

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 551

(Duly Adopted November 14, 2018)

AN ORDINANCE APPROVING AMENDMENTS TO THE CIVIL SERVICE RULES AND REGULATIONS OF THE BOROUGH OF ALBURTIS, AS RECENTLY ADOPTED BY THE ALBURTIS CIVIL SERVICE COMMISSION, TO CONFORM TO STATUTORY CHANGES (INCLUDING CHANGE IN TITLE FOR THE COMMISSION CHAIR, APPOINTMENT OF ALTERNATE MEMBERS OF THE COMMISSION AND THEIR USE, QUORUM, SOLICITOR, CONDUCT OF HEARINGS, TIME FOR PUBLIC NOTICE OF EXAMINATIONS, TIMING OF BACKGROUND INVESTIGATIONS, POSTING OF ELIGIBILITY LISTS, GROUNDS FOR DISCIPLINARY ACTION RELATING TO POLITICAL OR ELECTION CAMPAIGNS, AND CERTAIN TECHNICAL CHANGES); AND THUS AMENDING CHAPTER 13 OF THE ALBURTIS CODIFIED ORDINANCES (RELATING TO POLICE CIVIL SERVICE) ACCORDINGLY AND RATIFYING AND REENACTING CHAPTER 13 IN ITS ENTIRETY AS SO AMENDED.

WHEREAS, Section 1170 *et seq.*, of the Borough Code, 8 PA. CONS. STAT. § 1170 *et seq.*, establishes civil service requirements for certain police officers in Boroughs which has three or more regular police officers who devote their normal working hours to police duty; and

WHEREAS, the Borough employs more than three regular police officers who devote their normal working hours to police duty, and has established a Civil Service Commission under Section 1172 of the Borough Code, 8 PA. CONS. STAT. § 1172; and

WHEREAS, Section 1176 of the Borough Code, 8 PA. CONS. STAT. § 1176, authorizes the Civil Service Commission to prescribe, amend, and enforce civil service rules and regulations, provided they are approved by Borough Council; and

WHEREAS, the Civil Service Commission adopted Civil Service Rules and Regulations on February 26, 1996, which were approved by Borough Council by Ordinance No. 329, adopted March 27, 1996; and

WHEREAS, the Civil Service Rules and Regulations were codified to Chapter 13 of the Alburdis Codified Ordinances by Ordinance 415 (adopted October 29, 2003) with numbering and other non-substantive changes, were amended by Ordinance 429 (adopted December 29, 2004) to reflect the change of the title of the Borough Secretary to “Executive Secretary”, were amended by the Civil Service Commission on February 24, 2011 and approved by Borough Council by Ordinance 496 (adopted March 30, 2011) to conform to changes made by Act 2010-91 and make minor technical corrections; and were amended by Ordinance 526 (adopted January 28, 2015) to reflect the change of the title of the Executive Secretary to Borough Manager; and

WHEREAS, the Pennsylvania General Assembly has amended various provisions of the Borough Code relating to police civil service by Acts 2011-104, 2012-43, and 2014-37; and

WHEREAS, by Resolution 2018-2 on October 22, 2018, the Civil Service Commission adopted amendments to the Civil Service Rules and Regulations to conform to the changes made by Acts 2011-104, 2012-43, and 2014-37 and approved the amendments made by Ordinance 526, subject to the approval of Borough Council; and

WHEREAS, Borough Council desires to conform to the requirements of Acts 2011-104, 2012-43, and 2014-37 and approves of the amendments to the Civil Service Rules and Regulations adopted by the Civil Service Commission, as set forth in this Ordinance; and

WHEREAS, the collective bargaining representative of the Alburdis police officers, the Alburdis Police Officers’ Association, has consented to the adoption of this Ordinance; and

WHEREAS, on November 7, 2018, the Borough published a public notice in the *East Penn Press*, a newspaper of general circulation in the Borough of Alburdis, of its intention to consider and adopt on this Ordinance on November 14, 2018;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburdis, Lehigh County, Pennsylvania, as follows:

