



SPONSOR: Rep. Mitchell & Sen. Mantzavinos
Rep. Osienski; Sen. Ennis

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 66

AN ACT TO AMEND THE CHARTER OF THE TOWN OF ELSMERE RELATING TO ALDERMAN COURT.

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 Town of Elsmere by making deletions as shown by strike through and insertions as shown by underline as follows:

Article VII-A. Alderman Court.

Section 701A. Creation.

This Article creates an Alderman Court for the Town of Elsmere.

Section 702A. Appointment.

(a) The Town may recommend an individual for appointment as the Town's Alderman or Assistant Alderman as provided under subsection (c) of this section or for reappointment as provided under subsection (d) of this section.

(b) The Governor must appoint, and the Delaware State Senate must confirm, an individual before the individual may take the oath of office under Section 707A of this Charter as an Alderman or Assistant Alderman.

(c) If there is a vacancy in the Office of Alderman or Assistant Alderman, the Mayor and members of Council may, by majority vote, submit a list of at least 1 individual qualified under Section 706A of this Charter, with an application, to the Governor for appointment.

(d) At least 30 days before the expiration date of an Alderman's or Assistant Alderman's term, the Mayor and members of Council shall, by majority vote, determine whether or not to recommend reappointment of the Alderman or Assistant Alderman for an additional term.

(1) If the Mayor and members of Council decide to recommend an individual for reappointment, the Mayor and members of Council shall submit a letter of recommendation to the Governor for consideration of reappointment.

(2) If the Mayor and members of Council decide not to recommend an individual for reappointment, the Mayor and members of Council shall follow the procedure under subsection (c) of this section to recommend at least 1 individual to the Governor for consideration of appointment.

Section 703A. Term of Office.

23 (a) The term of office for an Alderman or Assistant Alderman is 2 years.

24 (b) An Alderman or Assistant Alderman may remain in office until reappointed under Section 702A or a successor
25 is duly qualified.

26 Section 704A. Removal.

27 (a) An Alderman or Assistant Alderman may be censured, removed, or retired subject to Section 37 of Article IV
28 of the Delaware Constitution and the Rules of the Court on the Judiciary.

29 (b) An Alderman or Assistant Alderman may be replaced on expiration of the Alderman's or Assistant Alderman's
30 term following confirmation of another individual as Alderman or Assistant Alderman by the Delaware State Senate.

31 (c)(1) If an Alderman or Assistant Alderman is removed or retired under subsection (a) of this section or replaced
32 under subsection (b) of this section, the Alderman or Assistant Alderman shall do the following within 5 days of the
33 removal, retirement, or replacement:

34 a. Deliver to the Mayor all the books and papers belonging to the Town.

35 b. Pay over to the Town all moneys in the possession of the Alderman or Assistant Alderman.

36 (2) Immediately after the receipt of the books and papers belonging to the office of either the Alderman or
37 Assistant Alderman, the Mayor may require the auditor of the Town to make an audit of the books and papers of the
38 Alderman or Assistant Alderman who has been removed, retired, or replaced.

39 (3)a. It is unlawful for an Alderman or Assistant Alderman to neglect or fail to act as required under paragraph
40 (c)(1) of this section.

41 b. A violation of paragraph (c)(3)a. of this section is a misdemeanor punishable by a fine of at least \$25,
42 but not more than \$100, for each day the Alderman or Assistant Alderman fails act as required under paragraph
43 (c)(1) of this section.

44 Section 705A. Vacancy.

45 (a) In the absence of the Alderman, or if a vacancy occurs in the office of Alderman, the Assistant Alderman shall
46 exercise all the powers, duties, and responsibilities of the Alderman under this Charter.

47 (b) If a vacancy occurs in the office of Alderman, there is not an Assistant Alderman to act as Alderman, and the
48 Delaware State Senate is recessed for more than 6 weeks, the Town may temporarily appoint a retired justice of the peace
49 of this State to act as Alderman pending the confirmation of a nominee for Alderman by the Delaware State Senate.

50 (1) A retired justice of the peace must meet the appointment qualifications under § 9211(a) of Title 10 of the
51 Delaware Code to be appointed under this section.

(2) A retired justice of the peace appointed under this section has all powers, duties, and responsibilities of the Alderman under this Charter.

(3) A retired justice of the peace appointed under this section serves until a successor is duly qualified.

(4) The Town shall compensate a retired justice of the peace appointed under this section as provided for an Alderman or Assistant Alderman under Section 709A of this Charter.

Section 706A. Qualifications.

An individual appointed to serve as Alderman or Assistant Alderman must meet all of the following:

(1) Be at least 21 years of age.

(2) Be a United States citizen.

(3) Be a Delaware resident.

(4) Be a New Castle County resident.

(5) Be of good character and reputation.

(6) Not be the Mayor, a member of the Council, or otherwise an officer or employee of the Town.

Section 707A. Oath of Office.

(a) An Alderman or Assistant Alderman must take the oath of office within 14 days of confirmation by the Delaware State Senate.

(b) The Alderman or Assistant Alderman must swear or affirm to do the following:

(1) Perform the duties of the office honestly, faithfully, and diligently.

