CITY OF CLIFTON
CITY COUNCIL
SPECIAL BUDGET MEETING AGENDA
FEBRUARY 10, 2026
6:30pm

Adequate notice of this meeting has been provided by the Special Meeting Notice which was published as a legal advertisement in the Herald News on January 11, 2026. Further notice of this meeting was given prior to the meeting by posting said notice on the bulletin board at City Hall and on the City of Clifton website, which notice stated that formal action may or may not be taken on the matters to come before the Municipal Council.

1. **CALL TO ORDER**

2. **FLAG SALUTE**

3. **DISCUSSION**

    D1- 2026 Budget Discussion

    D2- Legal Opinion of the Affordable Care Act

4. **FLOOR TO MEMBERS OF THE PUBLIC**

5. **ADJOURNMENT**

ITEM NUMBER: D- 1

ITEM NAME: 2026 Budget Discussion
RECOMMENDATION:

SUMMARY:

ATTACHMENTS:

Description	Upload Date	Type
No Attachments Available		

D-1

To: Clifton City Council

From: Joe Monzo, Interim CFO

Re: 2026 Budget Mtg 2 (Feb 10th)

Date: February 4, 2026

This memo is a follow-up to the initial budget presentation of January 13th.

Since that presentation the administration and I have been working on changes to that document.

In addition, I have completed the Unaudited Annual Financial Statement that is due to be filed to DLGS by March 10th.

The following results from 2025 are of special note as they have an impact on the 2026 budget.

1. The year-end fund balance in the current fund is $ 11.3 Million, of which $ 11.1 Million may be considered for use as revenue in the 2026 budget.
2. The 2025 tax collection rate was 98.97 %. The year end delinquencies were $ 3.666 Million.
3. The tax collection rate for delinquent taxes (those due at 12/31/24) was 99.5 %. This impacts what we are permitted to use as anticipated delinquent tax revenue.
4. The net taxable assessed value of the city is $ 5,407,183,919, am increase of $ 17,979,480 or 3/10 of 1 percent.

There are two documents attached here that I will discuss at the budget session on February 10th.

1. A list of 10 potential changes to the original document. The result, after these changes, is that the tax rate would have an increase of 7.7cents (down from 16 cents), a local purpose increase of 4.84%.
2. An estimate of the fund balance at 12/31/26. At this point this is just speculative and would depend on where the adopted 2026 budget.

I will discuss each of these items at the budget meeting.

Thank you.

CITY OF CLIFTON 2026 BUDGET
STEPS/CHANGES TO ACHIEVE COUNCIL GOALS

2025 Taxation Level	93,525,039.00
2026 Assessed Valuation	5,407,183,919.00

Proposal Number		Appropriations	Other Revenue	Taxation	Tax Increase - $$$		Tax Increase %
	Presented Budget 1/13/26	148,179,143.76	40,009,727.00	102,536,489.00	$	0.16	9.64%
1	Reduce Operating Expense appropriations to 2025 Spending levels. Need to review 2026 spending vs the reserve year	(1,445,700.00)		(1,445,700.00)	$	(0.0267)	
2	Increase Delinquent Tax Revenue Anticipation based on the AFS delinquent tax calculation		500,000.00	(500,000.00)	$	(0.0092)	
3	Reduce the Reserve for Uncollected Taxes (RUT) appropriation based on 2025 actual tax collection rate	(1,500,000.00)		(1,500,000.00)	$	(0.0277)	
4	Reduce the use of year end fund balance as a revenue		(2,750,000.00)	2,750,000.00	$	0.0509	
5	Cancel dormant trust funds and anticiate the balance as revenue		1,500,000.00	(1,500,000.00)	$	(0.0277)	
6	Reduce Estimated Salary Hold	(3,500,000.00)		(3,500,000.00)	$	(0.0647)	
7	Increase the departmental salary accounts based on actual 2026 salaries and/or an estimate for those out of contract	1,573,791.00		1,573,791.00	$	0.0291	
8	Reduce franchise fee revenue based on actual receipts		(59,000.00)	59,000.00	$	0.0011	
9	Reduce police salaries by charging off one year of the 2023 federal cops grant	(250,000.00)		(250,000.00)	$	(0.0046)	
10	Recent Resignations (2)	(170,000.00)		(170,000.00)	$	(0.0031)	
	Changes Only	(5,291,909.00)	(809,000.00)	(4,482,909.00)	$	(0.0829)	
	Revised Totals	142,887,234.76	39,200,727.00	98,053,580.00	$	0.0771	4.84%

