

LAWS OF DELAWARE
VOLUME 83
CHAPTER 43
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 84
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND THE CHARTER OF THE TOWN OF SOUTH BETHANY RELATING TO TOWN COUNCIL, MUNICIPAL ELECTIONS, AND ORGANIZATION OF TOWN COUNCIL.

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 §C-5 of the Charter of the Town of South Bethany by making deletions as shown by strike through and insertions as shown by underline as follows:

5. Town Council.

~~5.1~~ Governing Body. The government of the Town and the exercise of all powers conferred by this Charter, except as otherwise provided therein, shall be vested in and exercised by a seven (7) member Town Council composed of a Mayor and six (6) other members, each of whom shall be elected by popular vote as hereinafter provided.

~~5.2~~ Qualifications.

~~5.2.1~~ General Qualifications. A candidate for the office of Town Councilmember or Mayor shall be a natural person at least twenty-one (21) years of age, a citizen of the United States, and otherwise qualified to vote at the annual municipal election as provided in 6.1. No candidate for the office of Town Councilmember or Mayor shall have been convicted of a felony or a crime of moral turpitude.

~~5.2.2~~ Resident and Non-resident Members. At least four of the seven members of the Town Council must be residents of the Town, but all may be residents of the Town. a. Resident Members. Any person who, on the date of the filing of notice of intention to run (or on the date of his/her appointment to fill a vacancy) qualifies as a "resident" of the Town (as that term is defined in Section 6.1.d.(2)(b) hereof) and certifies his/her intention of remaining a "resident" of the Town, shall be deemed to be a "resident" Town Council member upon taking office, whether or not such person is also a "freeholder" in the Town (as that term is defined in Section 6.1.d.(2)(a) hereof); and if such person subsequently fails to maintain residency in the Town, but continues to be a "freeholder" in the Town during his/her term of office, that person shall continue to be deemed a "resident" member of the Town Council. b. Non-resident Members. Any person who, on the date of filing of the notice of intention to run (or on the

date of his/her appointment to office in the case of a vacancy) is not a "resident" of the Town but is a "freeholder" shall be deemed to be a "non-resident" member of the Town Council. If such "non-resident" member of the Town Council subsequently establishes residency in the Town during his/her term of office, that person shall continue to be deemed to be a "non-resident" member of the Town Council; provided however, that if any "non-resident" member shall, during his/her term of office, cease to be a "freeholder" in the Town, that person shall be deemed to have vacated his/her office by reason of that fact, regardless of whether or not that person has also become a "resident" of the Town. Each Councilmember shall continue, throughout his/her term of office, to be either a resident or freeholder as described above.

5.2.3 Requirements for Mayoral Candidates. A candidate for the office of Mayor shall qualify as a "resident" of the Town as that term is defined 6.1(d) hereof, at the time of the election. The Mayor shall remain a resident of the Town throughout his/her term of office.

5.2.4 Term Limits. No person having served three (3) consecutive terms (or portions thereof) as Mayor shall serve as Mayor for the term immediately following his/her third consecutive term (or portion thereof).

5.2.5 Council to Act as Final Judge. The Town Council, by majority vote of its disinterested members, shall be the sole and final judge of the qualifications of its members and shall interpret and apply the standards set forth in this Charter.

5.3 Term of Office, Staggered Terms

5.3.1 Term of Office. The term of office for each member of the Town Council shall be two (2) years.

5.3.2 Staggered Terms. The present Mayor and Council members of the Town of South Bethany, and other officers appointed to serve in the office under Chapter 78, Volume 67, Laws of Delaware, as amended, shall continue to serve as Council members and Officers of the Town from and after the effective date of this Charter, until the successors are duly elected or appointed. At the annual Town election in 1995, three (3) Council members shall be elected to fill the vacancies created by the expiration of the terms of Office of the four (4) then-outgoing Council members. At the annual Town election in 1996, the Mayor and three (3) Council members shall be elected to fill the vacancies created by the expiration of the terms of office of the three (3) then-outgoing Council members. Thereafter, the Mayor and three (3) members of the Town Council shall be elected in even years and three (3) members shall be elected in odd years.

