

CHAPTER 10
FORMERLY
HOUSE BILL NO. 33

AN ACT TO REINCORPORATE THE CHARTER OF THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES, CHAPTER 196, VOLUME 22, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO AUTHORIZE THE COMMISSIONERS OF LEWES TO APPOINT A BOARD OF PUBLIC WORKS FOR THE TOWN OF LEWES WHICH SHALL ESTABLISH, CONTROL AND REGULATE AN ELECTRIC LIGHT PLANT, WATER WORKS AND A SEWER SYSTEM FOR SAID TOWN; PRESCRIBING THE POWERS AND DUTIES OF SAID BOARD OF PUBLIC WORKS AND PROVIDING FOR THE ELECTION OF THEIR SUCCESSORS".

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

WHEREAS, it is deemed desirable that the Charter of the Board of Public Works of the City of Lewes, being Chapter 196, Volume 22, Laws of Delaware, as amended, be consolidated into one complete Act and in certain respects amended and revised.

NOW THEREFORE:

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 the Charter of the Board of Public Works of the City of Lewes, Chapter 196, Volume 22, Laws of Delaware, as amended, by substituting in its entirety, to read as follows:

“AN ACT TO REINCORPORATE THE BOARD OF PUBLIC WORKS
OF THE CITY OF LEWES

The Mayor and City Council of the City of Lewes, as operator of public utilities through its Board of Public Works of the City of Lewes, is hereby authorized and directed to continue the Board of Public Works of the City of Lewes (‘BPW’) and the BPW is hereby authorized to continue, subject to the jurisdiction, authority and responsibilities provided by this Charter, to establish, to control and to regulate Utility Systems comprised of an electric generation, transmission, and distribution system; water works and distribution system; wastewater collection, treatment facility, and sewer system; storm water drainage system; and other future additional systems and utilities which may be established for the City of Lewes.

SECTION 1—DEFINITIONS.

The following words, terms and phrases, when used in this Charter, shall have meanings ascribed to them in this section:

1. ‘Additional Systems’ shall include, but are not limited to, systems for the purpose of furnishing steam, manufactured gas, natural gas, heat, heating oil, energy generation systems, and wired and wireless telecommunications or other communication services and any other utility system which may be established for the City of Lewes.
2. ‘Board’ shall mean the Board of Directors of the Board of Public Works as established pursuant to this Charter.
3. ‘BPW’ shall mean the Board of Public Works of the City of Lewes.
4. ‘City’ shall mean the City of Lewes, Sussex County, Delaware.
5. ‘Mayor and City Council’ shall mean the Mayor and City Council of the City of Lewes, Sussex County, Delaware.
6. ‘Service Area’ shall mean the corporate limits of the City of Lewes, the territory beyond such limits authorized in this Charter, and any franchised service area.
7. ‘Utility System’ shall mean and include electric generation, transmission, and distribution system; water works and distribution system, wastewater collection, treatment facility, and sewer system; storm water drainage system; and other future Additional Systems and utilities which may be established for the City of Lewes.

SECTION 2—BOARD, ELECTIONS AND APPOINTMENTS; OFFICERS.

2.1. Board. The administration of the Board of Public Works shall be by a Board of Directors. The Board shall be composed of five (5) elected Directors and one ex-officio person appointed by the Mayor of the City. The terms of each Director

shall be for a period of two (2) years commencing at the annual meeting of the BPW following his or her election and continuing until his or her successor is duly elected and qualified.

2.2. Annual Election and Term of Office.

2.2.1. On the second Saturday in May annually, successors to the Directors shall be chosen by the voters, qualified as hereinafter provided. At each of said annual elections the qualified voters shall in like manner elect a Director or Directors to serve for the unexpired term or terms of any Director or Directors whose office shall have been rendered vacant in any manner whatsoever.

2.2.2. The annual election shall be called by the President of the Board.

2.2.3. The Board shall designate the place for the annual election which shall be held on the second Saturday of May of each year from 8:00 o'clock in the morning, prevailing time, until 6:00 o'clock in the evening, prevailing time.