SECTION 1. Chapter 13 of the Codified Ordinances (relating to Police Civil Service) is amended by amending sections 13-207, 13-401, 13-403, 13-404, 13-405, 13-407, 13-408, 13-409, 13-410, 13-411, 13-412, 13-501(b), 13-509, 13-510, 13-609(a), 13-701, 13-702, 13-801(a), 13-804, and 13-902, as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining), and Chapter 13 is hereby ratified and reenacted in its entirety as so amended:

Chapter 13 — Police Civil Service

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Article II — Definitions

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§ 13-207 ~~Chairperson~~ Chair.

The term ~~“Chairperson”~~ “Chair” shall mean the ~~Chairperson~~ Chair of the Commission.

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Article IV — The Commission

§ 13-401 Civil Service Commission.

(a) **Composition; Term.** The Commission shall consist of three commissioners who shall be qualified electors of the Borough and shall be appointed by Borough Council initially to serve for the terms of two, four and six years, and as terms thereafter expire shall be appointed for terms of six years.

(b) **Vacancies.** Any vacancy occurring in the Commission for any reason whatsoever shall be filled by the Borough for the unexpired term within the period of thirty (30) days after such vacancy occurs.

(c) Alternate Members.

(1) Borough Council may appoint no more than three qualified electors of the Borough to serve as alternate members of the Commission. The term of office of the alternate members shall be six years.

(2) An alternate member may not hold another office in the Borough.

(3) An alternate may participate in any proceeding or discussion of the Commission, but may not vote as a member of the Commission unless designated as a voting alternate member under § 13-404(b).

(4) If designated to sit on the Commission under § 13-404(b) in order to provide a quorum, an alternate member shall be entitled to participate in all proceedings and discussions of the Commission to the same and full extent as provided by law for Commission members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties specified in this Chapter and as otherwise provided by law. An alternate member shall continue to serve on the Commission in all proceedings involving the matter or case for which the alternate was initially designated until the Commission has made a final determination of the matter or case.

(e) **(d) Oath.** Each member of the Commission, before entering upon the discharge of the duties of his/her office, shall take an oath or affirmation to support the Constitution of the United States and of the

~~Commonwealth of Pennsylvania and to perform his/her official duties with fidelity of office under 53 PA. CONS. STAT. ANN. § 1141 (relating to form of oaths of office).~~

~~(d)~~ **(e) Compensation.** No civil service commissioner shall receive compensation.

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§ 13-403 Organization of the Commission.

The Commission first appointed shall organize within ten days of its appointment and shall elect one of its members as ~~its chairperson~~ the chair, one as vice ~~chairperson~~ chair, and one as the Secretary. The Commission shall thereafter meet and organize of the first Monday ~~of February~~ of each even-numbered year.

§ 13-404 Quorum, etc.

(a) Quorum. ~~Two~~ Three members of the Commission shall constitute a quorum.

(b) Designation of Alternate Members. If, by reason of absence or disqualification a member, a quorum is not reached, the chair shall designate as many alternate members of the Commission to sit on the Commission as may be needed to provide a quorum. Designation of an alternate member under this subsection shall be made on a case-by-case basis in rotation according to declining seniority among the alternates.

(c) Validity of Commission Action. ~~and no~~ No action of the Commission shall be valid unless it shall have the concurrence of at least two members.

§ 13-405 Duties of ~~Chairperson~~ the Chair.

The ~~Chairperson~~ Chair, or in his or her absence, the vice ~~chairperson~~ chair, shall preside at all meetings and hearings of the ~~commission~~ Com-

mission, decide all points of order or procedure and perform any duties required by law or these Rules and Regulations.

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§ 13-407 Meetings.

Except for the biennial organization meeting, all meetings shall be held either at the call of the ~~Chairperson~~ Chair or at the call of two members of the Commission. The Commission shall have the discretion to determine whether meetings shall be open to the public when not specifically regulated by law or these Rules and Regulations. The Secretary shall give each commissioner 24 hours notice in writing of each and every meeting of the Commission.