FUND BALANCE / REGENERATION

12/31/2025 Balance	11,301,777.00
2025 Appropriation Reserves lapsed to fund balance	4,450,000.00
Recover : year 1 and 2 of cops grant	500,000.00
Use in the 2026 Budget	**(7,250,000.00)**
Excess Revenues over Budget	500,000.00
MRNA	500,000.00
Potential 2026 Fund Balance before any new revenue initiatives	10,001,777.00

ITEM NUMBER: D- 2

ITEM NAME: Legal Opinion of the Affordable Care Act

RECOMMENDATION:

SUMMARY:

ATTACHMENTS:

Description	Upload Date	Type
No Attachments Available		

D-2

DiFrancesco Bateman
Kunzman, Davis, Lehrer & Flaum, P.C.

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February 6, 2026

Via Email

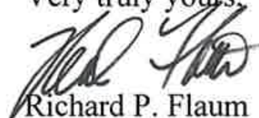
Thomas Egan, Esq., Municipal Attorney
City of Clifton
900 Clifton Avenue
2nd Floor
Clifton, New Jersey 07013

Re: Memorandum – Are City Council Members Eligible for Health Care Benefits

Dear Mr. Egan:

Further to the City Council's authorization, attached is our memo related to whether City Council members are eligible for health care benefits. If you have any questions or concerns, please advise.

Very truly yours,



Richard P. Flaum

RPF:eas
Enc.

Memo

To: Clifton City Council
From: DiFrancesco Bateman
Re: ACA Coverage for Councilmembers
Date: February 6, 2026

Questions: Does ACA require Clifton to provide health insurance to council members?

Quick Answer: Council members are W-2 employees and are eligible for health benefits if they can demonstrate they work 30 hours per week as required by the ACA

Analysis

Neither New Jersey nor federal law creates an automatic Affordable Care Act (ACA) entitlement to health insurance for Clifton council members. Instead, Clifton's obligation to offer coverage depends on two key factors: (1) whether the city qualifies as an "Applicable Large Employer" (ALE) under federal law, and (2) whether council members are considered full-time common-law employees meeting the ACA's standard.

Under the ACA, employers with 50 or more full-time employees are required to provide health insurance coverage to their employees or face penalties, as outlined in 26 U.S.C. § 4980H(c)(2)(A); Geneva College v. Sebelius, 941 F. Supp. 2d 672. The City of Clifton is an ALE under the ACA and is required to provide health insurance to employees.

The ACA's employer shared-responsibility rules in Internal Revenue Code § 4980H apply to ALEs and require them to offer minimum essential coverage to all full-time employees to avoid penalties. "Full-time employee" is defined by regulation as an employee averaging at least 30 hours of service per week or 130 hours of service per month, measured under either a monthly or look-back measurement method. The ACA incorporates the Code's common-law employee test and does not carve out a special exclusion or automatic inclusion for elected officials such as municipal council members.

For elected officials, the key federal question is whether, under the common-law control test, they are employees of the municipality and in fact perform 30 or more hours of service per week so as to be "full-time" for § 4980H purposes. If a council member is not full-time on that standard, § 4980H does not require that the city offer them coverage, although the city may choose to do so under state law or local ordinance.

New Jersey state-law (SHBP and 35-hour rule)

Importantly, separate from the ACA, New Jersey's State Health Benefits Program (SHBP) and related statutes restrict which local officials may receive taxpayer-funded coverage. For

municipalities that participate in SHBP, a local elected official must generally be a full-time appointed or elected officer, working at least 35 hours per week, to be eligible for SHBP health benefits. A 2010 statutory change barred most newly seated part-time local officials from taking SHBP health benefits, effectively requiring a 35-hour-per-week workload for post-2010 officials, with limited exceptions for prior service. Clifton is not part of the state health benefits plan.

Clifton-specific ordinances and practice

Clifton has addressed council-member health coverage directly by ordinance. The city code historically provided that hospitalization and medical insurance for members of the Municipal Council and their spouses "is hereby continued during the period that each such member serves" and that council members may elect the same health, dental, and prescription options as confidential officials and employees, on the same deductibles and copays. The City recently adopted an ordinance to discontinue medical benefits for council members effective January 1, 2026.