~~5.4 Prohibition of employment with Town. Neither the Mayor nor any member of the Town Council shall be employed by the Town in any capacity during their term of office.~~

Section 2. Amend §C-6 of the Charter of the Town of South Bethany by making deletions as shown by strike through and insertions as shown by underline as follows:

6. Municipal Elections.

~~6.1 Voter qualifications. Any natural person shall be qualified to vote in any annual municipal election, special election or referendum who, on voting day shall: (a) have attained eighteen (18) years of age; (b) be a citizen of the United States; (c) shall be registered under the Town's Voter Registration ordinance (if one be in effect); and (d) Have been one of the following: (1) A freeholder in the Town, as defined herein, for a period of ninety (90) consecutive days immediately preceding the date of the election. A "freeholder" shall be deemed to include any natural person who holds title of record either in his/her own name or as trustee to a fee simple estate or a life estate in and to real property located within the corporate limits of the Town. (2) The spouse of a freeholder whether their name is on the deed or not. (3) A resident of the Town. A "resident" shall mean any natural person who has been physically residing within the corporate limits of the Town for at least nine (9) months, consecutively or nonconsecutively, of the twelve-month period immediately preceding the date of the election, and who is physically residing within the Town on the date of the election. (4) Provided, however, anything herein to the contrary notwithstanding, not more than eight (8) persons per property shall be entitled to vote either as a "freeholder" or as the spouse of a "freeholder" under subparagraphs (1) and (2) immediately preceding.~~ 6.1.1 Determination of Voter Eligibility. The Board of Elections is responsible to determine voter qualifications as prescribed in this Charter, as provided in Sec. 6.1.

6.2 Voter Registration. The Town Council may, by ordinance, provide for the registration of voters and may prescribe registration and voting places. Such ordinance shall not alter the qualifications of voters as defined in this Charter nor unduly impair the right to vote in any election. 6.3 Uncontested Election. Where there is only one (1) official candidate for any office on the day of the annual municipal election, the official candidate shall be deemed elected thereto without the holding of such an election. 6.4 Annual Municipal Election Procedures. (a) Notice of Candidacy. In order to be listed on the ballot for election of Mayor and other Town Council Members, each candidate shall file a written notice of intention to seek such office with the Town Manager during normal business hours at least forty five (45) days prior to the date set for the election. If the Election Board (Sec. 6.4.(g)) determines

~~that any candidate may not meet the qualifications for office, it shall notify the Mayor who shall call a special meeting of the Town Council to be held not less than thirty (30) days prior to the date set for the election, at which the Town Council shall decide the matter. The candidate whose qualifications are at issue shall be notified, by registered mail, of the date, time and place of the meeting, at which he or she may appear and testify. If the Town Council determines that the candidate does not meet the qualifications of office, it shall reject the notice of intention to seek office and his or her name shall not appear on the ballot. In making the determination, only those members of the Town Council who are not running for re-election shall be entitled to vote on the question. (b) Date, Time, and Place. Annual municipal elections for the Town Council shall be held on the last Saturday before the last Monday in May at such time and place, within the Town, as shall be determined by the Town Council. The polls shall remain open for at least a six (6) hour period to be determined by the Town Council. (c) Notice of Elections. Public notice of any election to elect members to the Town Council shall be given by posting notices thereof in at least five (5) public places in the Town not less than thirty (30) days before the date of such election and by publishing notices at least once in two (2) newspapers of general circulation in the Town at least thirty (30) days before the date of the election. Such notices shall state the date, time, and place of the election as well as a description of the offices to be filled. Such notices shall be in bold print or bordered in black in such manner as to call attention thereto. In the event that the publications and/ or posting do not appear on the same date, the date of the last publication or posting shall control. (d) Voting Machines, Paper Ballots. Elections shall be by voting machine, electronic voting system, or by paper ballot as the Town Council shall determine; provided, however, that voting machines or electronic voting systems shall be used if required by State law. (e) Absentee Voting. Any qualified voter may vote by absentee ballot at any election. (f) Rules Governing Conduct of Elections. The Town Council shall adopt rules, consistent with the provisions of this Charter, and with applicable state or federal law governing the conduct of elections, including absentee voting. (g) Election Board. Every election shall be held under the supervision of an Election Board. The Election Board shall consist of three (3) Judges of Election. Such Judges shall be qualified voters of the Town and shall be appointed for that purpose by the Town Council at least ninety (90) days before such election. If, at the opening of the polls, there shall not be present any member of the Election Board, in such case, the ranking Town officer available at the opening of the polls shall appoint a qualified voter or voters to act as a member or members of the Election Board to fill vacancies caused by such absence. Members of the Election Board shall be the sole and final judges of the conduct of the election, the legality of the votes offered,~~

