

**BOROUGH OF PENNINGTON
ORDINANCE 2009-6**

**ORDINANCE EXCLUDING POSITION OF MUNICIPAL COURT ADMINISTRATOR
FROM DCRP MEMBERSHIP, RECOGNIZING IT AS A PERS POSITION AND
AMENDING CHAPTER 49 OF THE CODE OF THE BOROUGH OF PENNINGTON**

WHEREAS, the State Legislature has adopted Chapter 92 of the Laws of 2007 (N.J.S. 43:15C-1, et seq.) to create the Defined Contribution Retirement Program (“DCRP”) to provide retirement benefits to various county and municipal officials; and

WHEREAS, N.J.S. 43:15C-2 requires the governing body of each municipality to adopt an ordinance to identify the positions in that municipality which shall be eligible for participation and shall be required to participate in the DCRP pursuant to the criteria set forth in that statute and related guidelines issued by the Local Finance Board in the Department of Community Affairs;

WHEREAS, N.J.S. 43:15C-2 requires to participate in the DCRP any person who commences service on or after the effective date of the statute (July 1, 2007) in any employment, office or position or in any agency, board, commission, authority or instrumentality of the municipality pursuant to an appointment by an elected official or elected governing body that requires the specific consent or approval of the elected governing body of the municipality that is substantially similar in nature to the advice and consent of the Senate for appointments by the Governor of the State;

WHEREAS, explicitly excluded from the coverage of the statute, among others, are persons otherwise eligible for membership in the Police and Firemen’s Retirement System, persons employed or appointed in the normal course pursuant to routine employment and appointment procedures, persons who hold a professional license or certificate to perform and are performing as a certified health officer, tax assessor, tax collector, municipal planner, chief financial officer, registered municipal clerk, construction code official, licensed uniform subcode inspector, qualified purchasing agent, or certified public works manager, persons with a base salary of less than \$1,500. per year, and persons receiving a benefit as a retiree from any other State or locally-administered pension fund or retirement system established in New Jersey;

WHEREAS, in December 2008 Borough Council adopted an ordinance specifying the positions deemed to be eligible for and required to participate in the Defined Contribution Retirement Program;

WHEREAS, that ordinance, now having been codified as Article I of Chapter 49 of the Code of the Borough of Pennington, specifies that the position of Municipal Court Administrator is required to participate in DCRP;

WHEREAS, the Division of Local Government Services of the New Jersey Department of Community Affairs has determined that, contrary to its guidance heretofore, the position of Municipal Court Administrator should not be required to participate in DCRP and should be recognized as a PERS position;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, as follows:

1. Section 49-1 of Article I of Chapter 49 of the Code of the Borough of Pennington, specifying Eligible Positions, is hereby amended as follows:¹

“Pursuant to the criteria prescribed by law, the following positions are deemed to be eligible for and shall participate in the Defined Contribution Retirement Program:

- a. Borough Administrator;
- b. Municipal Prosecutor;
- c. Municipal Court Judge[;]
- d. [Municipal Court Administrator].

¹As used herein, brackets [] denoted language or punctuation to be deleted; underlining ____ denotes new language or punctuation.

2. Section 49-2 of Article I of Chapter 49 of the Code, specifying Exempt Positions, is hereby amended as follows:

“Pursuant to the prescribed criteria, individuals serving in the following Borough positions are exempt from membership in the Defined Contribution Retirement Program:

- a. Tax Collector;
- b. Chief Financial Officer;
- c. Construction Code Official;
- d. Tax Assessor;
- e. Municipal Clerk;
- f. Uniform Subcode Inspectors;
- g. Superintendent of Public Works[.];
- h. Municipal Court Administrator.”

3. This ordinance shall be implemented, construed and subject to the aforesaid Chapter 92 of the Laws of 2007 (N.J.S. 43:15C-1, et seq.) as may be amended from time to time, and any regulations or guidelines issued by the Local Finance Board in the Department of Community Affairs or the Division of Pensions and Benefits in the Department of Treasury.

4. Should any part of this ordinance be held to be invalid by any court of competent jurisdiction, such invalidity shall only affect the part or parts of the ordinance held to be invalid and all other parts shall remain in effect.

5. A copy of this ordinance shall be filed with the Director of the Division of Pensions and Benefits of the New Jersey Department of Treasury.

6. This ordinance shall take effect upon its passage and publication as required by law.

Introduced: May 4, 2009

Advertised: May 14, 2009

Public Hearing: June 1, 2009

Adoption: June 1, 2009

Advertised: June 11, 2009

ATTEST:

APPROVE:

Elizabeth Sterling, Borough Clerk

Anthony Persichilli, Mayor