sit over" the committees to "bring accountability to the residents." He estimated that he spends 30 hours per week in his capacity as a councilmember.

When asked about concerns regarding the Business Administrator's actions, Ballard indicated he was in the minority during the period that he objected to. He believed that he tried to carry out his role of oversight and ability, but the Business Administrator interfered with that.

Kathleen Horgan[63]

Kathleen Horgan is a current councilmember. She has served on the governing body for the last 15 years and has resided in Red Bank for 23 years. She has a full-time job in New York City at AMFAR, an AIDS research foundation and commutes daily.

Horgan described the council as being overtaken by divisiveness, rancor, and disagreements, with the focus becoming personalities focused on power grabs and grandstanding. Horgan suggested that the management enhancement report laid out a good "road map," and that if councilmembers engaged in less "meddling," the report's goals could be attained. She said that she regularly witnessed councilmembers involving themselves in the day-to-day affairs of the Borough, which she said stirs the pot, causes employees to be unhappy, and sets a pessimistic tone. She said the Borough needs a strong administrator, and that such a position is not a dictatorship as some describe.

[63] See *passim* Red Bank Charter Study Commission Minutes (Feb. 15, 2022).

Horgan specifically identified issues involving councilmembers "holding the reins on who can run." It was understood that Horgan was referring to Zipprich's dual role as a councilman and chair of the Red Bank Democratic Party – the latter of which controls the nominating process for council candidates. She suggested that nonpartisan government would help address these issues.

Kate Triggiano[64]

Kate Triggiano was elected to her first three-year term in 2018, commencing in 2019. She was re-elected in 2021 and selected as Council President for 2022.

Triggiano identified her role as being a policy maker and community outreach liaison that can help navigate and give direction to the Borough, not someone involved in day-to-day operations. She does not interact directly with department heads, and instead works through the business administrator.

She remarked about seeing interference by councilmembers in day-to-day affairs. She similarly complained of regular operations being turned into political wedge issues, or worse, lies being spread by elected officials to the public for political purposes.

Triggiano believed that a nonpartisan form of government may allow elections to become more policy-focused and oriented. She remarked there's no Democrat or Republican way to fix a pothole. She maintained her belief that Red Bank remains a progressive electorate and would remain so in a nonpartisan government.

She discussed that Red Bank had made progress in addressing some of the GSG Report's recommendations, including open permits and hiring a grant writer. At the same time, she supports other recommendations such as pursuing a transit village or a public-private partnership for municipal facilities, which have yet to be acted upon. Triggiano believed that certain governing body members have "ditched" the GSG Report and do not want to listen to it.

Triggiano also remarked about the personal toll running in a contested primary prior to a general election in her re-election. She believed that the public could benefit from a "mental break" between the current biennial primary and general elections for municipal office.

Edward Zipprich[65]

Edward Zipprich was first elected to the Red Bank Council in 2008 and has been a councilmember since 2009.

[64] See *passim* Red Bank Charter Study Commission Minutes (Mar. 2, 2022).
[65] See *passim* Red Bank Charter Study Commission Minutes (Mar. 10, 2022).

Zipprich provided background on how he supported the GSG management enhancement review in 2018, but that he and "many" of his colleagues have found "flaws" in the GSG report.

Zipprich rejected any notion that the Borough has suffered from any "silo" effect. He contended that the Department Heads historically ran individual departments, with governance provided "by committee" comprised of three governing body members. He indicated that former Administrator Shehady eliminated those committees and issued a directive that Department Heads should not communicate with individual governing body members. He believed this prevented the Borough form of government from "actually functioning" as a Borough form of government and rendered the Council a "rubber stamp" for the Administrator. He specifically held this belief for the period he and his faction with Councilman Ballard was in the self-described "minority" on the all-Democratic council.

Zipprich was asked about his dual role as councilmember and Chair of the Red Bank Democratic Party. He said he did not believe there was a conflict between the positions and that there is a "distinct difference" between being a "government official" and an "official in a political party."

When asked if the partisan system adequately represents the interests of unaffiliated voters, he believed that it did and indicated how partisan nominees are elected to represent the interests of all voters.

As part of discussions about strategic planning and policy discussions regarding capital improvements, Zipprich generally expressed his confidence in his council allies including Councilman Ballard and Councilwoman Mirandi to address these needs.

4. Former Councilmembers.

Linda Schwabenbauer[66]

Schwabenbauer was elected to the council as a Republican and served from 2015 to 2017.

She identified problems with the Borough's partisan election system. She said that it limits the pool of candidates, including people whose employers will not allow them to run in such systems. She also believed there have been strong independent candidates that have run but did not "have a shot" in the partisan election.

She also identified a lot of "friction" caused by individuals on council serving as a party chair and ostensibly choosing candidates and having the ability to oppose members of council that disagree with him or her. Schwabenbauer mentioned the pressure that political parties

[66] See *passim* Red Bank Charter Study Commission Minutes (Feb. 15, 2022).

place on councilmembers to oppose those from the opposing political party, including pressure she herself experienced from the local Republican party. She also recalled an instance that partisan politics prevented Democrats from voting on the budget that she developed, simply because she was a Republican that prepared the budget.

Schwabenbauer commented there was "way too much involvement" by councilmembers in the day-to-day operations of the Borough. She believed that councilmembers should not be in charge of any departments, and the administrator should be a CEO-like figure that can make hiring and firing decisions.

Erik Yngstrom[67]

Yngstrom was elected twice and spent five years as a councilmember prior to his resignation in early 2022.

He believed that the borough form of government allowed decision making to be broken across different committees, which led to what he described as "little fiefdoms" and "siloed people." He believed that some of the committees rendered councilmembers as "pseudo department heads," while the council should be limited to setting policy for the department heads to implement. He agreed that the chain of command had broken down in the Borough. He also agreed that the committee system caused the withholding of information from other governing body members.

He believed that a strong administrator was required to "run the show" and oversee the department heads, rather than have councilmember involvement in a "silo."