§ 13-408 Clerks, & Supplies, and Solicitor.

~~Borough Council shall furnish the Commission with such supplies and clerical assistance as may be necessary for the Commission to fulfill its duties. In addition, the Commission may retain counsel, and any other consultants or experts, including physicians and psychiatrists, as are necessary. The elected and appointed officials of the Borough shall assist the Commission with all reasonable and appropriate efforts, including compensation for any counsel or experts retained by the Commission.~~

The Borough shall:

(a) Furnish to the Commission, on its requisition, clerical assistance that may be necessary for the work of the Commission.

(b) Provide a suitable and convenient room for the use of the Commission. The Commission shall order from the Borough the necessary stationery, postage, printing, and supplies.

(c) Provide the services of a solicitor for the Commission to be appointed by the Commission and paid by the Borough. The Borough may place a reasonable limit on the amount allowed each year for the services of the Commission solicitor.

(d) Through its elected and appointed officials, aid the Commission in all proper ways in carrying out the provisions of this Chapter relating to police civil service.

§ 13-409 Minutes & Records.

(a) **In General.** The Secretary shall keep minutes of the Commission's proceedings, showing the vote of each member upon each question. If a member is absent or fails to vote, the Secretary shall indicate that fact in the minutes. The Commission shall preserve its minutes and the records of examinations and other official actions. All recommendations of applicants for appointment received by the Commission shall be kept and preserved for a period of five years. Records may only be disposed of in accordance with the *Retention and Disposition Schedule for Records of Pennsylvania Municipalities* issued by the Local Government Records Committee under the authority of the Municipal Records Act, 53 PA. CONS. STAT. § 1381 *et seq.*

(b) **Public Inspection.** The records of the Commission shall be open to public inspection only to the extent required by applicable law (*see, e.g.*, Sections 1176, 1177 and 1191 of the Borough Code, ~~53 PA. STAT. ANN. §§ 46177, 46191~~, 8 PA. CONS. STAT. §§ 1176, 1177, 1191, and the Right to Know Law, 65 PA. STAT. ANN. § 67.101 *et seq.*), and public inspection shall be subject to reasonable regulation. These Rules and Regulations and all modifications thereof shall be made available for public distribution or inspection.

§ 13-410 Investigations.

The Commission ~~shall have the power to make~~ may conduct investigations concerning all matters ~~relating to~~ touching the administration and enforcement of these Rules and Regulations. The ~~Chairperson~~ Chair of the Commission is authorized to administer oaths and affirmations in connection with such investigations.

§ 13-411 Subpoenas.

(a) **In General.** The Commission ~~shall have the power to~~ may issue subpoenas over the signature of the ~~Chairperson~~ Chair, or his/her ~~designee~~, to require the attendance of witnesses and the production of records and papers pertaining to any investigation or inquiry. The fees of such witnesses for attendance and travel shall be the same as for witnesses appearing in the courts and shall be paid from appropriations for the incidental expense of the Commission.

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(c) **Enforcement.** Subpoenas shall be enforced in accordance with applicable law. (*See, e.g.,* Borough Code § 1179, ~~53 PA. STAT. ANN. § 46179~~ 8 PA. CONS. STAT. § 1179.)

§ 13-412 Annual Report.

The Commission shall make a an annual report to the Borough Council ~~on or before the last Wednesday in September each year~~ containing a brief summary of its work during the ~~preceding~~ year ~~and a full accounting for any expenditures of public monies~~. The annual report shall be available for public inspection.

Article V — Applications & Qualifications

§ 13-501 Applications.

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(b) **Form of Application.** The application shall be in the form prescribed by the Commission for that specific examination, and shall include information relating to:

(1) the Applicant's full name (and prior or alias names), the Applicant's citizenship, and ~~whether the Applicant has attained the age of eighteen (18) years~~ place and date of birth;

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(5) the Applicant's business and employment history since high school);

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(8) whether the Applicant may be rejected for any of the reasons set forth in Borough Code § 1183, ~~53 PA. STAT. ANN. § 46183~~ 8 PA. CONS. STAT. § 1183;

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§ 13-509 Hearings for Disqualified Applicants.

