

CHAPTER 244
FORMERLY
HOUSE BILL NO. 280
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 214, VOLUME 65 OF THE LAWS OF DELAWARE, AS AMENDED,
RELATING TO THE CHARTER OF THE TOWN OF NEWPORT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Section 3-05, Article III, Chapter 214, Volume 65 of the Laws of Delaware, as amended, by making deletions as shown by strike through as follows:

Section 3-05 Qualifications for Mayor and Commissioners

Any qualified voter of the Town of Newport who is at least twenty-one (21) years of age, who is a United States citizen, who has not been convicted of a felony as that crime is designated by the State of Delaware, who has resided in the Town for at least two (2) years next preceding his/her election, ~~and has currently paid all Town taxes due,~~ shall be eligible to hold the office of Mayor or Commissioner; provided that the "qualified voter" as used herein shall mean a person who is a registered voter at the time his/her nominating petition is filed.

Section 2. Amend Section 3-12, Article III, Chapter 214, Volume 65 of the Laws of Delaware, as amended, by making insertions as shown by underlining and deletions as shown by strike through as follows:

Section 3-12 Meetings of Commissioners

The Mayor and Commissioners shall hold an organizational meeting in the evening of the ~~second Monday~~ third Thursday in April the regular municipal election and shall meet regularly at least once a month thereafter. Additional meetings may be held on a regular, adjourned or special basis, provided notice is given in accordance with the law of the State of Delaware and the rules of the Mayor and Commissioners. Special meetings may be called by the Mayor, or by written request of any two members of the Commission and, whenever practical, upon no less than eight hours notice to each member. All meetings shall be open to attendance by the public, provided however, the Commissioners may recess for the purpose of discussing, in an executive session pursuant to the Sunshine Law of the State of Delaware, or any other matter appropriate for executive session, provided that the general subject matter for consideration is expressed in the motion calling for such session.

The Mayor and Commissioners shall have the same power and authority to enact all ordinances, adopt all resolutions, pass all motions, make all orders and transact all business at any adjourned or special meeting, called as aforesaid as the Mayor and Commissioners has at a regular meeting.

Section 3. Amend Section 3-15, Article III, Chapter 214, Volume 65 of the Laws of Delaware, as amended, by making insertions as shown by underlining and deletions as shown by strike through as follows:

Section 3-15 Organizational Meeting

An organizational meeting of the Commissioners of Newport shall be held on the ~~second~~ third Thursday in April, immediately prior to the regularly scheduled meeting. At the Organizational meeting, the Commissioners, including those elected that day, shall select from amongst themselves one Commissioner, who shall be the presiding officer of the Commissioners and shall be called "Mayor". The Mayor shall have a term of one year. Any Commissioner may vote for himself/herself in the selecting of the Mayor. If the Commissioners are unable to select one of their number as Mayor, then the Mayor shall be chosen by drawing lots from a box.

Section 4. Amend Section 4-03, Article IV, Chapter 214, Volume 65 of the Laws of Delaware, as amended, by making insertions as shown by underlining and deletions as shown by strike through as follows:

Section 4-03 Payment of Taxes

All taxes shall be paid to the Town by the close of business on June 30th, or the next banking day if June 30th falls during a weekend or a holiday, of each year; provided however, the Mayor and Commissioners may provide by Ordinance with a 4/5ths vote, for an earlier due date for payment of taxes so long as such date is not less than ninety (90) days following commencement of the fiscal year. On all taxes paid after June 30th, or such earlier date, so long as such date is not less than ninety (90) days following the commencement of the fiscal year, as

established by Ordinance with 4/5ths approval there shall be paid a penalty at the rate of two percent (2%) per month or fraction thereof for each month unpaid after date due. All tax bills shall be sent out on or before May 15th of each year. Appropriate legal action shall be taken against all delinquent taxpayers whose taxes have become delinquent for a period of two (2) years or more.

Section 5. Amend Subsection C, Section 6-06, Article VI, Chapter 214, Volume 65 of the Laws of Delaware, as amended, by making insertions as shown by underlining and deletions as shown by strike through as follows:

C. Definition of "Capital". For the purpose of this section, "capital" shall be defined as any project or equipment, including any extension or addition thereto or thereof, having a life expectancy in excess of, or to be financed over a period greater than six (6) years, or a value exceeding ~~five thousand dollars (\$5,000.00)~~ twenty-five thousand dollars (\$25,000.00).