Yngstrom remarked that nonpartisan government would be better and allow more voices to be heard. He conceded that he personally benefitted from the partisan system, being afforded the Democratic Party line to run after living in town for only two years, against a competing longtime resident. He said that, once involved, he realized that the partisan electoral system shut people out of running for council. He said Red Bank has many really smart people that "get passed upon" because they're not in the political "crowd." This led to the divisiveness that is present now. In a nonpartisan system, he envisioned anyone interested in running filling out the paperwork and getting on the ballot.

5. Current Borough Staff[68]

The Commission conducted interviews of current Borough employees – including Department Heads – to obtain feedback regarding how the current government is functioning. These meetings were conducted with the approval of the Interim Borough Administrator. In order to protect the employees' anonymity, the interviews were conducted privately by panels

[67] See *passim* Red Bank Charter Study Commission Minutes (Mar. 2, 2022).
[68] See *passim* Red Bank Charter Study Commission Meeting (June 15, 2022).

of two commissioners acting as a subcommittee, with relevant takeaways reported out without reference to any individual.

Chair Facey-Blackwood observed that the employees liked when there was a clear chain of command that is being followed. She received mixed responses on whether Red Bank's government is operating efficiently, depending upon the department, with concerns attributable to staffing levels.

Vice Chair Taylor also found issues with chain of command, with employees finding that they have different councilmembers asking them to do different things. They would prefer a reporting structure that went from employee to department head to the administrator. He also heard concerns about resident committees being an impediment to employee efficiency through overreach.

Commissioner DuPont found the employees to be passionate and just wanting to do their jobs. He found "interference" to be a "constant" complaint. He found that the employees wanted some sort of change, especially in the chain of command.

Commissioner Forest thanked the employees for their service. He noted that some employees had positive things to say about the municipal operations, while also hearing concerns about the chain of command.

Commissioner Okeson similarly heard concerns about chain of command, with employees needing to have extra conversations to loop in the Administrator.

C: Phase One Conclusions

Based upon the information that was revealed in the Phase One investigation, the Commission finds that the current Borough form of government is not meeting the needs of Red Bank.

The Commission's principal takeaway is that the current Borough form lacks sufficient structure in establishing the executive authority in Red Bank – which has allowed the governing body to be overtaken by division and chaos.

Under the Borough form of government, the executive authority rests in the mayor and council, unless delegated by ordinance to a business administrator. While Red Bank has maintained a business administrator since 1979, the position has more recently become a "political football." The Borough's longtime administrator indicated that the flexible system worked well for decades, but became dysfunctional in the last ten years.

Reflecting this, in 2018, the Council unanimously voted to strengthen the business administrator position. But earlier this year, the Council turned around and voted to weaken the position, with certain councilmembers claiming they need more input into decision-making.

The Commission was moved by numerous complaints from current and former elected officials, as well as Borough employees, that certain councilmembers have been "meddling" in day-to-day affairs that are supposed to be carried out by the business administrator. It seems that the Borough form of government's flexible approach to a business administrator – which can be modified by ordinance – has fostered instability in Red Bank's government and allowed certain councilmembers to overstep their bounds. It has also allowed for actions undermining the business administrator, preventing the effective operation of the municipal government, and negatively affecting the morale of Red Bank employees, who benefit from a defined chain of command.

The Commission also finds that the Borough form's annual partisan elections have fostered instability and discontent. Current and past governing body members from both parties have reflected critically upon general partisanship preventing councilmembers from different parties from supporting each others' initiatives, or in-fighting that has occurred during one-party rule. In both instances, the biannual election cycles have prevented the mayor and council from acting on matters independent of short-term political considerations.

The partisan primaries have also allowed a councilmember to concurrently serve as a municipal party chair, providing that individual an outsized role over the nominating process for candidates and the re-election fate of council colleagues. This has clearly led to discord among both the elected officials and the public writ large.

V: REVIEW OF ALTERNATIVE FORMS OF GOVERNMENT

A: Introduction

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 second presentation from Mr. Sasdelli of the Department of Community Affairs. 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 then conducted a meeting that specifically focused on whether a partisan or non-partisan government would be beneficial. Rutgers Professor Julia Sass Rubin provided a presentation on her academic research into the power of political party support in New Jersey primary elections, which are a component of partisan elections. The Commission also interviewed individuals that served as the partisan municipal chair in Asbury Park, a Monmouth County municipality with nonpartisan elections.

Finally, the Commission held a meeting that focused on interviewing current and former elected officials from Faulkner Act municipalities with varying structures. The interviewees

hailed from Marlboro, which uses a partisan mayor-council form; Ocean Township (Monmouth), which uses a non-partisan council-manager form; and Franklin Township (Somerset), which uses a partisan council-manager form.

B: Overview of Options[69]

The Commission is tasked with making a recommendation regarding Red Bank's current Borough form of government. State law affords the Commission with three different recommendation options: [70]

- Recommend an alternate form of government under the Faulkner Act
- Recommend a special charter
- Recommend that the Borough form should remain unchanged

The Commission received testimony from Sasdelli 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.

With respect to the alternative forms of government, there are three forms of government that are available to Red Bank[71]:

- Mayor-Council[72]
- Council-Manager[73]
- Mayor-Council-Manager[74]

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 is elected to a four-year term and is vested with the municipality's executive powers, responsible for day-to-day operations, in charge of administration and designed to be independent of the council. The mayor has the right to speak at council meetings, but is not obligated to, and does not have a vote. The mayor appoints the business 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.

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

[69] See *passim* Red Bank Charter Study Commission Minutes (Apr. 6, 2022); Edward Sasdelli, Red Bank Charter Study Commission Phase 2 Review Alternatives (Apr. 6, 2022) ("Sasdelli Presentation").
[70] N.J.S.A. 40:69A-12.
[71] The fourth Faulkner Act "small municipality" form is not available to Red Bank, as its population just exceeds the limit of 12,000 people. See N.J.S.A. 40:69A-115.
[72] N.J.S.A. 40:69A-31 et seq.
[73] N.J.S.A. 40:69A-81 et seq.
[74] N.J.S.A. 40:69A-149.1 et seq.

through the mayor or designee, who is typically the business administrator.[75] 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. 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.

In the Council-Manager form of government, used in approximately 42 New Jersey municipalities, the mayor sits as one of the voting members of the governing body. The mayor may be directly elected or selected from among the council. The mayor presides at governing body meetings. The mayor and council are all elected to four-year terms.

