



SPONSOR: Sen. Ennis & Rep. Carson  
Sens. Lawson, Sokola; Reps. Briggs King, Spiegelman

DELAWARE STATE SENATE  
151st GENERAL ASSEMBLY

SENATE BILL NO. 124

AN ACT TO AMEND THE TOWN CHARTER OF THE TOWN OF SMYRNA.

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

1           Section 1. Amend Section 3, Chapter 176, Volume 74, Laws of Delaware, as amended, by making deletions as  
2 shown by strike through and insertions as shown by underline as follows:

3           3. Annexation of Territory.

4           3.2.10 Property Owned by the State of Delaware; Highways, Streets, Roads and Alleys; Ponds, Canals, Streams  
5 and Other Waters.

6           (a) Real property owned by the State of Delaware may be annexed into the Town without the State's  
7 casting a vote in the Special Election, provided the state agency having control and supervision thereof does not  
8 notify the Town, in writing, of its objection to such annexation within 30 days after notice of the resolution  
9 proposing the annexation as provided in § 3.2.1.

10           (b) Highways, Streets, Roads, and Alleys; Ponds, Canals, Streams, and Other Waters. Contiguity with the  
11 Town's existing corporate limits, or with other territory which is itself contiguous with the Town's existing  
12 corporate limits, shall not be deemed interrupted by the existence of any highway, street, road, alley, pond, canal,  
13 stream, or other body of water running parallel with and between the parcel sought to be annexed, but nothing  
14 herein shall be construed to allow rights of way, utility easements, waterways, or like entities to be annexed in  
15 "corridor" fashion or to be utilized as a corridor route for annexation to create contiguity.

16           (c) Whenever the Town Council authorizes an annexation, all streets, roads, and alleys immediately  
17 adjacent to the annexed parcel, up to the centerline of the street, road, or alley, shall be deemed annexed into the  
18 Town.

19           Section 2. Amend Section 4, Chapter 176, Volume 74, Laws of Delaware, as amended, by making deletions as  
20 shown by strike through and insertions as shown by underline as follows:

21           4. Powers of the Town

22 4.2 Enumeration of Powers. Not by way of limitation upon the scope of the powers vested in the Town Council to  
23 exercise all powers delegated by this Charter to the Town (except as may expressly appear herein to the contrary),  
24 but rather by way of enumeration and for purposes of clarity, the Town Council is vested by this Charter with the  
25 following powers, that is to say, the Town Council:

26 4.2.50. The Council may impose and collect a lodging tax of no more than 3% of the rent, in addition to  
27 the amount imposed by the State or any other government agency, for the occupancy of any room or rooms in a  
28 hotel, motel, or tourist home, as defined under § 6101 of Title 30 of the Delaware Code, which is located within  
29 the boundaries of the Town of Smyrna.

30 Section 3. Amend Section 6, Chapter 176, Volume 74, Laws of Delaware, as amended, by making deletions as  
31 shown by strike through and insertions as shown by underline as follows:

32 6. Town Council.

33 6.1 Organizational Meeting. An organizational meeting of the Town Council shall be held as soon as practicable,  
34 not exceeding one week, following the determination of the election results by the Election Board. Such meeting  
35 shall be held at the usual place for holding regular meetings. The newly elected Council-members shall assume the  
36 duties of their respective offices, being first duly sworn or affirmed to perform their duties with fidelity, which  
37 oath or affirmation shall be taken before a Notary Public, a Justice of the Peace, the Mayor, or by one of the  
38 holdover Council-members.

39 At the organizational meeting, the Mayor shall appoint, from among the other members of the Town Council, a  
40 Vice-Mayor and Secretary, subject to confirmation by the Town Council. Each of these officers (i.e. the Vice-  
41 Mayor and Secretary) shall serve in that position for a term ~~of one year or until the organizational meeting after the~~  
42 ~~next succeeding election~~ not to exceed the remainder of the incumbent Mayor's term, unless sooner removed from  
43 such office by action of the Town Council.

44 Section 4. Amend Section 16, Chapter 176, Volume 74, Laws of Delaware, as amended, by making deletions as  
45 shown by strike through and insertions as shown by underline as follows:

46 16. Streets and Alleys.

47 16.1 Power to Lay Out, Locate, Open, Widen, Alter, Close, Vacate or Abandon. The Town Council shall have the  
48 power and authority to lay out, locate, and open new streets or alleys, or to widen or alter existing streets or alleys, or parts  
49 thereof, and to close, vacate, or abandon existing or proposed streets or alleys or parts thereof, whenever the Town Council  
50 shall deem it in the best interest of the Town.

16.2 Initiation of Proceedings. The procedures set forth in this Charter to lay out, locate, open, widen, alter, close, vacate, or abandon a street or alley in the Town of Smyrna may be commenced by resolution of the Town Council.

