SPONSOR: Sen. Mantzavinos & Sen. Lockman & Sen. Walsh &
Rep. Neal & Rep. Bolden & Rep. Cooke &
Rep. K. Williams

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 298
AS AMENDED BY
SENATE AMENDMENT NO. 1

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

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

Section 1. Amend Article III of the Charter of the Town of Newport by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 3-08 Commissioners Prohibitions

A. Holding Other Office Except where authorized by law, no Mayor or Commissioner shall hold any other Town office, or Town employment during the term for which elected to Commissioner, and no Mayor or Commissioner shall hold any compensated appointive Town office or employment until one (1) year after the expiration of the term for which elected to office.

B. Appointment and removals. Neither the Mayor nor the Commissioners shall in any manner dictate the appointment or removal of the Town administrative officers or employees whom the Town manager or any of his/her subordinates are empowered to appoint, but the Mayor and Commissioners may express its views and fully and freely discuss with the Town Manager anything pertaining to appointment of such officers and employees <u>in Executive Session</u>. (70 Del. laws, c. 4)

C. Interference with Administration. ~~Except for the purpose of inquiries and investigations,~~ The Mayor and Commissioners shall deal with Town officers and employees who are subject to the direction and supervision of the Town Manager solely through the Town Manager, and neither the Mayor nor the Commissioners, nor its members shall give orders to any such officer or employee, either publicly or privately.

Section 3-09 Vacancies and Forfeiture of Office

A. Vacancies. The office of Mayor or Commissioner shall become vacant upon death, removal from the Town, resignation, removal from office in any manner authorized by law, or forfeiture of office.

B. Forfeiture of Office. The Mayor or Commissioners shall forfeit office if:

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(1) he/she lacks, at any time during his/her term of office, any qualification for the office prescribed by this Charter or by law;

(2) violates any express prohibition of this Charter;

(3) is convicted of a felony as that term is defined by the State of Delaware;

(4) ~~failure to attend three (3) successive monthly meetings at any time or~~ failure to attend four (4) regular meetings in a twelve (12) months period.

C. Filling of Vacancies. In case of vacancy for any cause in the office of Mayor, the Vice- Mayor, shall fill such vacancy. In the case of a vacancy for any cause in the office of Commissioner, the Commission, including the Mayor, upon majority vote shall make a temporary appointment to fill such vacancy at the next regular meeting. Such appointment shall continue until the next general municipal election, Thereafter, such office shall be filled by election and the person so elected shall serve for the remainder of the term of the Commissioner whose office became vacant.

Section 3-10 Judge of Qualification of Members

The Mayor and Commissioners shall be the judge of the election and the qualifications of the Mayor and Commissioners and of the grounds for forfeiture of their office, and for such purposes, shall have power to subpoena witnesses, take testimony, and require the production of records. A Mayor or Commissioner charged with conduct constituting grounds for forfeiture of his/her office, except for forfeiture by virtue of violation of Sec. 3-09 B(4), shall be entitled to a public hearing on demand; and notice of such hearing shall be posted ~~in five (5) prominent locations in the~~ around Town, one of which shall include the Town Hall, at least ten (10) days in advance of the hearing.

Section 3-12 Meetings of Commissioners

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

The Mayor and Commissioners shall have the same power and authority to enact all ordinances, adopt all resolutions, pass all motions, make all orders and transact all business at any adjourned or special meeting, called as aforesaid as the Mayor and Commissioners has at a regular meeting. 78 Del. Laws, c. 244, § 2

Section 2. Amend Article IV of the Charter of the Town of Newport by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 4-01 Property Assessment Procedure

A. Generally. There annually shall be made a true, just and impartial valuation and assessment of all real estate within the Town except such real estate as is exempt from municipal assessment and taxation by virtue of any State law, and also of such personal property as is subject to County assessment and taxation; provided, however, that in no event shall household furnishings, bank accounts, stocks, bonds or automobiles be assessed or taxed.

B. Use of County Assessments. It shall be lawful for the Town to enter into an agreement with the Board of Assessment for New Castle County to inspect and copy, or to obtain copies, of the assessments made for County purposes. ~~Annually, the Commissioners shall make a judgment regarding whether the Town will utilize such County assessments and whether said County assessments are a true, just and impartial evaluation.~~ The ~~Commissioners~~ Town Manager ~~then~~ shall ~~order the adoption of such~~ utilize the County assessment for municipal purposes ~~or the adoption of assessments as determined by the Town assessment authority; provided, however, that adoption of the County assessment for municipal purposes~~ and shall not preclude the Town from modifying the County assessment list to take into account new construction, tax exemption status, or use not reflected in the County assessment list, or clear cases of inequitable assessment. 70 Del. Laws, c. 4

~~The determination to use the County assessments shall be made by ordinance before February 1st of any year and shall continue in effect from year to year until revoked by ordinance. Notice of a determination to use the County assessments shall be given to the Assessor or Board of Assessment prior to March 1st in the year that the determination is made and shall be published at least once a week for two (2) weeks prior to March 1st of each year in at least two (2) newspapers in the municipality, or to the extent no such newspaper exists, then in a newspaper of general circulation in New Castle County~~.