The mayor and council act collectively as the legislative body, only appointing the municipal manager, municipal clerk, tax assessor, attorney, and boards and commissions. The mayor and council appoint a manager to be the chief executive and carry out its will. In turn, the manager serves as the executive, appointing all subordinate personnel, preparing the budget, and attending council meetings and participating in discussions. The individual councilmembers are prohibited from trying to individually influence the manager or give orders to the manager's subordinates.[76]

Although the manager has broad authority, he or she may only act in accordance with governing body policy. 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.

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)

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. 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

[75] 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.").
[76] 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.").

councilmembers elected to three-year terms staggered each year. The mayor only votes to break ties and may appoint the statutory administrator, subject to removal by a 2/3 vote of council.

All of the Faulkner Act forms of government automatically give citizens the power of initiative and referendum. Under initiative, citizens have the power to circulate a petition to have a particular placed directly on the ballot. The referendum right allows citizens to circulate a petition in opposition to a particular ordinance. If enough signatures are obtained, the ordinance is suspended and submitted to voters as a referendum in a future election.

C: Discussion on Form of Elections (Partisan or Nonpartisan)[77]

Under the Mayor-Council and Council-Manager forms of government, the mayor and councilmembers may be elected in either partisan or nonpartisan elections.

In partisan elections, candidates run with party affiliations listed on the ballot. There is a primary election in June, with the major party nominees and independent candidates advancing to the November general election.

In contrast, under nonpartisan elections, candidates do not run with party affiliations and there are no primary elections.[78] The candidates may list a slogan on the ballot that does not exceed six words, though the terms cannot identify party affiliation. They are similar in operation to the non-partisan school board elections.

The Commission held a meeting specifically tailored to addressing the form of election issue, interviewing an academic that had conducted research into the pitfalls of partisan primaries and municipal chairs from a non-partisan municipality.

Julia Sass-Rubin[79]

Julia Sass-Rubin is a professor at Rutgers University's Edward J. Bloustein School of Planning and Public Policy.

She presented on her academic research into New Jersey's primary election ballots. She noted that many jurisdictions are very weighted towards one political party or the other, such that the primary election determines the ultimate officeholder.

She explained that New Jersey's ballot design is unique and unlike any other state. In 19 of 21 New Jersey counties, the primary ballot is organized around the county line, which consists of all the party-endorsed candidates in either a vertical or horizontal order. She said

[77] See *passim* Sasdelli Presentation (Apr. 6, 2022).
[78] N.J.S.A. 40:45-5 et seq.
[79] Red Bank Charter Study Commission Minutes (Apr. 19, 2022)

that the "line" gives several advantages to down-ballot candidates, including legitimacy that is ascribed when that individual is in the same column as others, namely incumbent candidates for higher office.

Sass-Rubin performed research into the 2020 Third District Republican Congressional primary, in which candidate Kate Gibbs was "on the line" in Burlington County, while David Richter was "on the line" in Ocean County. Evaluating the divergent election results between the counties, she found there was a 35% margin between candidates on the line and those off the line. She also cited anecdotal results from the 2021 primaries, including Assemblymembers Betty Lou DeCroce and Serena DiMaso losing their primaries off the line, despite being incumbents.

Sass-Rubin contended that the "line" gives the ability to 21 Republican and 21 Democratic chairs to choose who gets favorable ballot access – or at best delegate that power to county committee members – which is also a closed universe. She noted that candidates that do not receive the "line" often drop-out, which results in fewer choices for voters.

Sass-Rubin then discussed various electoral reforms that would reduce any purported unfairness with the "line." Those determinations would ultimately need to be made by the State Legislature or a court, and until such changes are made, the primary election ballot will continue to have the "line" structure discussed at the meeting.

Joe Grillo and Angela Ahbez-Anderson[80]

Joe Grillo served as Chair of the Asbury Park Democrats from 2012 to 2020 and also previously served as Executive Director of the Monmouth County Democrats. Ms. Ahbez-Anderson is the Chair of the Asbury Park Democrats. She is a former president of the Asbury Park Board of Education, which she served on for 10 years. Asbury Park is a municipality that holds non-partisan elections.

Grillo believed that a municipality's non-partisan status does not tend to impact voter registration, as compared to other factors, such as socioeconomics. He believed that nonpartisan elections increase diversity and "bring[] out" candidates because anyone can run with a certain number of signatures.

Grillo stated that Asbury Park holds its non-partisan election in November, and that he believes it helps general election turnout at the local level. This is because the partisan elections were typically one-sided, with the June primary determining the Democratic candidates likely to prevail.

Grillo explained that, despite being party officials, he and Ahbez-Anderson opposed an attempt to return Asbury Park to partisan elections, noting their belief that there is no

[80] See *passim* Red Bank Charter Study Commission Minutes (Apr. 19, 2022)

Democrat or Republican way to fix a pothole. Such a referendum was defeated in 2018, along with an attempt to use wards to elect the Council.

Grillo and Ahbez-Anderson explained that while they may lack a statutory role in picking candidates that would receive the "line" in a nonpartisan election, they still have power and effect in hosting local events and engaging in party building, which they spoke at length about.

D: Discussion on Current Faulkner Act Municipalities[81]

Jon Hornik – Marlboro Township

Jon Hornik is Mayor of Marlboro. Marlboro operates under the Mayor-Council form of government, with a five-member council. He believed that the Mayor-Council form of government was effective and most closely resembled the separation of powers that exist at the federal and state level.

As mayor, Hornik serves as the executive and works closely with the business administrator, having a daily conference call and speaking approximately 2-3 times per day. The mayor serves as the appointing authority, so all personnel decisions are made through Hornik's authority. The council serves as the legislative body, and the mayor is only an "invited guest" at governing body meetings. The councilmembers may serve as liaisons to individual departments, but only with the approval of the mayor.

Hornik said that if the right person is elected the strong mayor, you can "achieve a lot," but if you get the wrong person, it could be a "disaster."