Further the Clifton health care summary plan description (SPD)defines employees eligible for health benefits as any individual working 30 hours a week. This would apply to the council members so long as they can prove they are actually working those hours.

Employee Defined

The ACA adopts the Internal Revenue Code's common-law definition of "employee," focusing on the employer's right to control the manner and means of the work, and does not carve out special rules automatically including or excluding elected officials.

Accordingly, the definition of "employee" is central to determining employer obligations, particularly under the employer shared responsibility provisions codified in. 26 USCS § 4980H. A "full-time employee" is defined as an individual employed on average at least 30 hours of service per week. 26 USCS § 4980H. The determination of hours of service includes rules prescribed by the Secretary of the Treasury in consultation with the Secretary of Labor, which account for employees not compensated on an hourly basis. 26 USCS § 4980H.

IRS regulations under §4980H allow two main methods for determining who is meeting time standards for a full-time employee under the ACA: (1) the monthly measurement method, or (2) the look-back measurement method for variable-hour, seasonal, or fluctuating workforces.

Under the monthly measurement method, the employer determines status month-by-month: an employee is full-time in a given month if they reach at least 30 hours per week or 130 hours of service that month, which can cause status to change if hours vary.

Under the look-back measurement method, the employer tracks hours over a defined "measurement period" (often 12 months), treats employees averaging at least 30 hours per week

or approximately 1,560 hours over the period as full-time, and then locks that status in for a "stability period" during which coverage must be offered to those classified as full-time.

The ACA also distinguishes between "seasonal workers" and other employees. Seasonal workers are defined as those performing labor or services on a seasonal basis, including retail workers employed exclusively during holiday seasons, as per § 54.4980H-1.

ACA Employee Definition and Common Law Standards

The ACA regulations define an "employee" as "an individual who is an employee under the common law standard." See 26 CFR § 54.4980H-1(a)(15)..

The IRS common law definition of "employee" is grounded in the principle that an individual is considered an employee if the relationship between the individual and the person for whom they perform services constitutes the legal relationship of employer and employee under usual common law rules. This determination primarily hinges on the degree of control the employer has over the worker. Clifton City Council members are classified as W-2 employees and receive an annual wage of $4,000. Initially this is strong evidence the City Council members are common law employees pursuant to the IRS definition.

Under Treasury Regulation § 31.3121(d)-1(c), the relationship of employer and employee generally exists when the person for whom services are performed has the right to control and direct the individual performing the services, not only as to the result to be accomplished but also as to the details and means by which that result is achieved. The employer need not actually exercise this control; the mere right to do so is sufficient. The right to discharge the worker is also a significant factor indicating an employer-employee relationship. Additional factors, though not determinative in every case, include the furnishing of tools, materials, or a place to work by the employer. § 31.3121(d)-1; Prince Cable, Inc. v. United States, 1998 U.S. Dist. LEXIS 5981; American Consulting Corp. v. United States, 454 F.2d 473.

Evolution of IRS Testing Methods

The IRS previously employed a 20-factor test to assess the presence of control in determining whether an employer-employee relationship exists. These factors included the level of instruction, training, integration into the business, control over work hours, payment methods, and the right to discharge or terminate the worker. These factors collectively evaluate the economic realities and the degree of dependence of the worker on the employer's business. American Consulting Corp. v. United States, 454 F.2d 473; Stevens v. Board of Trustees of Public Employees' Retirement System, 294 N.J. Super. 643.

The IRS 20-factor test, while historically significant, is no longer the primary framework used by

the IRS for determining employee status under common law rules. Instead, the IRS has transitioned to a more streamlined approach that categorizes factors into three main groups: behavioral control, financial control, and the relationship of the parties. Farruggio's Bristol & Phila. Auto Express v. Repeal of N.J.A.C. 12:16-23.2a4, 2021 N.J. Super. Unpub. LEXIS 2835. This updated framework reflects a shift away from the rigid application of the 20-factor test, although the principles underlying the test remain relevant.