2.2.4. A plurality of votes shall elect.

2.2.5. In the event of a vacancy in the office of a Director of the Board, the President of the Board shall appoint a person holding the same qualifications for Director to fill such vacancy until the next annual election of Directors of the Board. Prior approval of such appointment shall be by a majority of the Mayor and City Council. No appointment of Directors of the Board, either originally or to fill vacancies, shall be made from members of the Mayor and City Council; but no person shall be disqualified for election as a Director of the Board at any annual election by reason of holding the office of Council member.

2.3. Qualifications of Directors of the Board.

2.3.1. A qualified voter who is a resident for at least three hundred sixty-five (365) days next preceding the date of the Annual Election for Directors of the Board.

2.3.2. At least twenty-one (21) years of age on the date of the annual election for Directors of the Board.

2.3.3. No member of the City Council or the Mayor may serve concurrently on the Board and as Mayor or City Councilperson.

2.3.4. Disqualification. If any Director during his or her term of office shall be found guilty of any crime or misdemeanor and sentenced to imprisonment for any term whatever or shall for any reason cease to be a resident, freeholder or leaseholder of the City, he or she shall forthwith be disqualified to act as a Director, and his or her office shall be deemed vacant and shall be filled as aforesaid.

2.4. Filing of Intent to be a Candidate.

No person shall be voted upon as a candidate for the office of a Director of the Board unless he or she shall notify the General Manager of the BPW in writing of his or her candidacy for the office, or five (5) or more persons qualified to vote in the Annual Election may file the name of the candidate for the office of the Director of the Board with the General Manager, provided that the candidate endorses his or her written consent thereon. Such notification shall be filed no later than twenty (20) days prior to Election Day.

2.5. Definition of Freeholder or Leaseholder. For purposes of determining whether a Director of the Board is a freeholder or a leaseholder, the following definitions shall be applicable:

2.5.1. A freeholder shall mean any person who holds fee simple title within the corporate limits of the City and said title is of record in the Office of the Recorder of Deeds, in and for Sussex County.

2.5.2. A resident leaseholder shall mean any person who holds public lands under a valid lease from the State of Delaware or from the Mayor and City Council and who has erected on said land an improvement pursuant to the Charter of the City of Lewes.

2.6. Qualifications of Voters. At the annual election for Directors of the Board, qualifications for voters shall be as follows:

2.6.1. Resident: Every person, male or female, who is a bona fide citizen of the United States and of the State of Delaware and a bona fide resident of the City or on the public lands under the jurisdiction of the City for at least thirty (30) days next preceding the date of the Annual Election; or

2.6.2. Nonresident freeholder or leaseholder: Every person, male or female, who is a bona fide citizen of the United States and who is a freeholder or leaseholder for at least thirty (30) days immediately preceding the date of the Annual Election; or

2.6.3. Other: Every person, male or female, who is a bona fide citizen of the United States and who is a customer of any available utility of the Board of Public Works for at least thirty (30) days immediately preceding the date of the Annual Election; and

2.6.4. At least eighteen (18) years of age on the date of the annual election.

2.7. Voter Registration, 'Books'.

2.7.1. Resident voters shall be registered on the Book of Resident Voters of the BPW. In the case of nonresident freeholders or leaseholders, they shall be registered on the Book of Non-Resident Voters. In the case of other voters, they shall be registered on the Book of Other Voters.

2.7.2. The Book of Resident Voters shall contain the following information: the names of the registered voters arranged in alphabetical order, the address of the voter, acknowledgment of age qualification, the date the voter became a resident and any other pertinent information.

2.7.3. The Book of Non-Resident Voters shall contain the following information: the names of the non-resident voters arranged in alphabetical order, the permanent address of the voter, the local address of the voter, acknowledgment of age qualification, the date the voter became a freeholder or leaseholder of the City and any other pertinent information.

2.7.4. The Book of Other Voters shall contain the following information: the names of the other voters arranged in alphabetical order, the permanent address of the voter, the local address of the voter, acknowledgment of age qualification, the date the voter became a customer of any available utilities and any other pertinent information.

2.7.5. No person shall be registered upon any Book of Voters unless he or she will have acquired the qualifications to vote in the Annual Election for Directors of the Board for the year in which such person registers.

2.7.6. A person shall be required to register only one (1) time; provided, however, that if a registered voter fails to vote in two (2) consecutive Annual Elections in which there is a contest for Directorship on the Board, his or her name shall be removed from the applicable Book of Voters, and notice sent to said registered voter at his or her last known address by registered or certified mail, with return receipt requested, advising that his or her name has been removed from the applicable Book of Voters, and that it will be necessary to register again in order to vote in the Annual Election.