Marlboro's government operates on a partisan basis, but Hornik as a Democrat noted his efforts to appoint people to committees and positions regardless of party affiliation. When asked about nonpartisan elections, Hornik expressed his belief that the partisan nature of national politics has now permeated at the local level over the last five years. He also noted that three of the five Democrats that served on his past Council slate were Republicans that switched parties to run with him, and that their views did not change, so there was a conservative element to the Democratic Party's governance. To this end, he runs under the "Right Team, Right Direction" slogan, and the local Democratic party is "not a force" in Marlboro. The current Marlboro council has a 3-2 Republican majority. Hornik noted challenges in overcoming the partisan divide, but that he believed he had done so to date.

Councilman Robert Acerra and Councilwoman Margie Donlon – Ocean Township (Monmouth)

Robert Acerra and Margie Donlon are Councilmembers in Ocean Township, Monmouth County. Ocean operates under the Council-Manager form of government, with non-partisan elections that are concurrent, and a mayor selected by the governing body.

[81] See *passim* Red Bank Charter Study Commission Meeting (June 15, 2022)

Acerra noted that the governing body is not supposed to engage directly with department heads and that all councilmembers are supposed to work through the manager. Acerra advised that he has a weekly meeting with the manager, while Donlon stated she meets with the manager on an "as-needed" basis. They both spoke favorably of this structure.

Acerra believed that the public did not understand their system with the governing body selecting the mayor, and he said he would favor a directly elected mayor.

Donlon explained that she ran on a "mixed ticket" with three Democrats, one Independent, and one Republican, Acerra. She found it much more "enjoyable" to run on a nonpartisan basis, as compared to her previous run for countywide office on a partisan basis. She finds that the slate – now in office – achieves consensus on issues, rather than politicization that often occurs in a partisan environment.

Donlon found that the political parties at the local level are not "very involved" in the Ocean nonpartisan election. Acerra noted that the Republican county committee "is not that active" in Ocean.

With respect to concurrent elections, Acerra noted that "experience" can become a campaign issue, with his slate arguing that the other slate lacked the in-office experience that was needed from Day One. Donlon believed staggered elections may create a different dynamic than outsiders having to run against a slate of 5 people.

Mayor Phil Kramer and Former Councilman Theodore Chase – Franklin Township

Phil Kramer and Theodore Chase have served on the Franklin Township governing body; the former is the current mayor and the latter is a former councilman. Franklin operates under the Council-Manager form of government, with a directly elected mayor, five ward-based councilmembers, and three at-large councilmembers, all elected on a staggered basis.

The municipality previously held non-partisan elections, but Chase's recollection is that the elections were "effectively partisan" with each political party placing a slate on the ballot. In 1994, a petition successfully moved the elections to a partisan November election.

Chase also explained that Franklin changed from having a mayor selected by the governing body to one being directly elected. He recalled a lot of "wheeling and dealing" when the governing body selected the mayor, including deals across party lines.

Kramer expressed his belief that the manager needed to be "a bit arrogant" in order to manage their nine-member governing body, which he described as "a bit unwieldy" and "a bit high to go." Kramer believed that while a bad mayor in the Mayor-Council form could be problematic, if you have a bad manager under the Council-Manager form, they can be fired at any time.

Chase said that the municipality's wards have geographic and demographic differences. The wards allow governing body members to respond to different types of issues.

E: Academic Research on Alternative Forms

In addition to the information adduced at its public meetings, the Commission also reviewed various academic research that supported the Council-Manager form of government.

The National Civic League produces a Model City Charter, with its most recent ninth edition issued in 2021.[82] The document "promotes the council-manager form of government as the core organizational feature," explaining:

> This form introduced a new governance model to American government that is based on a unitary system rather than the separation of powers, a framework that frequently results in conflicts between branches of government. All powers of the city are vested in a popularly elected council, which appoints a professional manager who is continuously responsible to the public and removable by the council. It has improved the quality of the governmental process and city government performance.
>
> . . . .
>
> The council-manager plan combines democratic governance with the capability to operate city government with the values of effectiveness, efficiency, and economy. The council-manager form promoted these "three e's," a capable governing body, and a city manager accountable to the council. The manager would promote these values by proposing sound policy options to the council and by using professional expertise and experience to ensure that the city administration accomplished council- approved policies effectively while achieving the highest level of efficiency and economy in use of resources. Now it is widely recognized that the development of policy proposals should also promote equity and the process of adopting, implementing, and assessing policies should engage a full range of residents.[83]

[82] National Civic League, Model City Charter (9th ed. 2021), available at http://www.nationalcivicleague.org/wp-content/uploads/2021/12/Model-City-Charter%E2%80%949th-Edition.pdf.
[83] Id.

Of particular interest, the Model City Charter's Ninth Edition contains revisions that make it "the council's responsibility to regularly evaluate the performance of the city manager," stating:

> Council decisions are built on the comprehensive and objective information and advice from the city manager that is provided to all of the council members and to the public. This kind of communication contributes to the inherent transparency of the council-manager form. The features of the council-manager form make it less likely than the mayor-council form to have instances of corruption.[84]

The International City/County Management Association also promotes the Council-Manager form of government in its publications, stating that it "recognizes the critical role of elected officials as policy makers, who focus on mapping out a collective vision for the community and establishing the policies that govern it."[85] At the same time, the Council-Manager form "also recognizes the need for a highly-qualified individual who is devoted exclusively to the delivery of services to residents."[86] The ICMA notes that Council-Manager can be benefitted by flexibility, clearly defined roles, and a roadmap for success.[87]

On the ICMA's 100th anniversary, an academic article was written in *Public Administration Review*.[88] It claimed that the Council-Manager form is "arguably . . . the most important innovation in American local government over the last century" and that its virtues are "regularly asserted in the professional and academic literatures on local government administration."[89] The article then reviewed various other studies and metrics on how both "strategic choices made by executive officials" and "functionality of the organization" are impacted by the form of government.[90] After a lengthy analysis, the paper found that "[t]he studies examined . . . indicate evidence exists to support claims of improved performance under the council-manager form of government."[91]

VI: COMMISSION FINDINGS

---

[84] Id.
[85] International City/County Management Association, Council-Manager Form of Government: What it is, how it works, and the benefits to your community (Nov. 30, 2019), available at https://icma.org/documents/council-manager-form-government-what-it-how-it-works-and-benefits-your-community-brochure.
[86] Id.
[87] Id.
[88] Jered B. Carr, "What Have We Learned about the Performance of Council-Manager Government? A Review and Synthesis of the Research," Public Administration Review, Vol. 75, No. 5 (Sep. / Oct. 2015).
[89] Id.
[90] Id.
[91] Id.