~~and the election results. The Election Board shall have the power to subpoena persons and records relative to the determination of the qualifications of voters and the legality of any vote or votes offered. (h) Election Results. Upon the close of such election, the votes shall be counted by the Election Board. The persons having the highest number of votes shall be declared by the Election Board to be duly elected to such vacant offices as then exist. Persons holding office shall continue in office until their successors are duly elected and installed. (i) Tie Vote. In the event of a tie vote for any office, the election to such office shall be determined by a run-off election within thirty (30) days pursuant to the election procedures of this Sec. (j) Preservation of Records and Ballots. The custody of election records and all ballots cast shall be maintained in the Town Office for a minimum period of six (6) months. (k) Election Record Book. The Election Board shall enter in an Election Record Book the complete results of the election, to be subscribed by all Election Board Members. Such Book shall be preserved by the Town Council. (l) Compliance with state laws. The Town's municipal elections shall hereby be conducted in accordance with the state laws governing municipal elections found in Title 15 of the Delaware Code Chapter 75 ("Municipal Elections"), as it may hereafter be amended from time to time, or any future corresponding provisions of law, and the Town shall implement the election provisions found in this Charter in accordance with the same state laws governing municipal elections. 78 Del. Laws, c. 324, § 1~~

6.1. Compliance with State Law.

6.1.1 The Town of South Bethany shall not adopt any ordinance, nor shall this Charter be interpreted in any manner that is contrary to any mandatory provisions of Delaware Code, Title 15, Chapter 75 Municipal Elections, Subchapter IV and V.

6.1.2 Compliance with state laws. The Town's municipal elections shall hereby be conducted in accordance with the state laws governing municipal elections found in Title 15 of the Delaware Code Chapter 75 Municipal Elections as it may hereafter be amended from time to time, or any future corresponding provisions of law.

6.2 Notices, Posting, Publishers, Deadlines and Election Calendar

6.2.1 Notice of Solicitation of Candidates. For each election of members of the Town government, the Town shall post a Notice of Solicitation of Candidates conspicuously within the Town and on the Town website, at least twenty (20) days prior to the candidate filing deadline for the offices up for election. Such notice shall include the term or terms of each office up for election, the deadline and procedure for declaring candidacy for an office up for election and the qualifications for holding each office.

6.2.2 Notice of Election. For each election of members of the Town government, the Town shall post a Notice of Election conspicuously within the Town and on the Town website and shall publish the notice in one (1) newspaper of general circulation in the Town no later than twenty (20) days prior to the date of the election. Such notice shall include the date, time and location of the election, the candidates for each office on the ballot, a description of the positions to be filled, qualifications to vote in the election, and information on how to obtain an absentee ballot and a summary of absentee ballot procedures.

6.2.3 The annual election for Town Council and/or Mayor shall be held on the second Saturday in May, from 9am – 3pm at South Bethany Town Hall, 402 Evergreen Road, South Bethany, Delaware or at such time and place as shall be determined by Town Council, upon proper notice.

6.3. Voter Qualifications and Voter Registration.

6.3.1 Voter qualifications in any municipal election, special election or referendum on voting day:

(a) Attain eighteen (18) years of age

(b) A citizen of the United States

(c) Registered under the Town's voter registration ordinance (if one is in effect) and

(d) Qualify as one of the following:

[1] Property Owner. A property owner in the Town for a period of ninety (90) consecutive days immediately preceding the date of the election. A property owner is a natural person who holds title of record or deed in his/her name; or listed as a trustee to a fee simple estate, or who holds a life estate, to real property located within the corporate limits of the Town. In no event shall any single property be entitled to more than eight (8) votes of persons who qualify as "Property Owners" of that property.

[2] Resident. A resident of the Town shall mean any natural person who has been physically residing within the Town corporate limits for at least thirty (30) days prior to any scheduled Town election, and who maintains residency within the Town on the date of election.