2.7.7. The Books of Voters shall be maintained in the Office of the General Manager of the BPW and shall be conclusive evidence of a right of any person to vote at the Annual Election.

2.7.8. A person may register at the Office of the BPW during the regular business hours of such office until the close of business of such office on the 15th day prior to the date of the Annual Election for Directors of the Board by completing such forms as may be required.

2.7.9. The Board may provide by resolution for the BPW's office to be open on one (1) Saturday and/or one (1) evening within the thirty (30) day period immediately preceding the date of the Annual Election for the purpose of permitting persons to register to vote in such Annual Election.

2.8. Absentee Ballot. The City Council may, by Ordinance, provide for any voter registered to vote in the Annual Election for a Director of the Board to cast an absentee ballot if such person is unable to appear and cast his or her ballot in person. The BPW shall comply with the provisions of such Ordinance in its Annual Election.

2.9. Manner of Holding Annual Election. The procedure for holding the Annual Election shall be as follows and the Board may refer for guidance to the State of Delaware Election Law for Municipalities, Title 15, Chapter 75, Subchapter IV of the Delaware Code.

2.9.1. The Annual Election shall be conducted by a Board of Election consisting of an Inspector and two (2) Judges together with such alternates and other election officials as are determined by the President of the Board to be necessary, all of whom shall be appointed by the President of the Board with the concurrence of a majority of the Directors of the Board at a regular meeting of the Board prior to the date of the Annual Election. The Board of Election shall determine who is and who is not entitled to vote thereat, taking reasonable steps to see that the law pertaining to the Annual Election receives compliance and for the purpose of counting the votes and certifying the result to all the Board. The Board of Election shall keep a list of all persons who vote at such Annual Election.

2.9.2. In the event that no person files or is nominated for each office for which an election is to be held within the time set forth in this Charter, the incumbent shall be deemed to be re-elected for a full term, and it shall not be necessary to hold an election.

2.9.3. In the event that only one (1) person files or is nominated for each office for which an election is to be held within the time set forth in this Charter, the person who files or who is nominated shall be deemed to be elected for a full term, and it shall not be necessary to have an election.

2.9.4. No person other than the Board of Election, election officials and others permitted by state law, and persons actually voting shall be admitted within the voting place without the consent of the Inspector.

2.9.5. Each candidate may appoint some suitable person to act as a challenger who may be within the voting place. Each challenger shall be protected in the discharge of his or her duty by the Board of Election.

2.9.6. No person other than the Board of Election, election officials and others permitted by state law, shall remain within fifty (50) feet of the entrance to the building except for the purpose of offering his or her vote; provided, however, that a physically-handicapped person shall be permitted to bring into the election room an elector or two (2) electors if the nature of the disability, in the opinion of the Inspector, such as total disability to walk to the election room, requires it in order to render the necessary assistance.

2.9.7. No person shall electioneer or engage in any political discussion within the building during the hours of election or during the counting of the ballots.

2.9.8. No more than one (1) person shall be permitted to occupy any voting booth at any one time except as otherwise provided in this Section.

2.9.9. No person shall remain in or occupy a voting booth longer than is necessary to prepare his or her ballot and in no event longer than three (3) minutes.

2.9.10. Upon the close of the election, the votes shall be read and counted publicly and the persons having the highest number of votes shall be declared to be elected.

2.9.11. The Board of Election shall enter in a book to be provided for that purpose minutes of the election containing the names of the persons so elected. They shall subscribe the same and shall make and deliver to the person elected certificates of their election. The book containing such minutes, the ballots and the list of those persons who voted shall be secured by the Board of Election who shall preserve the same and shall be evidence in any court of law or equity.

2.9.12. If two (2) or more candidates for the office of Director of the Board shall receive an equal number of votes so that there shall not be an election of a Director, the incumbent Director shall continue in Office until the runoff election as herein provided is held. The Board of Election shall declare the election a tie and shall report that result to the Board which shall, within twenty (20) days after receipt of the report of the Board of Election, hold a Special Election between those candidates where a tie resulted under the same rules as hereinbefore set forth. No person shall be

permitted to register to vote following the Annual Election and before the Special Election in order to vote at the Special Election.