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 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

The Commission may choose to recommend a referendum on an alternative form of government, recommend a special charter, or determine that the current Borough form of government should remain unchanged.[92]

Through the Commission's work, it has determined that the current Red Bank form of government is not operating to the satisfaction of most current and former elected officials, the employees, and most importantly, the people of Red Bank.

The Commission has the unique power of directing a referendum for an alternative form of government. It believes that this moment requires the Commission to use this power and offer Red Bank voters an option to try and change things for the better. It therefore makes a recommendation for an alternative form of government under the Faulkner Act.

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.[93]

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 Red Bank.

The Commission also finds that there would not be any benefit to holding a special election, which would necessarily be in the October to November time period, around the same time that the general election is already scheduled.

3. Type of Optional Form of Government

[92] N.J.S.A. 40:69A-12.
[93] N.J.S.A. 40:69A-15.

The Commission must choose between the three forms of government that are available: Mayor-Council, Council-Manager, and Mayor-Council-Administrator.[94]

As a preliminary matter, the Commission eliminated consideration of the Mayor-Council-Administrator form. It is only utilized in three municipalities, calling into question its efficacy. In addition, it closely resembles the current Borough form with a non-voting mayor that has led to dysfunction. Finally, the form does not allow for non-partisan elections, which the Commission supports.

After robust debate between the remaining two options, a 4-1 majority of the Commission has chosen to recommend the Council-Manager form.[95]

The Commission believes that the Council-Manager form of government has the design and safeguards that are needed to move Red Bank forward and prevent against the chaos and dysfunction that Red Bank has experienced in recent years. A significant portion of the Phase One interviews focused on problems presented by governing body members involving themselves in day-to-day municipal operations, and a continued debate regarding the desired scope and authority of the Business Administrator.

Under the Council-Manager form of government, the governing body will hire a manager (similar to the Borough's Business Administrator) to run the day-to-day affairs of Red Bank. The manager will have State law protections that prevent against individual governing body members from unilaterally providing direction to the manager or circumventing him or her. These protections resemble those between a school superintendent and board of education. The manager answers directly to the mayor and council and can be removed by a simple majority vote.

The Commission believes this structure is important for Red Bank's government to function in a more business-like manner, with the manager having express authority to make time-sensitive decisions without having to wait for a governing body meeting. The Commission notes that Red Bank has grown over the years, and that its population soars on weekdays and for events, such that a full-time professional administrator is essential. The Council-Manager structure will also allow Red Bank employees to be confident that they answer to one individual – the manager – and not an indeterminate number of governing body members. At the same time, the manager has an obligation to report and provide objective information to all of the governing body members and public. The National Civic League's model charter recommends the Council-Manager form, and it specifically references the Council's responsibility to regularly evaluate the manager, which is reflective of the control and oversight that the council can and should provide to same.

---

[94] 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.

[95] Chair Facey-Blackwood, Vice Chair Taylor, and Commissioners Forest and Okeson supported the Council-Manager recommendation, while Commissioner DuPont supported the Mayor-Council form of government. Red Bank Charter Study Commission Meeting (July 6, 2022). This Section is written based upon the majority's viewpoint.

The Commission also sees the Council-Manager form being collaborative because the mayor becomes a voting member of the governing body. Under the current Borough form of government, the mayor is technically the head of the municipal government, but does not even have a vote unless the council is tied. The Council-Manager form will give the mayor a rightful voice as the first among equals on council.

While the Commission considered the Mayor-Council form, it ultimately concluded that it was not right for Red Bank at this time. That form of government concentrates a significant amount of power in the office of mayor, and if the wrong individual is elected, that person would have unilateral authority over personnel and management for four years with a limited ability to override or remove them. Given the recent history with elected officials meddling in day-to-day affairs, the Commission believes the executive functions are better placed in an administrator that serves at the pleasure of the governing body and can be removed by a simple majority vote, rather than the mayor alone. The Commission also believes that Red Bank's residents are accustomed to the mayor being present at governing body meetings to hear and address concerns. They had significant concerns about the mayor not being obligated to attend governing body meetings, as in the Mayor-Council form.

4. Size of Council

The Commission has the option of establishing the council as 5, 7, or 9 members.[96]

The Commission believes that a seven (7) member governing body is ideal for Red Bank. It would be comprised of the Mayor and six (6) councilmembers. This number is identical to the current size of the Red Bank Mayor and Council.

The Commission does not believe that the governing body should be reduced from its current size, which could negatively impact the diversity in its membership or reduce the number of viewpoints on council. The Commission also received testimony that nine-member councils can be "unwieldy" and have difficulty obtaining consensus. Red Bank's comparably smaller population to other municipalities does not seem to warrant that large of a governing body.

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

The Commission may choose to elect all governing body members at-large or have a portion of governing body members elected from wards.[97]

The Commission strongly believes that all governing body members should be elected at-large. Public comment consistently opposed the creation of wards, and the Commission

[96] N.J.S.A. 40:69A-83, -83.3.
[97] N.J.S.A. 40:69A-13; N.J.S.A. 40:69A-83.3.

agrees with these beliefs. Wards are typically used in municipalities much larger than Red Bank, which is only 1.75 square miles and has a population of under 13,000. The Commission feels that wards have the potential of dividing the community, rather than bringing it together, and can also operate to reduce the pool of candidates for office.

6. Frequency of Elections (Concurrent or Staggered)

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.[98]

The Commission believes that staggered elections every other year are warranted.

The Commission received significant public comment objecting to the "constant" elections that occur in the Borough form of government, with a primary election and general election for Council each year, which the Commission found to be "draining."

Staggered elections would result in an election once every two years, providing voters with a break every other year, and allowing the Council additional time to pursue initiatives without experiencing annual election gridlock.