Section 6. Amend Section 7-06, Article VII, Chapter 214, Volume 65, of the Laws of Delaware, as amended, by making insertions as shown by underlining and deletions as shown by strike through as follows:

Section 7-06 Alderman and Assistant Alderman

~~The Mayor may appoint, with the advice and consent of three Commissioners, an officer of the Town who shall have the title Alderman. The Alderman may be removed from office by the Mayor subject to the approval of three Commissioners. Any Magistrate or Justice of the Peace serving the State of Delaware may be designated to also serve as Alderman for the Town, but he/she shall not be a Commissioner or the Town Solicitor. In the event that there is no Alderman within the Town, the members of the Town of Newport Police Department are directed to take all violators, except those receiving a voluntary assessment, to the nearest available Magistrate, who is authorized to serve in the capacity of Alderman.~~

~~The compensation of the Alderman shall be fixed by resolution, and unless otherwise provided by the Mayor and Commissioners by resolution, the Alderman shall not retain any fines levied by the Court, but must pay such fines into the Town Treasury within fifteen (15) days of collection. Before entering upon the duties of his/her office, he/she shall be sworn or affirmed by the Mayor, by any one of the Commissioners, or by any Justice of the Peace, to perform the duties honestly, faithfully, and diligently. The Alderman shall have jurisdiction of all violations of ordinances of the Town and of all misdemeanors prescribed by any law of the State of Delaware committed within the boundaries of the Town. The Alderman shall have power and authority to hold for bail, fine or imprison offenders, compel the attendance of persons accused of violation of Town ordinances by service or process either within or without the limits of the Town, compel the attendance of witnesses, and hold or punish for contempt; provided that in the case of a violation of an ordinance, he/she shall impose no fine or penalty in excess of that fixed by the ordinance or law, and shall not commit to prison for a longer term than thirty (30) days in default of the payment of a fine imposed by him/her. If any vacancy shall occur in the office of the Alderman by death, resignation, removal from office, or otherwise, such vacancy may be filled by the Mayor and three Commissioners at any meeting thereafter for the remainder of the term. If any Alderman shall be removed from office by the Mayor and Commissioners as herein provided, he/she shall deliver to his/her successor in office within two days after selection of his/her successor, all books and papers belonging to his/her office.~~

A. Appointment. An Alderman or Assistant Alderman shall be recommended by the Town, appointed by the Governor, confirmed by the Delaware State Senate, and thereafter sworn into Office by the Mayor, and evidence of such appointment shall be recorded at the Recorder of Deeds in New Castle County.

B. Appointment and Reappointment Nomination. When a vacancy occurs in the Office of Alderman or Assistant Alderman, the Mayor and Commissioners of the Town of Newport shall, by majority vote, submit a list of at least 1 qualified candidate and an application to the Governor for consideration of appointment. At least 30 days prior to the expiration date of an Alderman's or Assistant Alderman's term, the Mayor and Commissioners of the Town of Newport shall by majority vote, determine whether or not to recommend reappointment of the Alderman or Assistant Alderman for an additional term. The Town shall submit a letter of recommendation to the Governor for consideration of reappointment, or a letter with at least 1 qualified candidate and an application to the Governor for consideration of appointment.

C. Term of Office. The Alderman and Assistant Alderman shall serve a 2 year term and may remain in office until either reappointed or a successor is duly qualified.

D. Removal. An Alderman or Assistant Alderman may be censured or removed subject to the provisions of Article IV, Section 37 of the Delaware Constitution of 1897 and the Rules of the Court on the Judiciary. An Alderman or Assistant Alderman may also be replaced upon expiration of a term, following Senate confirmation of a new Alderman or Assistant Alderman.