6.3.2 Trusts, Corporations, Partnerships and Limited Liability Companies (LLCs both general and limited) are artificial entities and are not considered natural persons; therefore, they cannot vote in Town elections.

6.3.3 Voter Registration. The Town Council may, by ordinance, provide for the registration of voters and may prescribe voter registration and voting places. Such ordinance shall not alter the qualifications of voters as defined in this Charter nor unduly impair the right to vote in any Town election.

6.4. Proof of Voter Eligibility

6.4.1 Persons appearing to vote shall present proof of identity and address. The identification shall be one or more of the following items that individually or together show the identity and address of the person:

(a) A current State of Delaware driver's license or ID card

(b) A uniformed service ID card

(c) Another current photo ID issued by the State of Delaware, U.S. Government; the voter's employer, high school or higher education institution

(d) A current utility bill, bank statement, credit card statement, a paycheck or pay advice or another type of bill or statement

(e) A lease or sales agreement; and/or

(f) Any other documentation that a person can reasonably and commonly accept as proof of identity and address

6.4.2 Personal recognition by a majority of the Election Officers in the polling place can attest to a voter's identity and address.

6.5 Candidates, Qualifications, Terms, Declaration of Candidacy and Withdrawal of Candidacy

6.5.1 Candidates for Town Council Member or Mayor shall have been a qualified voter of the Town for at least one (1) year prior to the date of election and meet the following requirements:

(a) Attained twenty-one (21) years of age

(b) A citizen of the United States

(c) Registered under the Town's voter registration ordinance (if one is in effect)

(d) Has not been convicted of a felony or a crime of moral turpitude.

6.5.2 Additional Qualifications for Mayor

A candidate for Mayor shall qualify as a "Resident" of the Town, pursuant to Charter §C-6C at the time of the election. The Mayor shall remain a resident of the Town of South Bethany throughout his/her term of office.

6.5.3 At least four members of the seven members of Town Council shall qualify as "Residents" of the Town, pursuant to Charter §C-6C and shall maintain the status of "Resident" throughout their term.

6.5.4 The term of office for each member of the Town Council and Mayor shall be two (2) years, and no person shall serve more than three (3) consecutive terms as Mayor, effective with terms beginning on or after the Election.

6.5.5 Staggered terms. The Mayor and three (3) members of the Town Council shall be elected in even years and three (3) members of Town Council shall be elected in odd years.

6.5.6 Prohibition of employment with Town. Neither the Mayor nor any member of the Town Council shall be employed by the Town in any capacity during their term of office.

6.5.7 Notice of Intention of Candidacy. In order to be listed on the ballot at any regular or special election of Mayor or Town Council members, each candidate shall file a written Notice of Intention of Candidacy to seek office with the Town, on a form prescribed by the Town, during normal business hours. The Town shall submit the names of candidates for each office up for elections to the Department of Elections no later than one business day following the filing deadlines for the elected positions.

6.5.8 If the Board of Elections determines that any candidate may not meet the qualifications for office, the Board of Elections shall notify the Mayor, who shall call a special meeting of the Town Council to be held not less than twenty (20) days prior to the Notice of Election posting. The candidate whose qualifications are at issue shall be notified of the date, time and place of the hearing at which he or she may appear and testify. If the Town Council determines that the candidate does not meet the qualifications for office, it shall reject his or her Notice of Intention of Candidacy and his or her name shall not appear on the ballot. In making the determination, only those members of the Town Council who are not running for re-election shall be entitled to vote on the challenge.

6.5.9 Certificate of Intention of Candidacy. A candidate for municipal office shall file a Certificate of Intention or a Statement of Organization establishing a campaign committee with the State Election Commissioner no later than seven (7) days after declaring that candidate's candidacy as defined in Delaware Code, Title 15, Chapter 75.

6.5.10 Where the number of qualified candidates for an office is equal to or less than the number of seats up for election, the Board of Elections shall declare the candidate or candidates elected. However, in no event will a new term for any candidate begin until the swearing in and the Organizational meeting of Town Council.

6.5.11 Withdrawal. A person may withdraw as a candidate by filing with the Town the form promulgated by the State Election Commissioner for that purpose.