The IRS regulations consistently affirm that the existence of an employer-employee relationship depends on whether the employer has the right to control not only the result of the work but also the means and methods of accomplishing it. § 31.3121(d)-1(c). Similarly, § 31.3306(i)-1(b) and § 31.3401(c)-1(b) reiterate this focus on control, with additional factors like the right to discharge and the provision of tools and workspace being indicative of an employment relationship. § 31.3306(i)-1; § 31.3401(c)-1.

The New Jersey Department of Labor and Workforce Development has noted that the IRS provides a method, through federal Form SS-8[1], for businesses to obtain determination letters from the IRS regarding the status of a worker or group of workers under the IRS's tests for independence. Farruggio's Bristol & Phila. Auto Express v. Repeal of N.J.A.C. 12:16-23.2a4, Nos. A-4932-18, A-0226-19, 2021 N.J. Super. Unpub. LEXIS 2835, at *6-8 (Super. Ct. App. Div. Nov. 18, 2021).

Arguments that an elected official does not meet the IRS common law test for determining whether a worker is an employee or an independent contractor, notwithstanding their inclusion as employees for tax withholding purposes contend that elected officials have complete control over how and when they do the work, cannot be fired, generally have other employment (or other sources of income, if retired), are paid a lump-sum stipend regardless of the amount of time the officials spend on the work, and are free to hire assistants to help in the work at their own expense.

In the context of New Jersey and the Third Circuit, the definition of "employee" under the ACA aligns with federal standards. However, New Jersey courts have historically adopted broad interpretations of "employee" in other contexts, such as under the New Jersey Conscientious Employee Protection Act (CEPA). N.J. Stat. § 34:19-2, D'Annunzio v. Prudential Ins. Co. of America, 192 N.J. 110, Sauter v. Colts Neck Volunteer Fire Co. No. 2, 451 N.J. Super. 581, Safarian v. Am. DG Energy, Inc., 729 Fed. Appx. 168. While this broader interpretation is not directly applicable to the ACA, it reflects the jurisdiction's tendency to consider the functional and economic realities of employment relationships. Courts in the Third Circuit, including New Jersey, have also adopted broader tests for determining employee status under statutes like the

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[1] Firms and workers file Form SS-8 to request a determination of the status of a worker under the common law rules for purposes of federal employment taxes and income tax withholding. Generally, under the common law rules a worker is an employee if the firm has the right to control and direct what will be done and how it will be done.

Fair Labor Standards Act (FLSA).

However, the principles of the 20-factor test, particularly those related to control, remain embedded in the analysis of employment relationships. For example, the New Jersey Superior Court in Petit-Clair v. Bd. of Trs., 2020 N.J. Super. Unpub. LEXIS 1504. emphasized the importance of control-related factors and the IRS's adoption of the "right to control" as the unifying principle of the common law test. Petit-Clair v. Bd. of Trs., 2020 N.J. Super. Unpub. LEXIS 1504.

While elected officials may exercise discretion in performing their duties, their responsibilities are typically prescribed by statutes or ordinances, which significantly limit their autonomy. Although elected officials cannot be "fired" in the conventional sense, they remain subject to removal mechanisms including elections and impeachment, which is analogous to an employer's right to discharge an employee. This chain of accountability to the public or legislative body also reflects a form of institutional control over their tenure. Additionally, elected officials face numerous operational requirements that demonstrate employment-like control, including: mandatory attendance at meetings held at specific times and places; obligations to respond to and remain available for constituents; accountability to fellow officials; restrictions on communication tools (emails, personal devices, etc.); compliance with transparency requirements, as all communications are discoverable and subject to OPRA and other statutes.

The method of payment, such as a lump-sum stipend, does not preclude employee status under the common law test. The IRS and courts have consistently held that the form of payment is only one factor among many in determining employment status. For instance, public officials who receive salaries, even if labeled as "fees," are considered common law employees for Social Security and Medicare purposes.

Finally, in 2014, the Superior court in Bleeker v. Borough of N. Haledon, determined elected officials are considered municipal employees eligible for coverage, and the program mandates that employers pay the premiums for their employees. 2014 N.J. Super. Unpub. LEXIS 2327. The program prohibits requiring elected officials to pay for coverage unless all other municipal employees are similarly required to do so and held that "[t]his statutory framework precludes the enforcement of a reimbursement" ordinance. Ibid.

In conclusion, although council members possess some control, they remain accountable to taxpayers, fellow officials, and the mayor—demonstrating the employment relationship characteristics recognized under applicable legal standards.