If any Alderman or Assistant Alderman has been removed from office by Senate confirmation of a new nominee or by action of the Court on the Judiciary, he/she shall, within five (5) days of the Senate confirmation or Court on the Judiciary action, deliver to the Mayor all the books and papers belonging to the Town, and shall within five (5) days pay over to the Town of Newport all moneys in his/her hands. Immediately after the receipt of the books and papers belonging to the office of either the Alderman or Assistant Alderman, the Mayor may require the auditor of the Town to make an audit of the books and papers of the official who has been replaced. Upon the neglect or failure to deliver all the books and papers to the Mayor within the time specified by this Charter, or to pay over all of the moneys to the Town of Newport within the time specified, the Alderman or Assistant Alderman, so replaced, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$ 100) for each day that he/she fails to deliver the books and papers to the Mayor or to pay over all moneys to the Town of Newport.

E. Vacancy. In the absence of the Alderman, or when a vacancy occurs in the office of Alderman, the Assistant Alderman shall exercise all the powers, duties, and responsibilities of the Alderman as set forth in this Charter. When a vacancy occurs for an Alderman and there is no Assistant Alderman to act as Alderman, and the Delaware State Senate is recessed for more than 6 weeks, the Town may elect to have a retired Magistrate act as Alderman pending the confirmation of a nominee with the Delaware State Senate. Such retired Magistrate must meet the appointment qualifications of 10 Del. C. Section 9211 (a) to serve in such capacity, and shall receive such compensation as may be established by the Mayor and Commissioners of the Town of Newport. A retired Magistrate acting as Alderman shall have all powers, duties, and responsibilities of the Alderman as set forth in this Charter until session resumes and a successor is duly qualified.

F. Qualifications. Any person appointed to serve as Alderman or Assistant Alderman shall be at least twenty-one (21) years of age, a United States citizen, a Delaware citizen, of good character and reputation, and shall reside within New Castle County, and shall not be a Mayor or Commissioner of the Town of Newport or otherwise an officer or employee of the Town of Newport.

G. Oath of Office. Within 14 days of Senate confirmation the Alderman or Assistant Alderman shall be sworn or affirmed by the Mayor to perform the duties of office honestly, faithfully, diligently, and to support the Constitution of the United States and the Constitution of the State of Delaware, and to uphold and enforce the Charter of the Town of Newport and ordinances duly enacted by the Mayor and Commissioners of the Town of Newport.

H. Duties. It shall be the duty of the Alderman and Assistant Alderman to adjudicate actions brought under any ordinances legally enacted or established by the government of the Town and to carry into effect all legally binding orders and directions of the Mayor and Commissioners of the Town of Newport made pursuant to any law of this State or its Constitution. In carrying out the duties of the office, an Alderman or Assistant Alderman shall comply with the ethical responsibilities required of Aldermen in this state and shall operate the court in accordance with the Criminal Rules of Procedure for the Alderman and Mayor Courts of the State of Delaware.

I. Compensation. The compensation of the Alderman and Assistant Alderman shall be fixed by the Mayor and Commissioners of the Town of Newport and approved in conjunction with the Mayor and Commissioners' adoption of the Town operating budget. If no change is proposed and approved by the Mayor and Commissioners, the previously established compensation rate shall continue in effect until revised by a majority vote of the Mayor and Commissioners. Such compensation shall not be contingent upon or related to the amount of any civil or penal fines imposed or collected through the Alderman Court and shall not be reduced during the term of office.

J. Alderman's Docket. The Mayor and Commissioners of the Town of Newport shall procure suitable records for the use of the Alderman and the Assistant Alderman. Such records shall be known as the "Alderman's Docket". The Alderman and Assistant Alderman shall record all official acts and proceedings in the Alderman's Docket. All criminal matters, but not civil matters, shall be entered into the Delaware Criminal Justice Information System (DELJIS) as required by law.

K. Jurisdiction. The Alderman and Assistant Alderman shall have jurisdiction and cognizance of all breaches of the peace, offenses and violations of any civil or criminal ordinance of the Town committed within the corporate limits. As to such offenses or violations over which they are given jurisdiction by this Charter or by any other law of the State of Delaware, the Alderman and Assistant Alderman shall be authorized and empowered to hold for bail, set bail, impose fines, or imprison, for each offense or violation in accordance with the penalties provided by this Charter, by any Town Ordinance enacted hereunder, or as provided by any law of the State of Delaware; provided however, that the maximum fine which the Alderman or Assistant Alderman may impose shall never exceed the limits established by this Charter.

