

RESOLUTION 169 -21

**RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING
BETWEEN THE BOROUGH OF CLAYTON AND
DONNA NESTORE**

WHEREAS, the Mayor and Council of the Borough of Clayton have negotiated a Memorandum of Understanding with Donna Nestore; and

WHEREAS, the governing body does hereby agree to approve said memorandum of understanding, which is incorporated in and made a part of this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Clayton, County of Gloucester and State of New Jersey that:

1. The Memorandum of Understanding between the Borough of Clayton and Donna Nestore is hereby approved.
2. The Mayor, Borough Administrator or Borough Clerk are hereby authorized to execute the Memorandum of Understanding on behalf of the Borough of Clayton.

ADOPTED at a regular meeting of the Mayor and Council of the Borough of Clayton held on August 12, 2021.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

ATTEST:



CHRISTINE NEWCOMB, Municipal Clerk

CERTIFICATION

I, Christine Newcomb, Municipal Clerk of the Borough of Clayton, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton, held on Thursday, August 12, 2021.

CHRISTINE NEWCOMB, Municipal Clerk

MEMORANDUM OF UNDERSTANDING

BETWEEN THE BOROUGH OF CLAYTON AND DONNA NESTORE

This document is a Memorandum of Understanding ("MOU") by and between the Borough of Clayton ("Borough") and Donna Nestore (collectively, the "Parties") relating to her schedule as Assistant Administrator/Chief Financial Officer/Certified Tax Collector.

WITNESSETH

WHEREAS, the Borough recognizes that the duties of Ms. Nestore are extensive; and

WHEREAS, the Borough further recognizes that such duties may often go beyond normal office hours applicable to other employees; and

WHEREAS, the Borough further recognizes that, given Ms. Nestore's years of service, her dedication, and her established trust with the Borough, it is appropriate to allow the "flexing" of her schedule on a monitored basis, subject at all times to the understanding that there is no decrease in the level of governmental services and supervision;

NOW, THEREFORE, in consideration of the foregoing, it is hereby agreed by and between the Parties hereto as follows:

1. **Schedule.** As the Assistant Administrator/Chief Financial Officer/Certified Tax Collector, Ms. Nestore is a full-time salaried employee and a Department Head. Ms. Nestore shall work at least forty (40) hours per week and, during the time frame of this MOU, will set her work schedule subject to the requirements below:
 - A. Ms. Nestore shall be required to keep time records showing all hours worked. These records shall be maintained on a similar schedule to other white collar employees, commensurate with the conclusion of the applicable pay period. Such records shall be subject to inspection at any time by any member of the governing body, or any designee of the governing body. Any member of the governing body (or designee) shall have full authority to make inquiry on the nature of work performed during such hours.
 - B. In circumstances where Ms. Nestore has satisfied, or will satisfy, her minimum of at least 40 hours for the week, Ms. Nestore may be permitted to flex her schedule. Where Ms. Nestore flexes her schedule, she shall not be deemed to be in a "paid", "working", or "on duty" status. She shall not be permitted to work during the time that she would otherwise be working at the office.
 - C. Ms. Nestore shall not flex her schedule if the Administrator or appropriate designee is unavailable in the office.

- D. Schedule flexing shall not interfere with, or impair, the necessary administration of public services or Ms. Nestore's responsibilities as a Department Head.
 - E. Ms. Nestore shall be required to attend Council meetings unless otherwise excused by the governing body. Ms. Nestore shall not be required to attend Council meetings when she is on approved time off. The hours attending Council meetings shall be included as part of her weekly work hours.
 - F. It is recognized that the availability of Ms. Nestore is essential for the proper execution of Borough business and overall public accountability. Accordingly, schedule flexing will be subject to regular Borough monitoring.
 - G. Schedule flexing does not create any "banked time" in any form. It is the functional equivalent of a schedule adjustment. Each week is a new schedule "reset" on the ability to flex the schedule.
- 2. **Term.** This MOU shall have an effective start date of August 16, 2021 and continue until on January 8, 2022. Upon expiration of the initial term, this MOU shall automatically renew for additional successive six month terms unless and until either Party provides written notice of nonrenewal at least ten days prior to the end of the then-current term. If the Term is renewed for any renewal term(s) pursuant to this Section, the terms and conditions of this MOU during each such renewal term are the same as the terms in effect immediately prior to such renewal, unless modified by the parties. In the event either Party provides timely notice of its intent not to renew this MOU, both the Borough and Ms. Nestore reserve all legal rights as may be applicable. In no event will this MOU survive the conclusion of Ms. Nestore's employment with the Borough of Clayton, nor shall it be construed to apply to any other past, present or future employees of the Borough of Clayton.
 - 3. **Modification.** This MOU may only be modified by an instrument in writing signed by both Parties to the MOU.
 - 4. **Severability.** Whenever possible, each provision of this MOU will be interpreted in such a manner as to be effective and valid under applicable law, but if any of its provisions shall be held invalid, illegal or unenforceable, this MOU shall be construed as if not containing those provisions and the rights and obligations of the Parties shall be construed and enforced accordingly. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this MOU to effect the original intent of the parties as closely as possible.
 - 5. **Council Approval.** This MOU is subject to approval by the Borough Council before taking effect.

6. **No Waiver or Admissions.** Nothing in this MOU, nor the execution thereof, shall be construed as a waiver of any applicable legal rights, defenses, or arguments of any kind. Nothing in this MOU shall constitute an admission of any kind for purposes of any legal proceedings.
7. **No Past Practice or Precedent.** Nothing in this MOU constitutes a “past practice” or “precedent” of any kind for any purpose. Nothing in this MOU shall be construed to constitute any kind of “past practice” or “precedent”.

IN WITNESS WHEREOF, the parties hereto execute the above.

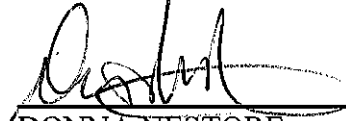
BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Dated: 8/12/21

DONNA NESTORE



DONNA NESTORE

Dated: 8/12/21

Attest by:



CHRISTINE NEWCOMB, Municipal Clerk