SECTION 3: ORGANIZATION.

The Board of Directors, at its annual meeting, held in the same month as the election but not less than seven (7) days after the election, shall swear in newly-elected Directors and organize by the election, from among the Directors of the Board, of a President, Vice-President, Secretary, Treasurer and Assistant Treasurer, each to serve for one (1) year and until their successors are chosen. Directors of the Board may receive pay or emolument, and be allowed compensation for his or her services and for expenses incurred while executing official duties. The Board shall meet at a date and time it may establish. The Board may establish its rules of procedure. It shall be the duty of the Vice President to preside at all the meetings of the Board of Directors in the event that the President is unable to preside, and to perform such other duties and have such other powers of the President as are prescribed in this Charter or in any rules of procedure established by the Board in the event that the President is unable to serve.

SECTION 4—POWERS AND DUTIES.

4.1. The BPW shall have the supervision and control of all the utility systems, and private sanitary sewerage, storm water drainage, water, and electric systems, as established or to be established within the Service Area, and may alter, condemn, repair or remove the same, and may cause new facilities for the utility systems to be made and opened. The BPW may cause any such utility systems to be laid, in its sound discretion, anywhere within the Service Area and in, on or over any of the streets, rights of way, lanes or alleys of the said City and Service Area in such manner and under such terms and conditions as the BPW deems proper and of such material as the BPW may deem proper, and may make proper outlets for the sewer and drainage into any of the streams, creeks, ponds, canals or other waters within the limits of the City or into the Delaware Bay or any of its tributaries or estuaries from any property within the corporate limits of the City; and for the purpose of improving the sewerage and drainage of the City may enter upon and deepen any part of the channel of said waterways, subject to applicable federal and state law.

4.2. The BPW may, in its discretion, manage and operate, as the sole provider or in conjunction with any person, firm, association, corporation or entity, one or more utility systems within its Service Area. The BPW shall have the power to enter into contracts in its name.

4.3. The BPW shall pay to the City a minimum of two percent (2%) to a maximum of five percent (5%) of the monthly adjusted revenues for utility services (gross revenues for utility services less adjustments made to customer accounts), in lieu of franchise fees, no later than thirty (30) days after the utility bills are mailed to customers each month. The City shall pay monthly out of the general fund of the City to the BPW for utility services, including street lighting, such sum as the BPW may prescribe by tariff.

4.4. The BPW shall make rules regulating the public utility systems and the tapping of public electric distribution, water mains and pipes, sewers, drains, and any other utility established by the Board of Public Works, by the owners of abutting lands and shall provide for the granting of permits for the same and for the payment of such tapping or other fees, including but not limited to front-foot assessments, impact fees, and rents, as the Board may deem proper, and it shall prescribe the material of all such private electric lines, water mains and pipes, sewers, storm water and/or drainage systems, or other utility which shall hereafter enter into any public utility system, and shall direct the manner in which they shall be laid or installed.

4.5. The BPW is hereby authorized and empowered to do all things necessary for the location, erection, construction, equipment, maintenance and operation of its utility systems as established by the BPW and to provide for the care and maintenance of the same, and to purchase machinery, equipment, and all such apparatus as may be necessary for the purpose of establishing such utility plants or facilities and, to effect this object, shall have the power to lay pipes or other apparatus under or along any public right-of-way, street, land or alley of said City and Service Area or any public roads adjacent thereto.

4.6. The BPW may sell its products and services to public and private persons, firms, associations, corporations or entities.

4.7. The BPW is hereby authorized to acquire by gift, devise, purchase, exchange or any other method of acquiring real property or any estate, interest, or right therein, provided that such acquisition shall not be made through an exercise of the power of eminent domain.

4.8. Whenever the BPW shall deem it necessary and expedient to acquire lands, easements or rights-of-way for any purpose connected with the utility systems, plants or facilities, and such lands, easements or rights-of-way cannot be acquired by agreement between the owner or owners thereof and the BPW, the Board shall direct its Secretary to notify the Mayor and City Council, and thereupon the said Mayor and City Council shall take such lands for the purpose or purposes aforesaid in the same manner and subject to the same conditions and proceedings as are or shall be from time to time provided by law for condemning and taking lands for the purpose of laying out and opening new streets in said City. No petition or application of citizens shall be necessary, but the notice as aforesaid from the Secretary of the BPW shall be ample authority to the Mayor and City Council to proceed as herein provided.