6.6 Board of Elections, Qualifications, Electioneering, Powers and Duties, Term, and Responsibilities.

6.6.1 Every election shall be held under the supervision of a Board of Elections, which shall consist of three (3) members and the Board of Elections shall be appointed by the Town Council. Members of the Board of Elections shall take the oath as defined in 15 Del.C.§7551(d).

6.6.2 The members of the Board of Elections shall be qualified voters of the Town and shall not be an elected official or candidate or immediate family member of an elected official or candidate, as defined in 15 Del.C.§7551(b). Members of the Board of Elections shall not participate in electioneering.

6.6.3 Members of the Board of Elections shall be the sole and final judges of the conduct of the election, the legality of the votes offered and the election results, subject to any applicable state or federal laws.

6.6.4 The Board of Elections shall have the power to subpoena persons and records relative to the determination of the qualifications of voters and the legality of any vote or votes offered.

6.6.5 If, at the opening of the polls, there shall not be present any members of the Board of Elections, in such case the ranking Town Manager or his/her designee available at the opening of the polls shall appoint a qualified voter or voters to act as a member or members of the Board of Elections to fill such vacancies caused by such absences.

6.6.6 The Town shall post the names and contact information for its Board of Elections in the Town hall and on the Town website.

6.7 Conduct of the Election. Elections and voting procedures shall be conducted in accordance with all provisions set forth in 15 Del.C.§7556 and §7557.

6.8. Close of Polls and Election Results.

6.8.1 Thirty (30) minutes prior to the closing of the polls, the Inspector shall announce or have another Election Officer announce that the polls shall close in thirty (30) minutes, both in the voting room and outside of the entrance of the building used by voters.

6.8.2 At the time that the polls close, the Inspector or Election Officer shall announce that the polls have closed both in the voting room and outside of the entrance to the building used by voters. The Election Officers shall permit any person to vote who was in line at the time the polls closed.

6.8.3 The Election Officers shall remove the cartridges and tapes from each voting machine, record the protective counter and seal numbers on the Voting Machine Certificate, close the voting machines, complete the

Vote Tabulation for the election, and post a copy of the results tape from each voting machine on the door of the polling place.

6.8.4 The Election Officers, as soon as possible after the polls have closed and the unofficial results announced, shall deliver all election documents, envelopes and absentee ballots to the municipality's Board of Elections. All votes shall be counted by the Board of Election. The Board of Elections shall announce the results of an election as soon as possible following the close of the polls.

6.8.5 Tie vote. In the event of a tie vote for any office, the election to such office shall be determined by a runoff election within thirty (30) days pursuant to the election procedures of this chapter.

Section 3. Amend §C-7 of the Charter of the Town of South Bethany by making deletions as shown by strike through and insertions as shown by underline as follows:

7. Organization of Town Council.

7.1 Organizational Meeting. An organizational meeting of the Town Council shall be held on the first Saturday following the date of the election. Such meeting shall be held at the usual place for holding regular Town Council meetings and shall be open to the public. The newly elected Mayor and other Town Council members shall assume the duties of their respective offices, being first duly sworn or affirmed to perform their duties with fidelity. Such oath or affirmation shall be taken before a Notary Public, a Justice of the Peace, ~~the Town Alderman~~, or by one (1) of the holdover Town Council members. At the organizational meeting, the Mayor shall appoint a President Mayor Pro-tempore, a Council Secretary, and a Treasurer subject to ratification by majority vote of the Town Council. ~~The Council Secretary and Treasurer need not be members of the Town Council.~~ Each of these officers of the Town Council shall serve in that position for a term of one (1) year or until the organizational meeting after the next succeeding election.

7.2 Duties of Mayor. The Mayor shall preside at all meetings of the Town Council and shall have a vote on all pending issues. The Mayor, and in the absence of the Mayor, the Town Manager, shall execute, on behalf of the Town, when authorized by Town Council majority vote, all agreements, contracts, bonds, deeds, leases, and other legal documents. The Mayor shall appoint such standing and other committees as the Town Council shall require. A member of the Town Council may serve as the Chairperson for standing committees and/or any other committees. The Mayor shall be authorized to administer oaths and affirmations. The Mayor shall perform such additional duties

as are specifically imposed upon that office by this Charter, and as are specifically delegated to the Mayor by majority vote of the Town Council. 78 Del. Laws, c. 324, § 2; 80 Del. Laws, c. 100, § 1