~~C. Approval and Posting of Assessment Roll. Each year, there shall be prepared and submitted to the Commissioners at least 60 days before the beginning of the tax year, two or more copies of the assessment rule, which shall show the location of each parcel of taxable real and personal property by street and number or other suitable description. When the Commissioners approve the roll as prepared, or as modified by the Commissioners, then a full and complete transcript thereof shall be posted in a place in the Town designated by the Commissioners. Such posting shall take place at~~

~~least 45 days before the beginning of the tax year and shall remain posted up to, but not including, the appeal day as herein set out. Notice of the time and place where the assessment list may be viewed shall be given by posting such announcement in at least five (5) public places throughout the Town.~~

~~D. Assessment Board of Appeals. Each year, at least 30 days before the beginning of the tax year, the Commissioners shall, upon receipt of a application for an assessment appeal, hold a Board of Appeals, during which lime the Commissioners shall hear and determine appeals from assessments and shall make such corrections and additions as may be deemed necessary and proper. The decision of a majority of the Commissioners sitting on appeals shall be final and conclusive in respect to all appeals~~.

No Commissioner shall sit on his/her own appeal, but the same shall be heard and determined by the other Commissioners. After the said valuation and assessment shall be examined and adjusted by the Commissioners, all property taxes shall be examined and adjusted by the Commissioners, all property taxes shall be levied on real and personal property thus assessed in just and equal proportions.

Section 4-02 Levy of Taxes

The Commissioners shall, after having ascertained the revenue necessary to balance the budget and having apportioned said sum on the assessment and valuation as provided for in this Charter, shall~~, on the first day for the fiscal year, furnish the Town Treasurer with a copy of the final~~ have the Town Manager utilize the County assessment roll containing the names of the taxables, as well as the owners of real estate and the tax on the entire valuation and assessment at a rate per one hundred dollars. The Assessment roll shall be certified true and correct by ~~a majority of all the Commissioners~~ the Town Manager.

Section 3. Amend Article VI of the Charter of the Town of Newport by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 6-06 Capital Program

A. Submission to the Commissioners. The Town Manager shall prepare and submit to the Commissioners any capital improvement plan for approval. ~~a five- year capital program at least four (4) months prior to the final date for the submission of the budget. The capital program shall include the following elements and information:~~

~~(1) A clear general summary of its contents;~~

~~(2) A list of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing with appropriate supporting information as to the necessity for such improvement.~~

~~(3) Cost estimated, method of financing, and recommended time schedules for such improvements; and~~

~~(4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.~~

B. The Commissioner Action on Capital Program. The Commissioners shall hold such deliberations and hearings as it deems desirable concerning the proposed capital program. It shall adopt the final program, with or without amendments, deletions or additions, no later than sixty days prior to the end of the current fiscal year.

The town manager shall incorporate the approved capital program and projects for the current year into the budget.

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

~~D. Perpetuation of Program. The capital program shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition. New projects will be added as their need becomes apparent. 78 Del. Laws, c. 244, § 5~~

Section 6-07 Power to Raise Revenue

B. The Commissioners shall have the right to grant or refuse, and to charge fees for licenses or permits for all trades or businesses, of any description, within the Town and to control their use of any property within the Town. The Commissioners shall have the power to levy and collect franchise fees, impact fees or gross rental receipts.

Section 6-09 Power to Incur Bonded Indebtedness

A. Power to Borrow Money. The Town may incur indebtedness by issuing either general obligation bonds or certificates of indebtedness secured by the full faith and credit of the Town, or by issuing revenue bonds, either in whole or in part of the total amount necessary to provide funds for the erection, extension, enlargement or repair of any plant, machinery, appliances or equipment ~~for the furnishing of water~~, for the construction, repair or improvement of highways, streets or lanes, or the paving, curbing, or erection of gutters along the same; for the construction or repair of sewers or sewage disposal equipment; or to defray the cost of the share of the Town in the cost of any permanent municipal improvement; or to replace any monies advanced from current funds of the Town to finance any one or more of such projects; or to carry out any capital improvement project deemed by the Commissioners to be necessary to the proper execution of any function or power of the Town.