4.9. The BPW may enter into contracts and agreements with any public or private person, firm, association, corporation or entity both inside and outside the boundaries of the City and the State:

4.9.1. For joint use of property belonging either to the BPW or to the other contracting party or jointly to both parties; and

4.9.2. For the joint acquisition of real and personal property, rights, and franchises, and the joint financing, construction and operation of plants, transmission and distribution lines and other facilities.

4.10. The BPW may enact and adopt such rules and regulations as the BPW deems proper in order to supply utilities or regulate the connection and/or access of public utility services or facilities by owners or lessees of abutting properties. Such rules and regulations as shall be adopted in conformity with the provisions of this Charter shall be printed and kept in the office of the BPW for distribution to persons or corporations that make application to connect with, lay or repair any public or private utility system as aforesaid.

4.11. The BPW shall fix rates, assessments, and fees for utility systems. Rates shall be competitive, fair, reasonable, compensatory, and with no undue preference or discrimination. Such rates shall be sufficient to provide for conducting and operating the said utility systems and for payment of debt service incurred pursuant to this Charter. The BPW may require reasonable deposits as security for the payment of charges for utility services and may provide for the return of deposits when satisfactory consumer credit has been established.

4.12. All utility rents, fees, rates, or assessments laid, imposed or assessed by the BPW for the City remaining unpaid and in arrears for thirty (30) days after they become due, shall be and constitute a lien of five (5) years upon the premises (whether leasehold rights or fee simple title in real estate) to which the utility facilities were connected, or, in the case of front-footage assessments, upon the properties subject to such assessments as hereinafter provided, and all such liens shall have preference and priority to all liens of recognizance, mortgage and judgment on such premises, created or suffered by said owner, although such other lien or liens shall be of a date prior to the time of the attaching of such lien for utility rents, fees and assessments. In case of the sale under execution process of any lands and premises or leasehold interests upon which such liens for utility rent, fees, rates, and assessments shall exist, such lien shall be transferred to the fund arising from such sale in the hands of the officer making the same and the said real estate or leasehold interest so sold shall be discharged therefrom.

4.12.1. The lien of any assessment for repayment of long term debt shall remain a lien for a period of as long as the term of the underlying debt and no longer, dating from the expiration of thirty (30) days after the date on which said assessment becomes due and payable.

4.12.2. The BPW shall have the authority to require any or all premises within the corporate limits of the City or Service Area, to be and to remain connected to the municipal utility systems. In any instance in which the owner has refused or failed to make the connection within one hundred twenty (120) days after formal notice from the BPW ordering the property to be connected, the BPW shall have the authority to cause the said connection or connections to be made and to assess all of the expense thereof upon the premises in question. All such costs for tapping fees and

connection shall be and constitute a lien upon the premises, dating from the date on which the said work was completed, the lien to be and to endure in accordance with the terms of the provisions applicable to sewer rents, fees, and rates.

4.12.3 Liens on real property for the non-payment of utility rents, fees, rates, assessment charges or any other charge, or fee imposed pursuant to this Section may be recorded in the Office of the Recorder of Deeds, in and for Sussex County, in the following manner. A certificate signed by the President of the BPW attested by the General Manager of the BPW and under the seal of the BPW shall be prepared, containing therein the name of the owner or lessee of the real property and the last known post office address of the said owner or lessee, a description of the property subject to the lien sufficient to identify it, an itemization of the fees or charges constituting the lien, the amount of the fees or charges in arrears and the year or years for which the fees or charges were levied, the date from which interest is to be calculated, and the date when an itemized bill of such fees or charges was sent to the said property owner or lessee. The certificate, when completed, as aforesaid, shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County in the Mortgage Records of the said County and shall be properly indexed by the Recorder. If the said Certificate is recorded, the amount of any fees or charges together with any interest or penalty shall be collected by foreclosure of the lien in the same manner and by the same procedure and subject to the same Rules of the Superior Court relating to pleading and practice as are provided for the foreclosure of a mortgage on real property, or, in the alternative, the BPW may use the monition method used for collection of such rents, fees, rates, assessment or other charge as established for Sussex County and authority is hereby established for it to do so and with the same costs and charges, together with a collection charge not to exceed five per centum (5%) of the amount of the lien with interest.