7.2.1 Emergency Powers. The Mayor shall be empowered to act on behalf of the Town, without prior Town Council approval, in the event of a sudden emergency requiring prompt action, in order to protect the public health, safety, and welfare of the Town, its inhabitants and property owners. A "sudden emergency", for purposes of this Section shall include, by way of example and not in limitation, a major fire or conflagration, significant flooding, or serious storm threatening significant damage, public health emergency, a civic disturbance, or a toxic spill. A "sudden emergency" shall also include any emergency situation as declared by any county, state or federal agency having jurisdiction over the Town where the scope of the emergency so declared includes the Town and urgent, compelling circumstances prevent action being taken by the Town Council.

7.3 Duties of ~~President~~ Mayor Pro Tempore. The ~~President~~ Mayor Pro-tempore shall function as Mayor during the absence or disability of the Mayor.

7.4 Duties of Council Secretary. The Council Secretary shall be responsible for recording the proceedings of the Town Council and for maintaining safe custody of other Town records and shall perform such other duties as directed by ordinance or the Town Council.

7.5 Duties of Treasurer. It shall be the duty of the Treasurer or his/her designee to attend all Town Council meetings, unless duly excused. It is the responsibility of the Mayor to name a designee to serve in the absence of the Treasurer. The Treasurer shall be responsible for maintaining custody of all Town funds in a financial institution selected by the Town Council; for deposit of all Town receipts and disbursement of Town funds in payment of bills presented for payment; for presenting an annual financial report to the Town Council at the end of the fiscal year; and for performing such other duties as directed by ordinance or the Town Council. The Treasurer may be assisted by Town staff as needed in carrying out these responsibilities. The Treasurer, before assuming the duties of such office, shall be required to give bond with sufficient surety to the Town Council in an amount at least equal to the funds likely to be handled in the discharge of such duties. The Treasurer shall at the end of such term of office deliver to his/her successor in office all fiscal records relating to such office and all Town funds then held in the Treasurer's custody as part of the settlement of final account. The cost of said bond shall be paid out of Town funds. ~~In case of resignation, incapacitation, or at the expiration of the term of office an audit shall be performed.~~ 72 Del. Laws, c. 354

7.6 Filling Vacancies of Appointed Officers. If a vacancy shall occur in the office of any officer appointed pursuant to Sec. 7.1 of this Charter, the successor shall be selected for the unexpired term pursuant to the procedures of Sec. 7.1.

7.7 Code of Ethics; Contracts; Competitive Bidding.

7.7.1 Code of Ethics. The Town Council may, by ordinance, adopt a Code of Ethics to govern all members of the Town Council, officers, and employees of the Town.

7.7.2 Contracts; Competitive Bidding. The Town Council may, by ordinance, adopt standards and procedures to govern the Town's entering into contracts, purchasing, and competitive bidding.

[1] Editor's Note: See also Ch. 6 Contracts and Bidding.

7.8 Vacancies, Forfeiture of Office.

7.8.1 Vacancies. The office of a Town Council member shall become vacant upon death, incapacitation, resignation or forfeiture of such office.

7.8.2 Forfeiture Proceedings. A forfeiture of such office shall occur when any Town Council member:

(a) is no longer qualified as provided in ~~§5.2~~ of this Charter to hold such office;

(b) willfully violates any provision of this Charter;

(c) is convicted of any felony or crime involving moral turpitude; or

(d) fails to attend three (3) consecutive regular Town Council meetings without being excused by Town Council vote.

(e) is physically, mentally, and/or emotionally incapable of performing his/her duties.

7.8.3 Determination Concerning Forfeiture.

Where the conditions set forth in Sec. 7.8.2 (c) ~~or (d)~~ occur, forfeiture shall be automatic.

Where the conditions set forth in §7.8.2 (a), (b), (d) or (e) are alleged, a preliminary discussion concerning "probable cause" to believe a forfeiture may have occurred shall be had by the Town Council in Executive Session. If the Town Council, in open session following such Executive Session, by a majority vote of its disinterested members, concludes that probable cause exists that a forfeiture under §7.8.2 (a), (b), (d) or (e) has occurred, it shall, within 48 hours thereafter, provide written notice thereof to the affected Town Councilmember by certified mail, return receipt requested, sufficiently posted. "Written notice" shall be deemed provided when deposited in first-class mail with sufficient postage. The affected member shall be entitled to a hearing and shall then have thirty (30) days

in which to make a written request for a public hearing before the Town Council, to be held within forty-five (45) days of the written request, at which hearing such member may appear with the assistance of counsel, at the member's own expense, and present evidence to the relevant issues. The Town Council shall also hear any other relevant evidence and vote again on the question of forfeiture. A determination of forfeiture shall be made only by unanimous vote of the Town Council members present and entitled to vote on the question.