16.3 Resolution Proposing Change: Notice; Hearing. Any such resolution shall contain a description of the proposed change and shall fix a time, date, and place when the Town Council shall sit to hear comments and objections concerning the proposal. Any resolution proposing the vacation or abandonment of a street or alley shall state that if the abandonment or vacation of the street or alley is approved, the Town shall convey the street or alley to the adjacent property owners. At least ~~fourteen~~ (14) 14 days before the date set for such hearing, the resolution adopted by the Town Council shall be printed in a newspaper having a general circulation in the Town of Smyrna and shall be posted in ~~five~~ (5) 5 public places in the Town.

16.4 Notice to Affected Property Owners. The Town Council shall cause the resolution adopted pursuant to section 16.3 to be sent, certified mail, return receipt requested, to the owner(s) of record of the real estate through, over, or abutting which such street or alley may run. Notice to one co-owner shall be effective as to all. If the address of the owner be unknown, a copy shall be delivered to any persons occupying the premises, or if none, posted thereon. Notice to affected property owners under this § 16.4 shall be provided at least fourteen (14) days before the date set for the hearing.

16.5 Hearing. At the time and place in the resolution, the Town Council shall hear such residents or taxables of the Town or owners of the property affected thereby, as shall attend the hearing. After hearing all comments, the Town Council shall, at said meeting, or at a subsequent date, as it may deem proper, adopt a resolution to proceed with, or abandon, the proposed locating, laying out, widening, altering, closing, vacating, or abandoning of any street(s) or alley(s) or parts thereof contemplated in its aforementioned prior resolution, including the conveyance of a vacated or abandoned street or alley to the adjacent property owners. The Town Council shall, within ~~five~~ (5) 10 days following the adoption of the aforesaid resolution, cause a copy of such resolution to be provided to all affected property owners in the same manner as the notice provided under section 16.4.

#### 16.6 Payment of Compensation; Acquisition of Title.

16.6.1. Where lands taken. Whenever the Town Council determines to proceed with the opening of a new street or alley, or the widening of an existing street or alley, the Town may acquire title to the lands necessary in accordance with 29 Del.C. Chapter 29 by negotiation and purchase or by condemnation in accordance with the provisions of 10 Del.C. Chapter 61, as hereafter amended or in accordance with any future corresponding provisions of law.

16.6.2. Where street or alley closed, vacated, or abandoned. Whenever the Town Council determines to proceed with the closing, vacating, or abandoning of any existing street or alley, or any part thereof, no compensation shall be paid to any property owner unless such closing, vacating, or abandoning deprives a property of all reasonable vehicular access

81 directly between any public street or public alley and an existing garage, carport or improved off-street parking area located  
82 on such property such that the property owner effectively loses the use thereof for off-street parking and/or temporary  
83 storage of motor vehicles. Any property owner claiming such deprivation shall notify the Town in writing of such claim  
84 within ~~fifteen (15)~~ 15 days of the resolution adopted pursuant to section 16.5. Upon receipt of such notice, the Town  
85 Council shall proceed to pay compensation for such damages in the same manner as in section 16.6.1.

86 16.6.3 Disposal of Abandoned and Vacated Street Lands. ~~Whenever the land comprehended or included in any~~  
87 ~~street or alley or part thereof is vacated or abandoned under this section be owned by the Town, the Town Council may, in~~  
88 ~~its discretion, sell such land at public or private sale and for such consideration as the Town Council shall deem proper;~~  
89 ~~provided that such lands shall first be offered equally to the owners abutting on each side. The Town Council shall have the~~  
90 ~~right and power to convey to the purchaser or purchasers thereof, a good and sufficient title thereto for whatever estate the~~  
91 ~~Town may have therein. The Town shall convey any abandoned or vacated street or alley equally to the owners of the~~  
92 ~~adjacent property, with each property owner being conveyed the adjacent portion of the street or alley to the centerline~~  
93 ~~thereof. If 2 or more adjoining property owners agree amongst themselves to a different division of their portions of the~~  
94 ~~street or alley, the Town may effectuate the conveyance of the street or alley in accordance with their request. The Town~~  
95 ~~may reserve an easement across all or a portion of the street or alley being abandoned or vacated.~~

96 16.6.4 "Street" Defined. For all purposes of this Section 16, the word "street" shall be deemed and held to  
97 comprehend the entire right-of-way, whether or not improved, including sidewalks, curbs, lanes, alleys, roadways, streets,  
98 or other highways owned by, titled in the name of, or under the jurisdiction and control of the Town. "Street" shall not  
99 include any road, street, highway, or other public way under the jurisdiction and control of the Delaware Department of  
100 Transportation (or any successor state agency).

#### SYNOPSIS

This Act amends the Charter of the Town of Smyrna ("Charter") to clarify the authority of the Town in certain areas and to improve the operations of the Town. Specifically, in this Act:

Section 1 clarifies that when property is annexed into Town, included in the annexation are all adjacent streets, roads, and alleys, up to the center line.

Section 2 authorized the Town to impose a lodging tax of up to 3% on hotels, motels, and tourist homes.

Section 3 authorizes the Mayor to appoint town officers to terms that mirror the remainder of the Mayor's term.

Section 4 clarifies the procedures for abandoning and vacating streets and alleys, including the disposition of abandoned or vacated streets or alleys to adjoining property owners.

This bill also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Ennis