4.13. All revenues from utilities shall be directed to the provision of utility services and not applied to the general fund of the City, unless the transfer of revenues constitutes a payment of a fixed rental or in lieu of franchise fees or taxes. Any shared BPW/City funds or services shall be accounted for directly and explicitly.

4.14. Borrowing:

4.14.1. Subject to applicable State laws and the City's Charter, the BPW may authorize the issuance and sale of revenue bonds or other types of indebtedness necessary to finance the acquisition, construction, and improvements for the utility systems and facilities including facilities owned or operated jointly with others.

4.14.1.1. The Board shall have the authority to borrow money and issue bonds or certificates of indebtedness and to secure the payment thereof by pledging the revenues derived from the operation of any project for which bonds are issued pursuant to this Section. The Board shall obtain the prior consent of the Mayor and City Council for such borrowing.

4.14.1.2. The funds derived from the sale of bonds issued pursuant to this Section may be used for the acquisition, construction, reconstruction, repair, alteration, improvement, extension, financing or refinancing of any utility system and equipment therefor, including transaction costs, redemption premium, interest during construction and working capital for the project, provided that the issuance of such bonds pursuant to this Section shall not constitute a debt of the City nor a pledge of its credit or taxing power and the bonds shall contain on the face thereof a statement to the following effect.

'Neither the faith and credit nor the taxing power of the City of Lewes is pledged to the payment of the principal of, premium, if any, or interest on this bond, nor is the City of Lewes in any manner obligated to make any appropriation for payment thereof.'

4.14.1.3. All bonds issued pursuant to this Section shall be deemed to be legal investments by any bank, trust company, insurance company, executor, administrator, curator, trustee or any other fiduciary.

4.14.1.4. The interest on any bonds issued pursuant to this Section shall be exempt from all taxation by the State of Delaware or by any political subdivision or agency thereof.

4.14.1.5. The bonded indebtedness to be issued pursuant to this Section shall not at any time exceed in the aggregate the total sum of two (2) times the net assets of the BPW, and the indebtedness created by any

bonds issued pursuant to this Section shall not be used in computing the maximum bonded indebtedness which may be created by the City pursuant to its Charter, nor shall the City be required to levy taxes to pay the principal of or interest on any bonds issued pursuant to this section.

4.14.1.6. The bonds to be issued pursuant to this Section shall be authorized by resolution of the Board which shall determine that the issuance of such bonds shall be in the best interest of the BPW. The bond shall bear such date or dates, mature at such time or times not exceeding forty (40) years from their respective dates, bear interest at a rate or rates per annum, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America, at such place or places and be subject to such terms of redemption, as such resolution or resolutions may provide. Bonds of the BPW issued by the Board pursuant to the provisions of this Section may be sold at either public or private sale at such place and interest rates as may be determined by the Board.

4.14.1.7. Any resolution or resolutions authorizing any bonds or securing any issue of bonds may contain provisions which shall be part of a contract with the holders of the bonds thereby authorized as to any matter relating to the repayment of the bonds, the security therefor, the operation of the project and any other matter or course of conduct that affect the foregoing.

4.14.1.8. Neither the Board nor any person executing the bonds or other obligations shall be personally liable on the bonds or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof.

4.14.1.9. In the discretion of the Board, the bonds may be secured by a trust indenture by and between the Board and a corporate trustee which may be any trust company or bank having the powers of a trust company. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be determined by the Board.

4.14.2. The BPW shall have the power to borrow temporarily from time to time on the anticipated revenues of the BPW in order to provide for the expenses of maintenance, replacement and operation of the utility systems. Such sum or sums shall not exceed the average revenue of the BPW for the preceding twelve (12) month period in any one (1) fiscal year, when, in the opinion of a majority of the Board, the needs of the BPW demand it. The Board may secure said sum or sums of money so borrowed by promissory notes of the BPW and attested by the Secretary, either with or without the seal of the BPW affixed as is requested by the bank or person advancing the money on said notes, and no officer or Director shall be personally liable for the payment of such notes because they are signed by them as officers of the BPW and are authorized by resolution of the Board; provided, however that any sum of money borrowed on the faith and credit of the BPW, as aforesaid, in any fiscal year shall be paid out of the revenue of the BPW, at the minimum rate of ten percent (10%) per fiscal year and shall be completely paid at the end of ten (10) fiscal years following the first fiscal year which said money was borrowed with interest thereon.