7.8.4 Failure to Request Hearing as a Bar. Failure of the affected member to make written request for a public hearing as hereinabove stated shall be an absolute bar to his or her right to challenge the Town Council's decision. If a public hearing is held, the Town Council shall have authority to subpoena witnesses, administer oaths, take testimony, and require the production of documentary or physical evidence, all of which shall be done if requested in writing by the affected person.

7.9 Filling Vacancies. A vacancy in the office of the Mayor or of any other Town Council member shall be filled for the unexpired term by a person qualified to fill the position.

7.9.1 Procedure; Office of the Mayor. Upon the occurrence of a vacancy in the office of the Mayor, the ~~President~~ Mayor Pro-tempore shall assume the duties and responsibilities of Mayor until such time as a new Mayor is elected and installed in office. A vacancy in the office of Mayor shall be filled for the remainder of the unexpired term at the next annual municipal election. If the next annual municipal election is to occur more than 120 days from the occurrence of the vacancy, the Town Council shall, within 24 hours of notice of the vacancy, announce the existence of the vacancy and the date and time for a special election to be held for the remainder of the term of office. Said election shall be held within sixty (60) days of the announcement of said vacancy. Said special election shall be held pursuant to the provisions as provided in ~~See 6.4~~ § C 6 of this Charter.

7.9.2 Other Council Members. A vacancy in the office of any Council member other than Mayor shall be filled for the remainder of the unexpired term at the next annual municipal election. If the next annual municipal election occurs more than sixty (60) days after the occurrence of the vacancy, the Town Council, by a majority vote of the remaining members in an open meeting, shall appoint a qualified person to fill such vacancy until the next annual municipal election. If the vacancy occurs within sixty (60) days of the expiration of term of office, such vacancy shall not be filled.

7.10 Meetings.

7.10.1 Regular meetings and workshop meetings. The Town Council shall hold at least eleven (11) regular meetings during the year and as many workshop meetings as needed. Subject to the provisions of the Delaware Freedom of Information Act regarding executive sessions, all such meetings shall be open to the public. The time and place of each regular meeting shall be set by the Town Council each year at its organizational meeting, but such meetings may be rescheduled by the Mayor as need arises, subject to the requirement of adequate public notice. 78 Del. Laws, c. 324, § 3

7.10.2 Special Meetings. Special meetings of the Town Council shall be called upon the written request of the Mayor or any four members of the Council stating the day, hour, and place of such meeting, and the subject or subjects to be considered thereat. Notice of such meeting (~~stating the date, hour, and place of such special meeting, and the subject or subjects to be considered thereat~~) shall be given to the Mayor and each member of the Council at least 48 hours prior to the time set for the meeting, shall be made in accordance with the provisions of the Delaware Freedom of Information Act ~~by overnight delivery, telegraph, telefacsimile, or email~~. The Mayor or any member of the Council may waive the prior notice requirement at any time prior to, at, or following such special meeting in writing, ~~by telegraph, telefacsimile, email, or recorded telephonic message, and the submission of any such waiver shall make valid the holding of the special meeting~~. The attendance of the Mayor or any member of the Council at such special meeting for any purpose other than to protest the lack of adequate notice shall also constitute a waiver of the prior notice requirement. Subject to the scope of the notice, the Town Council shall have the same power and authority to enact all ordinances, adopt all regulations, resolutions and rules, pass all motions, make all orders, and transact all business at any such special meeting called for as aforesaid as Council has at a regular meeting. Provided however, that the aforesaid procedure shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health, or safety.

7.10.3 Adjourned Meetings. The Town Council may adjourn its meetings from time to time, provided that adequate public notice shall be given of the date, place, and time for the resumption of such meetings.