(a) **Request for Hearing.** Any Applicant or person who is aggrieved by the refusal of the Commission to examine or certify the Applicant or person as eligible after examination, or the Commission's revocation of any certification, may request a public hearing before the Commission, ~~with or without counsel.~~ The Applicant or other aggrieved person must make his/her request for a hearing in writing within ten calendar days after the date when he/she knew or should have known of the Commission's action which is being challenged.

(b) **Hearing—In General.** Within ten days after ~~such a~~ request for a hearing under subsection (a), the Commission shall designate a time and place for the hearing which shall be conducted pursuant to the procedures set forth in the Local Agency Law, 2 PA. CONS. STAT. § 101 *et seq.*, and at which the Commission shall take testimony and review its refusal to provide examination or certification or its revocation of a certification. The Applicant or other person aggrieved may appear with or without counsel.

(c) **Public vs. Private Matters.** The hearing shall be public. The deliberations of the Commission, including interim rulings on evidentiary or procedural issues, may be held in the nature of a closed executive ses-

sion. The Commission's disposition of the matter shall constitute official action which shall occur at a public meeting held under 65 PA. CONS. STAT. chapter 7 (relating to open meetings).

~~The Applicant or aggrieved party must make his/her request for a hearing in writing within ten calendar days after the date when the party knew or should have known of the Commission's action which is being challenged.~~

§ 13-510 Public Notice.

At least ~~four~~ two weeks prior to the close of the application period, the Commission shall post in a conspicuous location in the Borough offices notice of the time and place of every examination, together with the information as to the type of position to be filled, the requirements for that position, where applications may be obtained for the examination, and the deadline for filing those applications. In addition, at least ~~four~~ two weeks prior to each examination, the Commission shall publish the notice in at least one newspaper of general circulation in the Borough. Additional public notice by publication, posting, or other means may be given at any time at the discretion of the Commission.

Article VI — Examination & Grading Procedure

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§ 13-609 Background Investigation.

(a) **Investigation by Chief or Designee.** The Commission shall request the Chief of Police or the Chief's designee to conduct a background investigation on ~~each~~ an Applicant for the entry-level position of patrol officer who has passed the written examination, the oral examination, and the physical fitness test, at such time as the Commission determines under § 13-701(b). The background investigation shall include interviews with the Applicant's family, acquaintances, current and former

employers, current and former neighbors, references, and current and former teachers and school officials. In addition, the Applicant's record of criminal convictions should be investigated. The Applicant may be interviewed directly when the information collected during the background investigation requires clarification or explanation.

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Article VII — Certification of Eligibility List; Appointment

§ 13-701 Creation of Eligibility List.

(a) **In General.** At the completion of the ~~examination requirements set forth in Article VI (written examination, oral examination, background investigation, and physical fitness test)~~, the Commission shall rank all Applicants who have passed all of those required examinations and satisfied the minimum requirements for appointment on an eligibility list. The eligibility list shall contain the names of passing individuals eligible for appointment listed from highest to lowest based on their total scores under § 13-606 (including applicable veterans' preference points), subject to subsection (b) (relating to background investigation) and § 13-703 (relating to physical and psychological examinations). For promotional positions, fulfilling the performance requirement set forth in § 13-506 is also required. In the case of tied scores, the tie will be broken by giving preference to the Applicant who submitted a final completed application first. If both tied Applicants submitted their complete applications on the same day, then the Applicants shall be ranked in alphabetical order by surname.

(b) Background Investigation. The Commission shall, from time to time, request that background investigations under § 13-609 be conducted on such number of persons on the current eligibility list for the entry-level position of patrol officer as the Commission desires, provided that background investigations shall be conducted for persons higher on

the eligibility list before or concurrently with background investigations for persons lower on the eligibility list. The Commission shall indicate on the eligibility list whether a person on the list has passed the background investigation or is still subject to a background investigation in the future. Upon determining that a person on the eligibility list has passed the background investigation, the Commission shall amend the eligibility list accordingly. Upon determining that a person on the eligibility list has failed the background investigation and warrants rejection, the Commission shall amend the eligibility list to delete that person.