4.14.3. Use of general obligation bonds shall require approval by the Mayor and City Council and shall be subject to the procedures of the City's charter.

4.15. The BPW may authorize reasonable expenditures to acquaint the public with the policies, operations, programs and plans of the BPW.

4.16. The BPW may invest surplus funds of the BPW in securities that are safe and authorized pursuant to the BPW's investment policies and by Board resolution.

4.17. The BPW, in addition to the reports and accounting it may otherwise be required by law to make, shall forward to the Mayor and City Council its annual financial report which shall include a balance sheet and a statement of operations, showing the financial condition of the BPW, prepared according to generally accepted public utility accounting principles. The funds and accounts of the BPW shall be audited annually by a certified public accountant, and shall be open to public inspection. The BPW

shall also annually prepare a budget forecast for the next fiscal year and furnish a copy to the Mayor and City Council. The fiscal year of the BPW shall be the same as that of the City.

4.18. While the Board must retain certain powers to itself, i.e. budget approval, rate setting and long-term indebtedness, it may from time to time delegate in writing other powers to officers or employees responsible to it, as necessary.

4.19. It shall be unlawful for the BPW to make or enter into any contract in excess of the amount established by State law, City charter or ordinance for materials, supplies, work or labor for the benefit and use of the BPW with any Director of the Board, member of City Council or the Mayor or with any partnership in which any Director of the Board, member of City Council or the Mayor is a general partner or with any corporation in which any Director of the Board, member of City Council or the Mayor is a director or controlling stockholder or with any firm or company which any Director of the Board, member of City Council or the Mayor is pecuniarily interested, provided that if all the disinterested Directors of the Board shall vote to enter into such contract, then the Board may enter into such a contract. Any such contract executed without such unanimous vote shall be absolutely null and void.

4.20. The BPW is hereby authorized and permitted to supply utility services of any utility system to those properties which are located within two (2) miles of the corporate limits of the City as presently constituted or hereafter extended under such terms and conditions as the Board shall deem proper. The Board is hereby authorized and permitted to enact and adopt such rules and regulations as the said Board may deem proper in order to supply said utility services.

4.21. Any property, real or personal, tangible or intangible, purchased with funds of the BPW shall be titled in the name of the BPW and, for real property, shall also be titled jointly with the City.

SECTION 5—ENFORCEMENT.

The BPW is authorized to provide for penalties for violations of its rules and regulations, not exceeding One Thousand Dollars (\$1,000.00) per violation for each day of violation, as well as the BPW's costs and expenses, including its reasonable attorney's fees, which penalties may be imposed and collected by the BPW administratively or in a court of competent jurisdiction, and to provide that such fine or penalty may be applied to each and every violation for each and every day of violation. However, before such penalty may be imposed administratively, there shall be notice and an opportunity to be heard afforded the alleged violator. Such procedures shall be adopted as rules and regulations of the BPW.

SECTION 6—ADMINISTRATION.

6.1. The Board is authorized to appoint a general manager and regulate his or her duties, and shall provide for such other employees as may from time to time be necessary

6.2. The Board is authorized to engage the services of agents and servants as the said Board may deem proper and necessary for the work herein devolved upon it.

SECTION 7—INDEMNIFICATION.

7.1. Indemnification; Defense to be Provided. The BPW shall indemnify, from the general funds of its treasury, to the extent not otherwise covered by the appropriate insurance, any person who is a party to or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigate (other than an action by or in the right of the BPW itself), by reason of the fact that he or she is or was a Director or other duly elected or appointed Board official or arising out of actions taken by each or any of them in connection with the performance of their official duties, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such actions, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the BPW, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Board of Public Works and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

7.2. Monetary Settlement To Be Approved. In the event of a monetary settlement, the Board shall first approve the amount and terms of the settlement before the right to indemnification shall vest.

