

ORDINANCE 08-2019

BOROUGH OF EATONTOWN  
COUNTY OF MONMOUTH, STATE OF NEW JERSEY

ORDINANCE AMENDING CHAPTER 89 OF THE CODE OF THE BOROUGH OF EATONTOWN ENTITLED  
"LAND USE" SECTION 89-5 ENTITLED "MUNICIPAL PLANNING BOARD"

**WHEREAS**, Section 89-5 of the Municipal Land Use Ordinance of the Borough of Eatontown provides for the creation of the Municipal Planning Board pursuant to N.J.S.A. 40:55D-23 et seq., and classes, terms and limitations on the selection of members of the Planning Board; and

**WHEREAS**, the Borough Council would like to place what it considers a reasonable, limited restriction on the appointment of certain members to the Planning Board.

**NOW, THEREFORE, BE IT ORDAINED**, by the governing body of the Borough of Eatontown, County of Monmouth in the State of New Jersey that Chapter 89 of the Code of the Borough of Eatontown shall be amended as follows:

Section 89-5G entitled, "Limitations on Appointments" shall be added to the aforesaid Land Use Ordinance as follows:

G. Limitations on Appointments.

The Mayor shall not appoint a Class II or Class IV Member to the Planning Board who was previously a member of the governing body for a period of one (1) year after said member has vacated or left the governing body.

**BE IT FURTHER ORDAINED**, that the subject Ordinance is subject to review by the Eatontown Planning Board for recommendations, if any, prior to adoption hereto.

**BE IT FURTHER ORDAINED**, that all Ordinances or parts of Ordinances which are inconsistent herewith are repealed, but only to the extent of such inconsistency.

**BE IT FURTHER ORDAINED**, that this Ordinance shall take effect upon passage and publication.

DATE INTRODUCED: March 13, 2019

DATE ADOPTED: April 24, 2019

APPROVED:

\_\_\_\_\_  
ANTHONY TALERICO, JR., MAYOR

ATTEST:

  
\_\_\_\_\_  
JULIE MARTIN, MUNICIPAL CLERK

Date: 5.8.2019

As per N.J.S.A. 40A:60-5d – Mayor failed to return ordinance

**Dept Clerk**

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**From:** Planning & Zoning  
**Sent:** Friday, March 29, 2019 11:32 AM  
**To:** Dept Clerk; Boro Clerk  
**Cc:** Cherron Rountree  
**Subject:** RE: Planning Board Review 08-2019

Corinne,

The Planning Board has scheduled a Section 26 review of introduced ordinance 08-2019 on April 15, within our 35 day statutory limit.

The Board will provide Council with a report or comment on 4/16.

Thank you.

Erik Brachman  
Zoning Officer/Land Use Administrator  
Board Secretary/Administrative Officer  
Borough of Eatontown  
732-389-7611  
pandz@eatontownnj.com

## **REPORT OF THE BOROUGH OF EATONTOWN PLANNING BOARD UNDER N.J.S.A.40:55D-26**

TO: The Mayor and Council

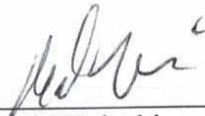
The Planning Board, having considered Ordinance No. 08-2019, pursuant to Section 26 of the Municipal Land Use Law finds the proposed ordinance inconsistent with the Master Plan. The Board has the following additional comments:

1. The proposed ordinance improperly infringes upon the Mayor's appointment powers to the Planning Board.
2. The Board questions the constitutionality of the proposed ordinance as it treats classes of planning board appointments - - Class I (Mayor's designee) member and Class III member - - differently and disparately from Class II and Class IV members.
3. The Borough of Eatontown needs volunteers to help serve its municipal government and the proposed ordinance discourages volunteers from participating in their local government.
4. The Planning Board disputes the premise of the proposed ordinance that there is an appearance of impropriety in having a former Councilperson who participated in voting on a rezoning of property review a site plan application under the that zoning ordinance. Planning Board members are required to take an oath of office to serve as a Planning Board member and are legally obligated to only consider the evidence submitted to the Planning Board in connection with land use applications to determine whether the site plan application meets the requirements of the Borough ordinances at issue in that application. The Municipal Land Use law expressly contemplates concurrent public service as a member of the Governing Body and the Planning Board so there is no conflict or appearance issue with sequential public service from the Borough Council to the

Planning Board.

5. The Borough Council should await the Court's decision in the matter known as Guerra, et. als v. Borough of Eatontown Planning Board, Superior Court of New Jersey, Law Division-Monmouth County, Docket No. MON-L-3518-18 before considering adoption of the proposed ordinance. The plaintiffs in that matter challenged a land use approval on the basis that former Councilmembers who voted on the ordinance rezoning the applicant's property were legally ineligible to sit on the Planning Board and vote on the applicant's site plan application. The Planning Board is awaiting the decision on this matter from the Hon. Lisa P. Thornton, A.J.S.C.

Respectfully Submitted,



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Mark Woloshin  
Planning Board Chairman

Dated: April 16, 2019