Section 4. Amend Article VII of the Charter of the Town of Newport by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

~~Section 7-02 Assessor~~

~~If and when the Mayor and Commissioners choose not to use the County assessments as specified in Section 4-01, Paragraph B, of this charter, the Mayor, with the advice and consent of three Commissioners shall appoint an officer of the Town who shall have the title of Town Assessor. He/she shall be a certified real estate assessor in his/her state of~~

~~incorporation, and shall have practiced the determination of real estate assessments for at least five years prior to appointment. 70 Del. Laws, c. 4~~

Section 7-07 Town Building Inspector

The ~~Mayor shall appoint, with the advice and consent of three Commissioners,~~ Town Manager shall hire an officer of the Town who shall have the title of Town Building Inspector. The Town Building Inspector shall have the duty to review all building plans, issue building permits and enforce all building codes~~, except plumbing codes if there is a Town Plumbing Inspector,~~ adopted by ordinance. The Town Building Inspector shall have the authority to inspect all buildings in the corporate limits of the Town of Newport and to issue stop work orders and such other orders as are necessary to obtain conformance to the Building Codes. The Town Building Inspector shall be compensated at a rate to be determined by the Town Manager. ~~Mayor and three Commissioners. The Town Building Inspector shall submit a monthly report to the Mayor and Commissioners. prior to the regular monthly meeting.~~ The Building Inspector shall report to and receive direction from the Town Manager.

~~Section 7-08 Town Plumbing Inspector~~

~~The Mayor may appoint with the advice and consent of three Commissioners an officer of the Town who shall have the title of Town Plumbing Inspector. The Town Plumbing Inspector shall have the duty to review all plumbing plans. issue plumbing permits and enforce all plumbing codes, adopted by ordinance. The Town Plumbing Inspector shall have the authority to inspect all buildings in the corporate limits of the Town of Newport and to issue stop work orders and such other orders as are necessary to obtain conformance to the Plumbing Codes. The Town Plumbing Inspector shall be compensated at a rate to be determined by the Mayor and three Commissioners. The Town Plumbing Inspector shall submit a monthly report to the Mayor and Commissioners, prior to the regular monthly meeting. 70 Del. Laws, c. 4~~

Section 5. Amend Article VIII of the Charter of the Town of Newport by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 8-01 The General Municipal Election

The general municipal election shall be held in the Town Hall or some suitable building within the Town limits designated by the Mayor and Commissioners on the First Monday in April, of each and every year. The Town Clerk or Town Manager shall, at least 15 days before any election or referendum, give notice of such election. together with the officers to be elected thereat, the referenda to be considered and any other matter to be voted on, by posting notices in five (5) or more public places in the Town of Newport.

Section 8-02 Filing for the Office of Commissioner

Filing for the Office of Commissioner shall be by letter signed by the candidate and there shall be no party designation on any such letter beside the name of any candidate or on any ballot in any municipal election. All persons desiring to be candidates at any municipal election shall file with the Town Clerk or Town Manager of the Town of Newport a written and signed statement of their candidacy at the Town Hall during normal business hours not later than thirty (30) days before the election. The Town Clerk and Town Manager are authorized to accept a notice of withdrawal signed by the candidate up until twenty (20) days before the election. A criminal background check is required of all candidates at the candidate's expense and shall be reimbursed up to $75 if the candidate is elected to office.

Section 8-05 Voter Qualifications

Every person domiciled in the Town of Newport who shall have reached the age of eighteen (18) years who is a citizen of the United States and who can prove the foregoing by proper identification, shall be entitled to vote at all regular and special municipal elections and referenda, except as otherwise provided in the Charter. Domicile in any area annexed to the Town by virtue of any action taken under this Charter or the laws of the State of Delaware shall constitute, for the purpose of this Section, domicile in the Town. The Town will utilize the State's voter registration rolls.