7.10.4 Open Meetings. All meetings of all Town governmental bodies shall be in compliance with the Freedom of Information Act, (Title 29, Chapter 100, Delaware Code), or any future corresponding provision of law.

7.10.5 Place of Meetings. All regular, special, and adjourned meetings of the Town Council shall be held within the corporate limits of the Town, except that emergency meetings may be held elsewhere.

7.11 Town Council Actions.

7.11.1 Council Actions. No Town Council actions may be taken except at a duly convened meeting.

7.11.2 Rules of Procedure, Record of Proceedings. The Town Council shall determine its own rules of procedure and order of business. It shall keep a record of its proceedings which shall be open to public inspection.

7.11.3 Ordinances, Regulations, Resolutions, and Rules. The Town Council is hereby vested with the authority to adopt ordinances, regulations, resolutions, and rules relating to any subject within the powers and functions of the Town, or relating to the government of the Town, its peace and order, sanitation, beauty, health, safety, convenience and property, and to fix, impose and enforce the payment of fines and penalties for the violation of such ordinances, regulations, resolutions, and rules. No provision of this Charter on any particular subject shall be held to be restrictive of the power to enact ordinances, regulations, resolutions, and rules on any subject not specifically enumerated, provided they do not violate State or Federal law. In addition to other acts required by law or this Charter the Town Council may by ordinance: (a) adopt or amend administrative rules, or establish or reorganize any Town department, office or agency; (b) provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed; (c) grant, renew, extend, or terminate a franchise; and (d) amend or repeal any ordinances previously adopted. Every ordinance shall be introduced in writing. Voting on any ordinance shall be by roll call vote, and the vote of each Town Council member on any ordinance shall be entered on the record. No ordinance shall be adopted unless it shall have the affirmative vote of a majority of the entire Town Council. The Town Council shall not have the power to exempt any individual from the application of any ordinance, regulation, resolution, or rule of the Town, except as set out in this Charter or as provided by the Constitution and Laws of the United States and the State of Delaware.

7.11.4 Emergency Ordinances. To meet an emergency affecting public health, safety, and welfare the Town Council may adopt one (1) or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its service, or authorize the borrowing of money except as provided in Sec. 13 of this Charter. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it was introduced, but the majority vote of all Town Council members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become

effective upon adoption or at such later time as it may specify. Every emergency ordinance shall automatically stand repealed as of the one hundred twentieth (120th) day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this Sub-section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this Section for the adoption of emergency ordinances.

7.11.5 Quorum. Four (4) members of the Town Council shall be present in order to constitute a quorum to conduct business. Council decisions shall require voting approval of a majority of the entire Council. 7.11.6 Vote Necessary to Carry Action. All powers of the Town Council, whether expressed or implied, shall be exercised in the manner provided herein, or if not prescribed herein, then by ordinances, regulations, resolutions, and rules. In the general performance of their duties, the acts, doings and determinations of a majority of the entire Council shall be as valid as the acts, and determinations of all the members of the Council.

7.11.7 Participation and Voting by Remote Access. The Town Council is hereby authorized, to the extent permitted or required by Delaware law including, but not limited to, a declared state of emergency and/or provisions of the Freedom of Information Act, to allow participation and voting by remote electronic access, provided the public has physical and/or electronic access to public meetings. ~~by duly enacted ordinance, to provide that whenever unavoidable circumstances prevent the Mayor or any member of the Town Council from being physically present at any meeting of the Town Council at which a quorum is physically present, such person(s) may participate in the meeting, including the making or seconding of any motion and the casting of a vote on any motion, by remote electronic access (e.g. speaker telephone, videoconferencing equipment), provided that all persons present at the place of the meeting can hear and speak to the person(s) participating at the meeting; provided further, however, that the meeting shall not be presided over by any person not physically present at the meeting.~~

7.11.8 Compensation of Council Members. Each Town Council member may receive compensation for services to the Town as may be prescribed by ordinance.

7.12 Succession of Authority. In the event that the Mayor is absent or incapable of assuming responsibilities, such responsibility shall be carried out by the following Town officials in the following order:

- 1) ~~President~~ Mayor Protempore,
- 2) each of the remaining Council members in order of seniority in years of Council service,
- 3) Council Secretary, and

4) Treasurer.

Section 4. This Act takes effect on June 1, 2021.

Approved June 15, 2021