At the same time, staggered elections will provide voters with an important opportunity to provide feedback on the governing body's performance half-way through the mayor's term, akin to a midterm election. Without staggered elections, voters would only have say in the municipal government every four years, which seems too infrequent. Staggered elections also prevent against the possibility of an entirely new governing body being elected at once, resulting in a potential government without any elected official having any institutional knowledge or experience.

Under staggered elections, the first governing body would be elected with the mayor and six councilmembers elected all at once. At the first reorganization meeting, the council would determine the length of the councilmembers' terms by lot (random drawing).[99] Four of the councilmembers would receive two-year terms, while two of the councilmembers and the mayor would receive four-year terms.[100]

7. Timing of Elections (Partisan vs. Non-Partisan)

The Commission must choose whether to have partisan elections or non-partisan elections.[101]

[98] N.J.S.A. 40:69A-83.3(a).
[99] Id.
[100] Id.
[101] N.J.S.A. 40:69A-83.1.

Red Bank currently operates in a partisan electoral system in which the major parties nominate candidates to run for mayor or council in the Democratic and Republican primaries. The prevailing primary candidates then compete in the general election against each other and any independent candidates that may have filed. In comparison, a nonpartisan system allows any candidates that obtains the requisite signatures to appear on the ballot without competing in a primary, and without major party nominees receiving preferable ballot position.

The Commission finds that the current partisan system in Red Bank is not serving the people well. The Commission's record is replete with examples of Red Bank's government being stymied by partisan politics. During years that both parties held seats on council, former councilmembers gave examples in which one party would block an initiative solely because it was proposed by the other party. In more recent years with unified Democratic control, the council has found itself factionalized with party in-fighting that has permeated into public and created gridlock and discord on council. It has also resulted in contested primaries with vile personal attacks that the Commission does not countenance.

The Commission also notes the structural issues with New Jersey primaries contributing to the apparent dysfunction. Dr. Rubin provided a compelling presentation finding that party-endorsed candidates "on the line" have a 35% stronger performance than those that are "off the line." In Red Bank, one of its sitting councilmembers has served as a longtime municipal party chair, which affords that individual the dual power of sitting on council and having discretion over the "line" and whether each council colleague may run for re-election with party support. The Commission finds that the ability for one individual to exercise this "dual power" in a partisan system prevents councilmembers and prospective candidates from having independent thoughts and ideas.

Based upon these considerations, the Commission has determined that Red Bank should pursue non-partisan elections – and it took a specific public vote making this decision.[102] This structure would allow any individual that is interested in running for office without having to compete in a party primary. While nonpartisan government would reduce – if not eliminate – the power of specific party officials from controlling the nominating process, it would not necessarily mean the end of municipal political parties or their ability to organize. To this end, the Commission received testimony that the local Democratic party in Asbury Park holds events and initiatives, and its leaders continue to support non-partisan elections despite them reducing their direct power over party nominations.

Historically, nonpartisan elections in New Jersey have been conducted in the May municipal election, which is held on the second Tuesday in May. If voters approve the Commission's recommendation with a May municipal election, a new governing body would be established next year under the following timeline:

[102] See Red Bank Charter Study Commission Meeting (June 15, 2022).

March 6, 2023	Nominating Petition Filing Deadline[103]
May 9, 2023	Municipal Nonpartisan Election[104]
June 13, 2023	Runoff Elections (if any)[105]
July 1, 2023 at 12:00 noon	New Government Reorganizes[106]

In 2009, the Legislature adopted a law that allowed nonpartisan elections held in May to be moved to the November general election by ordinance of the governing body.[107] While the Faulkner Act was not specifically amended to address a direct referendum for November nonpartisan elections, which this Commission specifically notes, certain municipalities have nevertheless considered such questions. If November elections were recommended and adopted, the following timeline would be applicable:

September 4, 2023	Nominating Petition Filing Deadline[108]
November 7, 2023	Municipal Nonpartisan Election[109]
December 5, 2023	Runoff Elections (if any)[110]
January 1, 2024	New Government Reorganizes[111]

After careful consideration, the Commission has decided to recommend May elections in the public referendum.

The Commission believes that if voters approve a new government, it should be installed as quickly as possible. If May elections are recommended, the nominating process for the new government would start in early 2023 and culminate with a new government installed on July 1, 2023. In contrast, a November election recommendation would allow the current Borough government – which will have been rejected by voters – to exist in lame duck for over one year. It would also mean that the current Borough form would take over two-and-a-half-years to be replaced, from the introduction of a charter study commission ordinance in June 2021 to the new government's installation in January 2024. The Commission believes that a rejected Borough government should be replaced as soon as feasible and not be left to govern any longer than necessary – which a May election ensures.

The Commission also believes that Red Bank voters are engaged in the charter study commission process and will turn out for a May 2023 election to select an entirely new Mayor

[103] N.J.S.A. 40:45-8.
[104] N.J.S.A. 40:45-7; N.J.S.A. 40:45-16.
[105] N.J.S.A. 40:45-19.
[106] N.J.S.A. 40:69A-205(c).
[107] 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)).
[108] N.J.S.A. 40:45-8.
[109] N.J.S.A. 40:45-7; N.J.S.A. 40:45-16.
[110] N.J.S.A. 40:45-19.
[111] N.J.S.A. 40:69A-205(c).

and Council. The Commission feels that voters will be made acutely aware of the election, with seven candidates running at-large – unlike ever before. As such, the Commission rejects the contention that a May 2023 election would have a negative impact on turnout or voter choice.

Lastly, the Commission believes that Red Bank may benefit from an election that is exclusively focused on municipal issues as it enacts a new government. At the same time, the Commission recommends that the new governing body consider moving future elections to November, as it is authorized to do by ordinance under state law.[112] While the May 2023 municipal election will be high-profile with a new government being established, leading to likely strong voter turnout, it is possible that future municipal elections may not receive the same level of engagement.

If the new government adopts an ordinance moving future elections to November, the May 2023 municipal election may be viewed as akin to a special election to elect a new government – with all future elections held in November.

8. 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 councilmembers.[113]

The Commission uniformly and consistently believed that the Mayor should be elected by the people, so the recommendation provides for one council seat that is designated and separately elected as the Mayor.