7.3. Determination of Board. Indemnification, as provided in this chapter, shall be made by the Board only as authorized in the specific case upon a determination that indemnification of the BPW and/or officer or official is proper in the circumstances because he or she met the applicable standards of conduct set forth above. Such determination shall be made:

7.3.1. By a majority vote of a quorum of the Board consisting of the Directors who were not parties to such action, suit or proceeding; or

7.3.2. If such a quorum is not obtainable, by independent legal counsel in a written opinion.

SECTION 8—ACTIONS OR SUITS.

No action, suit or proceeding shall be brought or maintained against the City on behalf of the BPW for damages, either compensatory or punitive, on account of any physical injury or injuries, death or injury to property by reason of the negligence, simple, gross, willful or wanton conduct of the said Board, or any of its divisions, officers, agents, servants or employees thereof, unless the person by or on behalf of whom such claim or demand is asserted, within one (1) year from the happening of said injury or the suffering of such damages shall notify the President of the Board and the Mayor of the City in writing of the time, place, cause, character and extent of the injury sustained, so enrolled or damages suffered. Such notice shall be directed to the President of the Board and the Mayor of the City by certified mail with return receipt requested and postage prepaid.

SECTION 9—SURVIVAL OF POWER AND VALIDATING SECTION.

9.1. This Charter shall operate to amend, revise and consolidate an Act, entitled: An Act To Authorize the Commissioners of Lewes to Appoint a Board of Public Works for the Town of Lewes Which Shall Establish, Control And Regulate an Electric Light Plant, Water Works And a Sewer System For Said Town; Prescribing the Powers and Duties of Said Board of Public Works and Providing For The Election Of Their Successors” being Chapter 196, Volume 22, Laws of Delaware, and the various amendments and supplements thereto, and to repeal all such parts of said Act and its amendments and supplements as are manifestly inconsistent with the provisions of this Charter.

9.2. All powers conferred upon or vested in the Board of Public Works of the Commissioners of Lewes by any Act of Law of the State of Delaware not in conflict with the provisions of this charter are hereby expressly conferred upon and vested in the Board of Public Works of the City precisely as if each of the said powers was expressly repeated in this Charter. All resolutions and regulations adopted by the Board of Public Works and in force at the time of the approval of this Charter shall continue in full force and effect until the same or any of them shall be repealed, modified or altered by the Board of Public Works under the provisions of this Charter; all the acts and doings of the Board of Public Works or any officers or employees of the Board of Public Works, lawfully done or performed under the provisions of any law of this state or of any ordinance of the City or any rule or regulation of the said Board of Public Works, prior to the approval of this Charter, are hereby ratified and confirmed.

9.3. All debts due from the BPW shall be deemed due and the same shall remain unimpaired until paid; and the power right and authority to collect rents, assessments, and fees imposed under the provisions of this Charter, and the processes which may be employed hereunder, shall be deemed to apply and to extend to all unpaid rents, assessments and fees imposed under the Charter of the Board of Public Works established by the Commissioners of Lewes and all amendments and supplements thereto.

9.4. The bonds given by or on account of any official of the BPW shall not be impaired by or affected by the provisions of this Charter, but the BPW shall succeed to the benefits of said bonds.

9.5. All valid rules and regulations, acts and resolutions heretofore passed relating to or concerning the BPW or authorizing the borrowing of money or relating to the issuance of bonds relating to the payment thereof by the BPW shall be and remain valid and good as heretofore and be unaffected and unimpaired by this Charter.

9.6. The Mayor and City Council shall have no authority to cease to operate, or to sell, lease, abandon, or in any other way dispose of any public utility owned by it, without first holding a public hearing during which the City’s financial advisor shall present a report to the Mayor and City Council concerning the revenue that has been earned by the BPW throughout the

City's ownership and an analysis of the revenues to be lost by the City through the proposed sale of the utility. There shall be two (2) Council votes at least 12 months apart to call a referendum election concerning sale of the utility. The City will hold a referendum election which must be passed by a majority of the voters, qualified as for a Board election, voting at the election, to approve said sale.

9.7. If any part of this Charter shall be held unconstitutional, such holding shall not in any way invalidate the remaining provisions of this Charter. This Charter shall be deemed and known to be a public act.

9.8. Effective Date of this Charter. The Charter shall take effect one hundred and twenty days (120 days) from and after its passage.”.

Approved April 09, 2009