~~The Commissioners, by ordinance duly adopted, may provide for the registration of voters and require that a person, otherwise qualified to vote, must also be properly registered in order to vote in the municipal elections. Any such ordinance providing for registration of voters shall make adequate provision for the preparation and custody of registration books and for the entry therein of the names of registered voters, their qualifications as such, the fact of their voting at each municipal election, and such other matters as may be required by this Charter of the Laws of the State of Delaware. Reasonable opportunity shall be provided for voters to register, and there shall be at least five (5) registration days in each year, the last one of which shall be not more than 30 days prior to any election or referendum. Hours of registration shall be determined by ordinance. The ordinance may provide for permanent registration lists~~

Section 6. Amend Article IX of the Charter of the Town of Newport by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 9-04 Powers and Duties of the Town Manager

The Town Manager shall be the chief administrative officer of the Town. He/she shall be responsible to the Commissioners of Newport for the proper administration of the affairs of the Town placed in his/her charge by or under this Charter. He/she shall have the following powers and duties:

E. The Town Manager shall prepare and submit the annual operating budget~~, capital plan~~ and capital budget as necessary to the Commissioners according to the requirements of this Charter.

Section 7. Amend Article X of the Charter of the Town of Newport by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

Section 10-01 Police Department

A. There shall be a Police Department which shall be directed and supervised by a police officer of the Town who shall have the title of Chief of Police. ~~The Commissioners shall, from time to time, make such rules and regulations as may be necessary for the organization, government and control of the Police Department.~~ The Chief of Police shall have the power to adopt and implement Department Policies for the greater good of the department. The Police Department shall preserve peace and order and shall compel obedience within the Town limits to the Ordinances of the Town and the laws of the State of Delaware. The Police Department shall have such other duties as the Commissioners shall, from time to time, prescribe. The Chief of Police and the members of the Police Department shall be subject to the direction of the Town Manager, acting on behalf of the Commissioners.

B. Each member of the Police Department shall have statewide police arrest and enforcement powers equivalent to those held by a member of the Delaware State Police subject to the following terms:

1. That all exercise of such authority be pursuant to an ongoing investigation originating in the aforesaid locus of the officer's original jurisdiction;

2. The officer informs the law enforcement agency of the jurisdiction into which entry is made and the appropriate dispatch center. In addition, should the investigation involve the use of, sale of, or otherwise, controlled substance, both State and local (if any) units that investigate such activity be notified.

3. The officers shall have police powers of the Delaware State Police to participate outside their jurisdiction a member of a state or federal task force. This also includes participating in Delaware Officer of Highway Safety campaigns like "Checkpoint Strikeforce."

~~Section 10-02 Board of Health~~

~~A. The Board of Health shall consist of five (5) members, who must be residents of Newport, one of whom shall be a practicing physician, if available, and one of whom may be a Commissioner, who is assigned to the Board of Health. The Board shall be appointed by the Mayor with the advice and consent of three Commissioners, A majority of the Board shall constitute a quorum. Members shall serve at the pleasure of the Mayor and three Commissioners for a period of one (1) year and shall be appointed at the first regular meeting of the Commissioners in May or until their successors are duly appointed and qualified.~~

~~B. The Board of Health shall have cognizance of and interest in the life and health of the people of Newport and shall report to the Commissioners in writing whatever, in its judgment, is injurious to the health and safety of the citizens~~

~~and shall make recommendations to the Commissions concerning whatever may contribute to the health and sanitation of the citizens of the Town of Newport. The Board shall have all powers now or hereafter vested by the laws of the State of Delaware in Boards of Health generally, and also such additional powers as may be conferred by ordinance.~~

~~C. The Board of Health shall organize by the election of a Chairperson and Secretary within ten (10) days after notice of their appointment and shall keep a record of their proceedings and acts.~~

~~D. The Board of Health, at a regular or special meeting, may authorize any of its members, agents or employees of the Town with the consent of the Town Manager and under his/her direction to make an inspection of private property, upon presenting official identification, and where there is good cause shown that a violation of the health and sanitation code or related health ordinances exists on such property and provided that the owner is advised at least three (3) days in advance of such inspection, and that the inspection is made at a reasonable hour; except that such requirements shall not apply in the case of an emergency.~~

~~E. The Board of Health shall have the power to recommend the adoption of ordinances relating to the health of the citizens or to prevent the introduction or spread of infectious or contagious diseases or nuisances affecting the same and such ordinances, when adopted by the Commissioners, shall extend to an area outside the Town limits for a distance of one (1) mile.~~

Section 8. Amend Article XI of the Charter of the Town of Newport by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

~~Section 11-01 Planning Commission~~

~~The Mayor, with the advice and consent of three Commissioners, shall appoint a Planning Commission consisting of five members at large. Appointments should be made at the first meeting of the Commissioners in May. All appointments shall be for terms of three years. Appointments during the transition period shall be fixed by ordinance, but terms shall not exceed three years. The compensation of the Planning Commission, if any, shall be determined by the Commissioners. They shall receive reimbursement for actual and necessary expenses incurred in traveling on official business approved by the Commissioners.~~