(b) (c) Duration of List. The eligibility list shall be valid for a period of one year from the date the Commission first ranks all passing Applicants, assigns veterans preference points, and formally adopts the eligibility list. The Commission may, at its sole discretion before the original expiration date, extend the list for up to an additional twelve (12) months by a majority vote of the Commission at a duly authorized Commission meeting. In the absence of a lawful extension by the Commission, the list shall expire.

(d) Posting of List. The Commission shall post the eligibility list, containing the names and grades of those who have passed the examination, in a publicly accessible portion of the Borough offices.

§ 13-702 Appointment.

(a) Furloughed Former Borough Police Officer. The Borough Council may fill any vacancy in an existing position in the Police Department which occurs as a result of ~~expansion of the police force~~, retirement, resignation, disability, or death by the reappointment or reinstatement of a former employee of the Police Department who had ~~been furloughed.~~ been appointed previously in accordance with Borough civil service rules. Except for physical and psychological examinations, no other testing shall be required for such a furloughed former employee. If the number of Police Officers in the Police Department shall be increased, the Borough Council shall fill the new positions by reinstating persons on the furlough list in accordance with § 13-802 so long as there are persons remaining on the furlough list who timely request reinstatement.

(b) General Rule. ~~If no furlough list exists or if positions remain to be filled after all of the officers on the furlough list were offered reemployment, Except as provided in subsection (a), every position, except that of Chief of Police, shall be filled only in the following manner:~~

(1) The Borough Council shall notify the Commission of any vacancy which is to be filled and shall request the certification of three (3) names from the eligibility list;

(2) If the Commission has not conducted a background investigation on the three (3) highest persons on the eligibility list for the position to be filled (or, if there are fewer than three (3) persons on the list, all of the persons on the list), the Commission shall request additional background investigations under § 13-701(b) until such time as the three (3) highest persons on the list have all passed the background investigation, or all of the persons remaining on the list have passed the background investigation;

~~**(3)**~~ **(3)** Thereafter, if three (3) or more persons are on the eligibility list for the position to be filled and have passed the background investigation, the Commission shall certify the names of the three (3) highest persons on the list to Borough Council. If three (3) names are not available, then the Commission shall certify the name(s) remaining on the list;

~~**(4)**~~ **(4)** The Borough Council shall make a conditional appointment from one of the ~~three~~ names certified, based solely on the merits and fitness of the Applicants. However, for entry-level appointments to the position of patrol officer, when one of the three Applicants on the certified list is a “soldier” within the meaning of the Veterans’ Preference Act, 51 PA. CONS. STAT. § 7101 *et seq.*, that Applicant shall be selected, and when two of the Applicants on the certified list are “soldiers,” one of those two Applicants shall be selected. The appointment shall be conditioned solely on passage of the physical and psychological examinations under § 13-703.

(c) Objections by Borough Council. The Borough Council may object to one or more of the Applicants certified by the Commission for any of the reasons set forth in § 13-507. Within ten days after such objec-

tions are filed, the Commission shall designate a time and place for a public hearing on such objections, ~~with or without counsel~~, which shall be conducted pursuant to the procedures set forth in ~~the Local Agency Law, 2 PA. CONS. STAT. § 101 et seq. § 13-509.~~ If the Commission sustains the objections as to any Applicant, the Commission shall strike the name of that Applicant from the eligibility list and certify the next highest name for inclusion on the list of Applicants submitted to the Borough Council (following the completion of any necessary background investigations).