Red Bank voters currently have the power to elect the mayor under the Borough form of government, and the Commission does not see any reason for that power to be taken away. The people should decide who serves as the head of their government – not the Council. The Commission also received testimony from elected officials in an appointive mayor system, and they expressed a lack of public understanding with that approach.

9. Runoffs

The Commission may choose from Red Bank's new government holding runoff elections if a sufficient number of candidate(s) fail to receive a majority of votes, or from not holding runoffs, with the highest vote-getter winning on a plurality basis.[114]

---

[112] Id.
[113] N.J.S.A. 40:69A-86.
[114] N.J.S.A. 40:69A-14; N.J.S.A. 40:45-18 et seq.

If runoffs are utilized, the threshold for winning and avoiding runoff elections is calculated based upon the total number of voters that cast a vote for at least one candidate for the subject office, adding one, and dividing by two.[115]

For Council races, only a certain number of candidates need to pass the threshold to avoid a runoff. During the initial election with six at-large council seats, if three or more candidates pass the threshold and receive a majority of votes, the remaining candidate(s) win by plurality without a runoff.[116] If two or three council seats are up for election, as would be the case in Red Bank's staggered elections after the initial election, if one or more candidates pass the threshold and receive a majority of votes cast, the remaining candidate(s) win by plurality without a runoff.[117]

If the required number of candidates fail to pass the threshold and a runoff election is required, the number of candidates advancing is calculated as double the number of seats to be elected.[118] In other words, if there is a runoff for mayor, it would involve the top two candidates. If a runoff for council is required, it would involve the top candidates comprising double the number of council seats that are up for election.

After consideration, the Commission has determined that runoff elections should be sanctioned in the unlikely event that a sufficient number of candidates fail to receive a majority of votes. This structure would protect against the infrequent possibility of having a mayor or entire council slate elected with a small plurality of the vote and lacking the legitimacy of having a majority support from voters. Illustrating this issue, after Hoboken's mayor was elected with 33 percent of the vote in 2017, the Council later adopted a referendum that voters approved to restore runoff elections by a 73%-27% vote.[119] The Commission finds that, based upon Red Bank's electoral history, it is unlikely that runoffs would frequently come into play, but they nevertheless provide an important safeguard.

For the initial May municipal elections, if runoffs are required, they would be conducted on the fourth Tuesday after the municipal election, unless that day conflicts with the June primary, in which case the runoffs are conducted on the fifth Tuesday after the regular municipal election.[120] If the new governing body moves the municipal elections to the November general election, potential runoffs would be conducted on the first Tuesday after the first Monday in December.[121]

---

[115] N.J.S.A. 40:45-18.
[116] Id.
[117] Id.
[118] N.J.S.A. 40:45-19.
[119] Terrence T. McDonald, Voters reinstate runoff elections in Hoboken, Jersey Journal (Nov. 7, 2018), available at https://www.nj.com/hudson/2018/11/voters_reinstate_runoff_elections_in_hoboken.html.
[120] N.J.S.A. 40:45-19.
[121] N.J.S.A. 40:45-19.

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.[122]

To start, the new government would take office on July 1, 2023.[123] It would be elected in a nonpartisan election on May 9, 2023. The filing deadline to run would be March 6, 2023.

When the new government begins, all of Red Bank's current ordinances and resolutions would remain in effect, as long as they are not inconsistent with the Faulkner Act.[124] From a practical standpoint, this means that all of Red Bank'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 is able to adopt new ordinances.

Under the new form of government, the current terms of all elected officials in the Borough form of government would cease, as well as any appointed officers, except for certain specific boards including library trustees.[125] The council does have the option to adopt a resolution allowing interim appointments of individuals for 90 days while a new administrative code is prepared and adopted.[126] 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.[127]

After a new governing body is elected in the May 9, 2023 election, but before it takes office on July 1, 2023, the current Borough Council is prohibited from creating or making appointments to any "subordinate board, department, body, office, position or employment."[128]

[122] N.J.S.A. 40:69A-1 et seq.; N.J.S.A. 40:45-5 et seq.
[123] N.J.S.A. 40:69A-205.
[124] N.J.S.A. 40:69A-206.
[125] N.J.S.A. 40:69A-207(a).
[126] N.J.S.A. 40:69A-207(b).
[127] N.J.S.A. 40:69A-207(c).
[128] N.J.S.A. 40:69A-208(a).

APPENDIX A – BIOGRAPHIES

COMMISSIONERS

Nancy Facey-Blackwood, Chair

Nancy Facey-Blackwood is a tireless advocate for a better Red Bank. She is a passionate community leader, serving as the Chair of Red Bank Charter Study Commission and Chair of Red Bank Environmental Commission. Ms. Facey-Blackwood was elected by her colleagues as Chair of Red Bank Charter Study Commission, where she has emphasized collaboration and transparency of the charter study process. As the Chair of the Red Bank Environmental Commission, Ms. Facey-Blackwood has overseen several projects that have helped to create a more sustainable Red Bank.

Ms. Facey-Blackwood worked in the Telecommunications field first starting with New York Telephone (now Verizon) then worked with AT&T as a systems engineer/analyst specializing in local services interconnections.

Mark Taylor, Vice Chair

Mark Taylor is a lifelong resident of Red Bank. He is a proud graduate of the Red Bank public schools and Red Bank Regional High School. Mr. Taylor earned a B.A. in History and a B.S. in Criminal Justice from the University of Scranton. After completing college, Mr. Taylor returned to Red Bank where he coached youth soccer for the Red Bank Recreation program. Mr. Taylor then attended law school, earning his J.D. He is barred in New York and New Jersey and currently practices law in Monmouth County. He resides with his wife and son at their home on Tilton Avenue.

Mr. Taylor is a former councilman for the Borough of Red Bank. While serving on the Council, Mr. Taylor served as liaison to the Parks & Recreation Committee, Finance Committee, Public Safety Committee (Fire and Police), Code Enforcement, and the Environmental Commission. Mr. Taylor continues to serve the residents of Red Bank in his capacity as President of the Red Bank Borough Education Foundation (RBBEF) and as the Vice-Chair of the Charter Study Commission.

Michael DuPont

Michael R. DuPont is a Partner at the law firm of McKenna, DuPont, Stone & Washburne, P.C., formerly known as McKenna, DuPont, Higgins & Stone, P.C.