~~The powers, duties and scope of activities of the Planning Commission shall be determined by ordinance. The Commission shall advise the Mayor and Commissioners on zoning and land subdivision matters, on the comprehensive development plan, on flood plain regulation, on the official map of the Town, and on such other matters as shall be contained in said ordinance.~~

~~The Planning Commission shall elect annually, from among its members, a Chairperson and Secretary. The Commission shall have no authority to employ persons, disburse monies , make contracts, or to exercise administrative~~

~~authority in any manner whatsoever, but all such employees engaged in planning matters, and all disbursements, contracts and administrative duties shall be under the direct supervision of the Town Manager.~~

Section 11-02 Comprehensive Development Plan

A. Development. The Commissioners shall adopt every 10 years or sooner, if required, ~~and may from time to time modify,~~ a comprehensive development plan setting forth, in graphic and textual form, policies to govern the future physical development of the Town. Such plan may cover the entire Town and all of its functions and services or may consist of a combination of plans governing specific functions and services or specific geographic areas. Such comprehensive development plan shall show, among other things, existing and proposed public ways, streets, bridges, tunnels, viaducts, parks, parkways, playgrounds, sites for public buildings and structures, pierhead and bulkhead lines, waterways, routes of railroads and buses, locations of sewers, water mains, and other public utilities, and other appurtenances of such a plan, including certain private ways. Such plan shall be adopted and have the effect as set out herein.

B. Adoption of the Development Plan. Upon receipt from the ~~Town Manager~~ Comprehensive Plan Committee of the proposed comprehensive plan, portions thereof, or proposed modifications thereto, the Commissioners shall refer such proposal to the Commissioners. ~~Planning Commission, which shall, within a time specified by the Commissioners, report its recommendations thereon. After receipt of the recommendations of the Planning Commission,~~ The Commissioners shall hold a public hearing on the proposed comprehensive plan or modification thereof, and may thereafter adopt it by ordinance with or without amendment. The comprehensive development plan shall serve as a guide to all future action of the Commissioners concerning land use and development regulations, urban renewal programs, and expenditures for capital improvements.

C. Implementation of the Development Plan. The Commissioners may, by ordinance, adopt land use and development regulations including, but not limited to zoning and subdivision regulations. The Commissioners may, by ordinance, provide for redevelopment, rehabilitation, conservation and renewal programs for the alleviation or prevention of slums, obsolescence, blight, or other conditions of deterioration, and the achievement of the most appropriate use of land.

Before acting on any proposed ordinance concerning land use and development regulations, urban renewal, or expenditures for capital improvements, where such ordinance refers to a matter covered by the comprehensive development plan or the official map, the Commissioners shall refer the proposal to the Planning Commission, which shall, within a time specified by the Commissioners and prior to the public hearing on the proposed ordinance, report its recommendations thereon. Upon adopting any such ordinance, the Commissioners shall make findings and report on the relationship

between the ordinance and the comprehensive plan, and in the event that the ordinance does not accord with the comprehensive plan, the plan shall be deemed to be amended in accordance with such findings and report.

Section 9. Amend Article XII of the Charter of the Town of Newport by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 12-05 Charter Amendments

~~The Mayor and Commissioners may, by ordinance, provide a procedure by which it may propose to the voters an amendment to this Charter, but said procedure shall, in all respects, comply with applicable State law. Referendum on such amendments proposed may be held at a regular or special election, as determined by the Mayor and Commissioners by resolution. Amendments to this Charter to be voted on at referendum shall be presented for voting by ballot title. The ballot title may differ from its legal title and shall be a clear, concise statement describing the substance of the proposed amendment without argument or prejudice. Below the ballot title shall appear the following question: "Shall the Above-described Amendment be Adopted?". Immediately below such question shall appear the following words, "YES" and "NO", and to the left of each, a square in which, by making a mark, the voter may cast his/her vote. Votes shall be counted and results determined in the same manner as for Commissioners' election. Amendments receiving a majority of the votes cast on the question shall be processed and adopted in accordance with State Law. In addition to the forgoing procedure for Charter Amendment by Referendum, as well as procedures established by applicable Delaware law, the~~ The Charter of the Town of Newport may be amended by the General Assembly, when properly sponsored and introduced by a member of the General Assembly and which is approved by two-thirds members of each House and signed by the Governor. The Mayor and Commissioners may request such a Charter Amendment from the Delaware General Assembly by Resolution of the Mayor and Commissioners passed by a majority vote after a duly noticed public hearing thereon. 78 Del. Laws, c. 244, § 8