L. Civil and Criminal Penalties; Costs. Neither the Alderman nor the Assistant Alderman shall impose any penalty in excess of the State Statutory penalty when enforcing the laws of the State of Delaware, as set forth in the Delaware Code, as amended, exclusive of costs, nor imprison any offender for more than thirty (30) days, or both, except as otherwise specifically provided in this Charter or by state statute; but the Alderman and Assistant Alderman may, in addition to any other fine or term of imprisonment permitted to be assessed or imposed, impose and collect such costs as are set by ordinance or resolution of the Mayor and Commissioners of the Town of Newport, provided that when enforcing the laws of the State of Delaware as set forth in the Delaware Code, as amended, no costs shall be imposed which are in excess of that which may be imposed by the Justice of the Peace Court for like service. When imposing penalties for violation of Town of Newport Ordinances, the Alderman and Assistant Alderman may impose such fines and costs as are validly authorized by Town of Newport Ordinances.

M. Monthly Report to Mayor and Commissioner of the Town of Newport. The Alderman and Assistant Alderman shall prepare and submit a written monthly report to the Mayor and Commissioners reporting all fines and penalties imposed during the preceding calendar month and shall pay to the Town of Newport all such fines and penalties at such times as the Mayor and Commissioners shall direct. Neither the Mayor nor the Commissioners may establish or communicate an expected revenue budget for the Alderman Court, notwithstanding the forgoing, the Mayor and Commissioner's may establish in their own budget a line item based upon an estimate using the prior year's activity for financial budgeting only.

N. Alderman Court Facilities and Staff. The Town of Newport shall provide adequate and appropriate facilities and staff to facilitate the independent judicial operations of the Alderman Court. Facilities shall be separate from conflicting town operations, including, but not limited to, police agency functions. The town may house the Alderman Court in a common municipal building, so long as the Alderman's Court is provided space physically separate from other town functions and is further situated in such a manner to foster public confidence in the independence of the Court. Likewise, staff assigned to the Court shall not be shared with conflicting town government operations.

Section 7. Amend Subsection I, Section 9-04, Article IX, Chapter 214, Volume 65 of the Laws of Delaware, as amended, by making insertions as shown by underlining and deletions as shown by strike through as follows:

I. The Town Manager shall have charge and supervision of the streets, gutters, curbs, waterworks, sidewalks, boardwalks, jetties, piers, parks and other administrative affairs of the Town and all work relating thereto; provided however, that nothing contained herein shall create the responsibility for the Town to pay for the sidewalk repairs and maintenance as such matters shall only be governed by a duly adopted Town Ordinance.

Section 8. Amend Section 12-05, Article XII, Chapter 214, Volume 65 of the Laws of Delaware, as amended, by making insertions as shown by underlining as follows:

Section 12-05 Charter Amendments

The Mayor and Commissioners may, by ordinance, provide a procedure by which it may propose to the voters an amendment to this Charter, but said procedure shall, in all respects, comply with applicable State law.

Referendum on such amendments proposed may be held at a regular or special election, as determined by the Mayor and Commissioners by resolution. Amendments to this Charter to be voted on at referendum shall be presented for voting by ballot title. The ballot title may differ from its legal title and shall be a clear, concise statement describing the substance of the proposed amendment without argument or prejudice. Below the ballot title shall appear the following question: "Shall the Above-described Amendment be Adopted?". Immediately below such question shall appear the following words, "YES" and "NO", and to the left of each, a square in which, by making a mark, the voter may cast his/her vote. Votes shall be counted and results determined in the same manner as for Commissioners' election. Amendments receiving a majority of the votes cast on the question shall be processed and adopted in accordance with State Law.

In addition to the forgoing procedure for Charter Amendment by Referendum, as well as procedures established by applicable Delaware law, the Charter of the Town of Newport may be amended by the General Assembly, when properly sponsored and introduced by a member of the General Assembly and which is approved by two-thirds members of each House and signed by the Governor. The Mayor and Commissioners may request such a Charter Amendment from the Delaware General Assembly by Resolution of the Mayor and Commissioners passed by a majority vote after a duly noticed public hearing thereon.

Approved May 21, 2012