Michael has successfully handled a wide range of matters including contract disputes, commercial land use issues and litigation, credit union law and compliance issues, personal injury litigation and municipal law. His clients include public and private companies, closely held businesses, municipal/governmental agencies, and financial institutions.

Michael served a four-year term on the District Nine Ethics Committee where he was a vice chair and chair of the committee. Michael has appointed on several occasions to serve as Special Ethics Master in complex disciplinary actions brought by the New Jersey Office of Attorney Ethics.

From 2006 to the present Michael has served as a Commissioner and Treasurer of the New Jersey Turnpike Authority. He has also served on various transition teams for various governors for the State of New Jersey. He is a mediator for the United States Bankruptcy Court for the District Court of New Jersey. He is also named by the Supreme Court of New Jersey for the disciplinary oversight committee, trustee to the Monmouth County Bar Association and an arbitrator for the American Arbitration Association. Michael has served as an elected member on both the Borough Council in the Borough of Red Bank, State of New Jersey and this Charter Study Commission.

Michael holds a B.A. from Loyola University in Chicago and a J.D. from the University of Illinois at Chicago.

Benedict Forest

Benedict Forest is a longtime New Jersey and Red Bank community activist. He is currently the longest serving member on the Board of Education for the Red Bank Public Schools, and formerly served as Board President. Mr. Forest has served as the Mayor's representative at Red Bank RiverCenter and is a board member of Clean Water Action of New Jersey.

Mr. Forest is the owner of a computer support firm. He formerly worked for 17 years as a reporter and editor for the Atlanticville, a community weekly publication in Long Branch. He is a local graduate of Monmouth Regional High School.

Mr. Forest is married 25 years to Amy Goldsmith and is a father of two children. He has resided in Red Bank since 1996.

Kathryn Okeson

Kate Okeson is an Artist and Arts Educator with 25 years of bringing inquiry driven processes and exploration to the classroom. In her work as a studio arts teacher, she attends to the discipline of creative and critical thought as a means to ask beautiful questions which lead to growth and action.

A Red Bank resident since 2007, Kate has served on the Human Relations Advisory Committee from 2013 to 2021, and on the Environmental Commission's Creative Team between 2017-2019. Her collaborative project under the heading of "Naturehood Watch", with

MP Raspanti, created the illustrations of local and migratory birds of the Navesink on water stations in Red Bank's parks.

She is founder and Program Director for the LGBTQ education advocacy non-profit Make it Better for Youth, where she organizes people and resources to affirm and accept our young LGBTQ+ community through education, outreach, and social opportunities. Over the last several years, MIB4Y has focused intently on educator-to-educator initiatives, including the development of a pilot curriculum pathway for NJ's LGBTQ+ Inclusive Curriculum legislation, and providing supporting data, materials, and training to school districts on inclusive education practices and approaches.

PROFESSIONALS

Michael L. Collins

Michael L. Collins was appointed by the Charter Study Commission to serve as its attorney and was commissioned to prepare this report. Mike is a partner with the law firm of King, Moench & Collins LLP, which is located in Red Bank and specializes in municipal law. Prior to entering prior practice, Mike served as Assistant Counsel to the Governor of New Jersey. He is a graduate of New York University and Seton Hall University School of Law.

Bonnie Thomas

Bonnie Thomas was appointed by the Charter Study Commission to serve as its Secretary. Bonnie is Deputy Clerk of Red Bank, a position that she has held since 2003. She has served the Borough in various capacities for over 30 years.

APPENDIX B – APPROVING RESOLUTION

RED BANK CHARTER STUDY COMMISSION

RESOLUTION APPROVING FINAL REPORT AND FINDINGS OF RED BANK CHARTER STUDY COMMISSION AND RECOMMENDING ALTERNATIVE FORM OF GOVERNMENT

WHEREAS, the Red Bank 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 Red Bank 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 Red Bank in the November 2022 general election:

> Shall the COUNCIL-MANAGER PLAN of the Optional Municipal Charter Law, providing for SEVEN (7) council members to be ELECTED AT LARGE for STAGGERED terms at NON-PARTISAN elections to be held in MAY, with the MAYOR ELECTED DIRECTLY BY THE VOTERS, with run-off elections to be held thereafter if a sufficient number of candidates fail to attain a majority of votes, be adopted by the Borough of Red Bank?

; 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 the Red Bank are asked whether to approve a change to Red Bank's form of government from the Borough

form to the Council-Manager form under the Optional Municipal Charter Law, commonly known as the Faulkner Act.

If approved, Red Bank will be governed by a council of seven (7) members, which includes a directly-elected Mayor, who serves as a voting member of the Council. The Council will exercise legislative powers and set municipal policy for Red Bank. 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.

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, four (4) 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 two (2) Council members 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 non-partisan elections held on the second Tuesday in May. If a sufficient number of candidates for mayor and/or council fail to attain a majority of votes, a potential runoff election for that office would be held in June. After the new Council is installed, it may choose to move subsequent non-partisan elections to the day of the general election in November, with potential runoff elections in December.

If the change of government is approved by the voters, the first municipal election will be held on May 9, 2023, and the new Mayor and Council members will be installed on July 1, 2023.

NOW, THEREFORE, BE IT RESOLVED by the Red Bank 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 Red Bank, and to take any and all steps reasonably necessary to effectuate the Commission's recommendation of a public question to be presented to the voters of Red Bank in this November 2022 general election, as set forth in the Report.

CERTIFICATION

I, Bonnie Thomas, Secretary of the Red Bank Charter Study Commission, do hereby certify this to be a true copy of a Resolution adopted by the Red Bank Charter Study Commission at a meeting held on July 19, 2022.

Bonnie Thomas
Secretary
Red Bank Charter Study Commission

APPENDIX C – CERTIFICATION

We hereby affirm by our signatures below that this Report contains the findings and recommendations of the Red Bank Charter Study Commission, as approved at a public meeting on July 19, 2022, in accordance with N.J.S.A. 40:69A-10.

Nancy Facey-Blackwood, Chair

Mark Taylor, Vice Chair

Michael DuPont

Benedict Forest

Kathryn Okeson