(2) Support the Constitution of the United States and the Constitution of the State of Delaware.

(3) Uphold and enforce the Charter of the Town of Elsmere and ordinances duly enacted by the Mayor and members of the Council.

(c) The Mayor shall give the oath of office. After an Alderman or Assistant Alderman takes the oath of office, the Alderman or Assistant Alderman shall record evidence of the appointment and oath of office with the Recorder of Deeds in New Castle County.

Section 708A. Duties.

An Alderman or Assistant Alderman shall do all of the following:

(1) Adjudicate actions brought under an ordinance that is legally enacted or established by the Town.

(2) Carry into effect all legally binding orders and directions of the Mayor and members of the Council made under a law of this State or its Constitution.

(3) Comply with the ethical responsibilities required of an Alderman in this State.

(4) Operate the Alderman Court under the Criminal Rules of Procedure for the Alderman and Mayor Courts of the State of Delaware.

Section 709A. Compensation.

(a) The Mayor and members of the Council shall fix the compensation for an Alderman and Assistant Alderman.

(1) The compensation is to be approved in conjunction with the adoption of the Town operating budget.

(2) If a change in compensation is not proposed and approved by the Mayor and members of Council, the previously established compensation rate continues in effect until revised by a majority vote of the Mayor and members of Council.

(b) The compensation under subsection (a) of this section may not be contingent on or related to the amount of civil or criminal fines imposed or collected through the Alderman Court and may not be reduced during an Alderman's or Assistant Alderman's term of office.

Section 710A. Alderman's Docket.

The Mayor and members of Council shall procure suitable records for the use of the Alderman and the Assistant Alderman.

(1) The records are to be known as the "Alderman's Docket".

(2) The Alderman and Assistant Alderman shall record all official acts and proceedings in the Alderman's Docket.

(3) All criminal matters, but not civil matters, are to be entered into the Delaware Criminal Justice Information System (DELJIS) as required by law.

Section 711A. Jurisdiction.

(a) The Alderman and Assistant Alderman have jurisdiction and cognizance of all breaches of the peace, offenses, and violations of a civil or criminal ordinance of the Town committed within the Town's corporate limits.

(b)(1) Except as provided under paragraph (b)(2) of this section, as to an offense or violation over which an Alderman or Assistant Alderman is given jurisdiction by this Charter or by a law of the this State, the Alderman and Assistant Alderman may hold for bail, set bail, impose fines, or imprison, for each offense or violation under the penalties provided by this Charter, a Town Ordinance enacted under this Charter, or a law of this State.

(2) An Alderman or Assistant Alderman may not impose a fine that exceeds the limits established by this Charter, including the limits under Section 712A of this Charter.

Section 712A. Civil and Criminal Penalties; Costs.

(a) Except as provided under this Charter or State law, an Alderman or an Assistant Alderman may not do any of the following:

(1) Excluding costs, impose a penalty in excess of the penalty authorized by State law when enforcing the laws of this State, as amended.

(2) Imprison an individual for more than 30 days.

(b)(1) Subject to paragraph (b)(2) of this section, an Alderman or Assistant Alderman may, in addition to a fine or term of imprisonment permitted to be assessed or imposed under Section 711A(b) of this Charter, impose and collect a cost as set by ordinance or resolution of the Mayor and members of the Council.

(2) If an Alderman or Assistant Alderman is enforcing the laws of this State, as amended, the Alderman or Assistant Alderman may not impose a cost that is in excess of that which may be imposed by the Justice of the Peace Court for like service.

(3) If an Alderman or Assistant Alderman is enforcing a Town Ordinance, the Alderman or Assistant Alderman may impose a fine and cost as authorized by a Town Ordinance.

Section 713A. Monthly Report to Mayor and Members of Council.

(a) The Alderman and Assistant Alderman shall prepare and submit a written monthly report to the Mayor and members of the Council reporting all fines and penalties imposed during the preceding calendar month.

(b) The Alderman and Assistant Alderman shall pay to the Town all fines and penalties contained in the monthly report at such times as directed by the Mayor and members of the Council.

(c)(1) Except as provided by paragraph (c)(2) of this section, neither the Mayor nor the members of the Council may establish or communicate an expected revenue budget for the Alderman Court.

(2) The Mayor and members of the Council may establish in the budget a line item based on an estimate using the prior year's activity for financial budgeting only.

Section 714A. Alderman Court Facilities and Staff.

The Town shall provide adequate and appropriate facilities and staff to facilitate the independent judicial operations of the Alderman Court.

(1) Except as provided by paragraph (2) of this section, the Alderman Court facilities must be separate from conflicting town operations, including the Department of Public Safety.

(2) The Town may house the Alderman Court in a common municipal building if the Alderman Court is provided space physically separate from other Town functions and is situated in such a manner as to foster public confidence in the independence of the Court.

(3) Staff assigned to the Alderman Court may not be shared with conflicting Town government operations.

SYNOPSIS

This Act amends the Charter of the Town of Elsmere to create an Alderman Court and establish procedures governing the creation and operation of the Court.

This Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend a municipal charter.