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Article VIII — Suspensions, Removals, and Reduction in Rank

§ 13-801 Grounds for Disciplinary Action

(a) **In General.** No person who has received a permanent appointment to a position in the Police Department pursuant to these Rules and Regulations or prior to the creation of the Commission shall be suspended without pay or removed from office, and no person who has been promoted in rank and received a permanent appointment to such position pursuant to these Rules and Regulations or who has received a permanent appointment to a ranking position prior to the creation of the Commission shall be reduced in rank, except for the following reasons:

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(5) intoxication while on duty; ~~or~~

(6) engaging or participating in ~~or conducting~~ the conduct of ~~any a~~ political or election campaign while on duty or in uniform or while using Borough property other than the officer's otherwise than to exercise of the person's own right of suffrage; or

(7) engaging or participating in the conduct of a political or election campaign for an incompatible office as provided in Borough Code § 1104(f), 8 PA. CONS. STAT. § 1104(f).

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§ 13-804 Hearings on Suspensions, Removals, and Reductions in Rank.

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(b) **Hearing.** The Commission shall schedule a hearing to be held within ten days from the Police Officer's written request for a hearing unless continued by the ~~commission~~ Commission for cause at the request of the Commission, the Police Officer, or the party which filed the charges against the Police Officer (the Borough Council or the Mayor). The failure of the Commission to hold a hearing within ten days from the filing of the written charges shall not result in the dismissal of the charges filed. The hearing shall be conducted in accordance with the provisions of the Local Agency Law, 2 PA. CONS. STAT. § 101 *et seq.*, and all other applicable laws. The person against whom the charges are made may be present in person and by counsel. All testimony shall be given under oath administered by the ~~Chairperson~~ Chair, or in absence of the ~~Chairperson~~ Chair, the vice ~~chairperson~~ chair. The Commission shall have power to issue subpoenas as set forth in § 13-411. The hearing shall be conducted in closed executive session that shall not be open to the public, unless a public hearing is required by law or requested by the Police Officer or Borough Council prior to the commencement of the hearing. The deliberations of the Commission, including interim rulings on evidentiary or procedural issues, may be held in private and shall not be subject to a request by the Police Officer or Borough Council for being open to the public. The Commission's disposition of the matter shall constitute official action which shall occur at a public meeting held pursuant to 65 PA. CONS. STAT. chapter 7 (relating to open meetings). A stenographic record of all testimony shall be taken at every hearing and preserved by the Commission. In the event the charges are dismissed, the records shall be sealed and not be available for public inspection.

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(d) Appeal of Decision. ~~If the Commission sustains the charges, the Police Officer who was suspended, removed or reduced in rank may file an appeal with~~ All parties shall have an immediate right of appeal to the Court of Common Pleas of Lehigh County, and the case shall there be determined as the court deems proper. The appeal shall be taken within thirty (30) days after the date of entry by the Commission of its final order, and shall be by petition. As provided by law, upon the appeal being taken and docketed, the court of common pleas shall schedule a day for a hearing and shall proceed to hear the appeal on the original record and additional proof or testimony as the parties concerned may desire to offer in evidence.

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Article IX — Miscellaneous Matters

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§ 13-902 **Discrimination on Account of Political or Religious Affiliations.**

(a) Information. No question in any form of application for examination or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any Applicant, nor shall inquiry be made concerning such opinion or affiliations and all disclosures thereof shall be ~~discouraged~~ ignored.

(b) Prohibition. No discrimination shall be exercised, threatened, or promised by any person against or in favor of any Applicant or employee because of political or religious opinions or affiliations or race, and no offer or promise or reward, favor, or benefit, directly or indirectly, shall be made to or received by any person for any act done or duty omitted or to be done under the civil service provisions of the Borough Code, 8 PA. CONS. STAT. §§ 1170-1194.

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SECTION 2. This ordinance shall also be considered a resolution of Borough Council under 8 PA. CONS. STAT. § 3301.1(c)(4).

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, this 14th day of November, 2018, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURTIS

Ronald J. DeIaco, President

Attest:

Sharon Trexler, Borough Manager

AND NOW, this 14th day of November, 2018, the above Ordinance is hereby AP-
PROVED.

Kathleen Palmer, Mayor